

PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS

RECEIVED

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SEP 04 2018

S.C. SUPREME COURT

APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Judge

Unpublished Opinion No. 2017-UP-442 (S.C. Ct. App. filed Nov. 29, 2017)

STATE OF SOUTH CAROLINA

Respondent,

v.

BRAD BERNARD DAWKINS

Petitioner.

APPENDIX

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APPENDIX

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Record on Appeal
In The
Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2015-002254

STATE OF SOUTH CAROLINA

Respondent,

v.

BRAD BERNARD DAWKINS

Appellant.

RECORD ON APPEAL

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WITNESSES

Shannon Childress
Laurens County Sheriff

WARRANT NUMBER

1617479

Lane Bell
Angie Nelson
Foreman of the Grand Jury
Date: 2/19/10

VERDICT

Guilty
Lyette Stokes
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2010

Indictment # 10CS30-0256

THE STATE

vs.

Brad Bernard Dawkins

Ph J
Failure to appear 2/20/10
BW issued 4/9/10. BW voided 5/18/10

INDICTMENT FOR

LEWD ACT UPON CHILD UNDER 16
16-15-0140

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

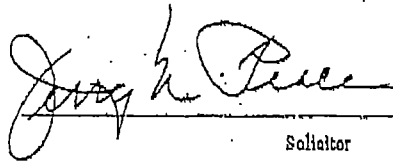
COUNTY OF LAURENS

LEWD ACT UPON CHILD UNDER 16
16-15-0140

At a Court of General Sessions, convened on the 19th day of February, 2010 the Grand Jurors of Laurens County present upon their oath:

That Brad Bernard Dawkins, did in Laurens County, state aforesaid, on or about the 30th day of November, 2009 being over the [REDACTED] years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of [REDACTED] juvenile, DOB [REDACTED] with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, a juvenile, DOB [REDACTED] in violation of Section 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 cases made and provided.



Solicitor

STATE OF SOUTH CAROLINA
 COUNTY OF Laurens
 STATE VS.
 Brad Bernard Dawkins
 AKA:
 Race: Sex: M Age: 45
 DOB: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED] SID#: [REDACTED]

IN THE CLERK OF GENERAL SESSIONS

INDICTMENT/CASE#: 10CS30-0256

A/W#: J617479

Date of Offense: 11/30/2009

S.C. Code §: 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

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

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

☒ CONVICTED OF or ☐ PLEADS

TO: Sex./Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1)

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

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

A TEST:

Sheck, C. Lance SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable; this balance is suspended with probation for 48

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def Prob)	\$500
§ 14-1-212 (Law Enforcement Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(A) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$ 3.90
TOTAL:	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

PTUP: days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Probation to commence

upon release from CDC

from 10 CS 30 2017

G.P.S. upon supervision

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

 FC Hall
 2154
 10-16-15

WITNESSES

Shannon Childress
Laurens County Sheriff

WARRANT NUMBER

J617481

Lawrence Hill
Angie E. Nelson
Foreperson of the Grand Jury
Date: *2/19/10*

VERDICT

Guilty
Lyette (Sister)
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

February Term, 2010
Indictment # 10GS30- *0257*

THE STATE

BW lifted 5/18/11 vs.
Brad Bernard Dawkins

Rev. J. J.
Failure to appear *7/20/10*
BW issued 4/9/10

INDICTMENT FOR

**CRIMINAL SEXUAL CONDUCT
WITH A MINOR**
16-03-0655

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

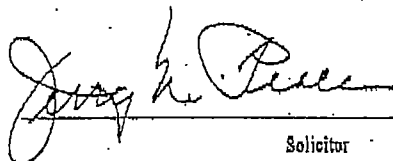
COUNTY OF LAURENS

CRIMINAL SEXUAL CONDUCT
WITH A MINOR
16-03-0655

At a Court of General Sessions, convened on the 19th day of February, 2010 the Grand Jurors of Laurens County present upon their oath:

That Brad Bernard Dawkins, did in Laurens County, state aforesaid, on or about the 30th day of November, 2009 being older than the victim, willfully and unlawfully commit criminal sexual conduct with a minor in the second degree, to wit: that the said defendant did engage in sexual battery upon a person who is at least the [REDACTED] to wit: a juvenile, DOB [REDACTED] in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

State of South Carolina)
 vs.) Transcript of Record
Brad Bernard Dawkins)
)
 —)

B E F O R E:

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

Michael D. Brown, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter.

1 got to call their witnesses first and present their
2 evidence first then the defense can choose at that time
3 whether they intend to present any evidence or not. They
4 don't have to. That is the decision, a lot of times the
5 defense and its counsel doesn't make until the State says
6 that is all I have got, that is all the witnesses I intend
7 to present. And sometimes we will take a break and then
8 the other side, yes, I want to put up some witnesses. And
9 that is total strategy on the part of the defendant
10 because he doesn't have to testify. He doesn't have to
11 present any defenses, he doesn't have to disprove a thing.
12 He is presumed innocent until the State proves his guilt
13 beyond a reasonable doubt. I will explain to you what
14 those terms mean but don't presume by any of my rulings
15 that I am pulling for one side or the other. It is my job
16 to try to present this case to you fairly and impartially
17 and that is what I am going to attempt to do. So with
18 that kind of brief explanation that the State goes first
19 and the defense has nothing to prove whatsoever, Ms.
20 Lancaster, if you will place them under oath. Y'all stand
21 and Ms. Lancaster will place you under oath.

22 (WHEREUPON, the jury was sworn at 11:08 a.m.)

23 THE COURT: All right, Mr. Sheek.

24 MR. SHEEK: May it please the Court. Good morning,
25 ladies and gentlemen. Again, I've introduced myself, but

1 my name is Lance Sheek. I'm assistant solicitor here in
2 the Eight Judicial Circuit. Laurens County where y'all
3 live is part of the Eight Circuit which is made up of
4 Laurens, Abbeville, Greenwood and Newberry Counties. Our
5 state is divided into 16 judicial circuits. Each circuit
6 has an elected solicitor who is the chief prosecutor for
7 that area. In this case, it was the gentleman seated here
8 with me this morning, David Stumbo, was elected as your
9 solicitor several years ago and I work for him. And your
10 solicitor's office is charged with the responsibility of
11 prosecuting any cases, any criminal cases that fall within
12 the General Sessions court of the Eighth Judicial Circuit,
13 so Laurens County is part of that. So that's what we do.
14 As I told you, the young lady sitting here at the table
15 with me is Wendy Chappell. She's an investigator with our
16 office. And Wendy and I are responsible for prosecuting
17 cases of the nature that you're going to hear today and
18 those are cases of sexual assaults in children. Now, what
19 you have today and what you're going to hear over the next
20 day or so is testimony related to the two indictments that
21 the Judge read to you a few moments ago as we were getting
22 ready to pick the jury. And as he told you and as he just
23 reiterated to you, indictments aren't evidence and what
24 I'm telling you now isn't evidence. The evidence is going
25 to come to you from that chair right there. This is our

1 witness stand and witnesses are going to come up here.
2 They're going to take an oath and then they'll testify to
3 you. They'll answer any questions. If there is a piece
4 of physical evidence that you have to look at it, it's
5 going to be entered through a witness seated in that chair
6 so that's where you really direct most of your attention.
7 Because what's going to happen over the next couple of
8 days is witnesses are going to be called, testimony is
9 going to be given about these indictments that you've been
10 read. And at the end of the day, you're going to go back
11 and you're going to go to a jury room, the room that you
12 were in a little bit this morning and you're going to
13 deliberate. You're going to talk about the testimony and
14 the evidence and we're going to ask you to reach a verdict
15 which literally means to speak the truth and that's what
16 we're going to ask you to do. So what are the charges
17 that the Judge told you about? Well, there's two
18 indictments in this case against the gentleman sitting
19 right over here at the table, Mr. Brad Dawkins. He's
20 charged with criminal sexual conduct with a minor in the
21 second degree. He's charged with lewd act upon a minor.
22 These charges are based on events that occurred back in
23 the fall of 2009. The indictments read on or about
24 November the 30th. And the reason they say on or about is
25 that's how these allegations are typically brought up.

1 They're how they are reported and this is how it's proved.
2 Our legislatures recognize that when children relay things
3 that have been occurring to them, often times, it's very
4 difficult to nail down with preciseness unlike a bank
5 robbery or something like this that you may have on
6 videotape. It is often something that occurs over a
7 period of time. But on or about November 30th of 2009,
8 you're going to hear from a young lady who was 13 years
9 old at the time, getting ready to turn 14 and she's going
10 to tell you about what happened between her and Bradley
11 Dawkins. That testimony is going to be the gist of what
12 this case is about. I could stand up here and tell you
13 all day long she's going to say this, she's going to say
14 that and it doesn't matter, because I don't give you
15 testimony. I don't give you evidence. She does that.
16 There's a couple of things I want you to keep in mind as
17 we go through this case. One problem I think that we have
18 created for ourselves in this country is our judicial
19 system often has an expectation that things are going to
20 occur like what we see on TV, so a phenomenon called the
21 CSI effect. The jurors interaction with the court system
22 is by far mainly what they see on TV as opposed to sitting
23 in chairs like you are today and actually seeing how we do
24 this business. In a case like this, the State's going to
25 bring to you the evidence that was available to them and

1 in the nature of these events, it is very often what we
2 call a he said/she said case. The victim says something
3 happened; the defendant does not have a responsibility to
4 get on the stand to say anything. He doesn't have a
5 responsibility to say or put up a defense, so I don't know
6 if he will. He may say something didn't happen. It
7 doesn't matter. What matters is that the responsibility
8 of the proof relies upon us, the State, to prove these
9 allegations to you and that's going to be proven by the
10 testimony of the young lady that experienced it back in
11 November of 2009. And for various reasons our justice
12 system often runs slow. You can see that. November of
13 '09, we're getting ready to come into November of 2015,
14 we're talking about six years ago. You're going to hear
15 the testimony of the young lady who's a sophomore at the
16 South Carolina State University doing speech pathology,
17 but it's going to be testimony of what happened to a
18 13-year-old little girl six years ago. And I want you to
19 keep that in mind. Listen to the testimony in this case.
20 Your oath is to find a verdict, proof of any guilt beyond
21 a reasonable doubt and a reasonable doubt is just that.
22 And His Honor has told you he's going to charge you all
23 the law. The end of this case, he's going to read you the
24 law that you have to apply, so you don't have to worry
25 about it right now. But the most important thing you come

1 into this courtroom equipped with today is your common
2 sense, because proof beyond a reasonable doubt is just
3 that, proof beyond a reasonable doubt. It's not proof
4 beyond all doubt. You know, I could argue it's not really
5 daylight outside and you don't have a window, you can't
6 see it. Maybe something happened and the sun is no longer
7 shining, I can always argue those kind of things. But
8 that's not what we're dealing with here. We're dealing
9 with proof beyond a reasonable doubt. You're going to
10 have to decide, in other words, who's telling you the
11 truth and that is solely within the responsibility of you
12 the jurors to judge the credibility and that literally
13 means the believability of the people that talk to you to
14 decide what happened. You're called the judges of the
15 facts. And in this case, you're going to speak a verdict
16 to what you think occurred in November of 2009 and that's
17 your job and your job alone. His Honor, Judge Griffith,
18 has the sole responsibility as the Judge of the law in
19 this case. He's going to tell you what the law is. I can
20 tell you what I think it is all day long. If it's
21 different from what he says, he rules, that's his job.
22 And just like that, you are the only ones that determine
23 the facts in this case. I can argue for the State's
24 position and for a verdict of guilty based on the evidence
25 that we're going to bring to you in this case and the

1 right of counsel and able counsel that's seated here
2 beside me today, he has the right to argue to you all of
3 the reasons why he thinks maybe you should not. That's
4 how the system works, but you and you alone make that
5 decision. Because of that, our system as we work it
6 doesn't move forward without you. People from our
7 community who are willing to come in and sit down and take
8 their time and listen and dispense justice because we, the
9 people that live in Laurens County, we sit here and we run
10 the justice system from Laurens County. You do that.
11 That's what you're doing right now. Because of that, I
12 want you to understand we appreciate you being here. I
13 understand you have jobs, you have lives, you have other
14 things that need to be done, other things that you were
15 doing this week. This probably wasn't on your list of
16 things that I want to be doing Tuesday morning, but we
17 thank you very much for your time. We thank you for your
18 attention. We thank you for being here.

19 THE COURT: Thank you, sir. Mr. Brown?

20 MR. BROWN: May it please the Court?

21 THE COURT: Yes, sir.

22 MR. BROWN: I stand before you today. I want you to
23 take a listen to the, the sound of a bell. The
24 unfortunate part about some things that we face in society
25 is that often times we hear once a bell is rung, you can't

1 do what? Go back and unring a bell. Sometimes things are
2 said. In fact, sometimes prosecutions are began that
3 should have never, ever taken place. It's a lot of
4 pressure on that time a very young person who had
5 initially a conversation with a group of people, a group
6 of people who professionally look at things only from one
7 perspective. Oftentimes, things are brought up and a
8 person that is a professional paid to look at something,
9 unfortunately, often look at things one way. And I'll
10 submit to you that that is the case here. You know the
11 unfortunate part is, in society there are a number of
12 things that can be shown, some things that can go hard,
13 some things that can be clearly shown. But what is one of
14 the worse things that could ever happen to a person
15 sitting literally where Mr. Dawkins is seated? That's for
16 a man to be accused of things in which we find Mr. Dawkins
17 charged with here today. Now, the prosecution didn't
18 specifically get into some of the things, but you will
19 have an opportunity to hear from this stand the specifics,
20 indeed, what you are charged with to look at involving
21 this case and those are the quote/unquote facts. The
22 information that you will receive in terms of what's
23 surrounding the charges that you hear coming today in this
24 courtroom. Verdicto; both the assistant solicitor and I
25 many moons ago had the chance to go through law school and

1 hear all these Latin words that, ultimately, we would have.
2 to one day bring to a courtroom and try to relate to you.
3 And so verdicto. A Latin word that means, as he said, to
4 speak the truth, the verdict. That's what you're charged
5 here with today. But more importantly to get to that
6 verdict, you had to have some qualifications to get here
7 besides behind citizens of this county. What empowers you
8 to be able to sit here to hear this testimony, to have
9 this case presented to you is none other than what we
10 would hope everyone would have every day they step out
11 their front door and that's common sense and that's life
12 experiences. That's the ability to weigh some things and
13 say, okay, I heard what one aspect of the situation is
14 being presented, but I also have the ability to listen and
15 to bring my life experiences and to use my common sense.
16 And that's all the defense is asking you to do. As he
17 said, we don't have a duty to prove or disprove anything.
18 The State has to bring these charges knowing that they
19 have to pursue a standard and the Judge will go over that
20 standard with you at the conclusion of this case and
21 that's beyond a reasonable doubt. We would ask that you
22 just pay attention through the course of this case, bring
23 into this courtroom your life experiences and be able to
24 weigh things and take a look at things and to know as you
25 should be able to hear in the course of this case that

1 once a bell is rung, it's very difficult, in fact, I
2 submit to you it's impossible to go back and unring that
3 bell. It's a lot of pressure on one person that once
4 something has been said, for a young child to come back
5 many years for whatever the reason is for this process to
6 take place in 2015 from 2009, to be able to go back and
7 change their story. Why? Because he's facing these
8 charges. These charges have been pending all of this
9 time. Please consider what you hear today, and then I
10 look forward to having an opportunity to come back and
11 having the ability to speak with you at the conclusion of
12 this case. Thank you.

13 THE COURT: All right. Mr. Sheek, call your first
14 witness.

15 MR. SHEEK: Thank you. I call Shannon Childress to
16 the stand.

17 THE COURT: Okay. Ms. Childress.

18 SHANNON CHILDRESS, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SHEEK:

22 Q Thank you. If you would, ma'am, give us your name?

23 A Shannon Childress.

24 Q And, Ms. Childress, where were your employed in
25 November of 2009?

1 A At the Laurens County Sheriff's Office.

2 Q And what was your job description at that point?

3 A I was lieutenant in Criminal Investigations majoring
4 in sex crimes.

5 Q And since that time have you retired from law
6 enforcement?

7 A I have.

8 Q Okay. And was that something that was unforeseen
9 when it occurred?

10 A Yes.

11 Q Would it be fair to say that your medical issues and
12 going out somewhat delayed the case you were working on?

13 A Yes.

14 Q In November of 2009, did you have an opportunity to
15 work on investigation of a case involving Bradley R.
16 Dawkins?

17 A Yes.

18 Q And a young girl named [REDACTED]?

19 A Yes.

20 Q And were you dispatched or put onto that case as part
21 of your investigative duties with the Laurens County
22 Sheriff's Department?

23 A Yes.

24 Q And I know, ma'am, at this point it's somewhat
25 limited, but as part of your investigation at some point

1 did you obtain an arrest warrant?

2 A Yes.

3 Q Okay. And that was against Mr. Dawkins?

4 A That's correct.

5 Q And when you were in Investigations, have you had a
6 child make an allegation of some type of abuse whether it
7 be sexual or physical, did you utilize the services of a
8 forensic interviewer or a, somebody that would talk to the
9 child?

10 A Yes, I did.

11 Q And was that conducted in this case?

12 A Yes.

13 Q And is that part of the information that you consider
14 when you're deciding whether or not to seek warrants?

15 A Yes, most of the time.

16 Q Okay. Thank you.

17 MR. SHEEK: That's all the questions I have at this
18 point, Your Honor.

19 THE COURT: Any questions?

20 CROSS-EXAMINATION

21 BY MR. BROWN:

22 Q Investigator Childress, did you make a determination
23 to bring warrants against my client, Mr. Dawkins?

24 A Yes, sir.

25 Q And did you have the ability to speak with Mr.

1 Dawkins?

2 A After the warrants were obtained, yes.

3 Q And not prior to?

4 A Oh, you know what, I did. I did talk to Mr. Dawkins.

5 Q Okay. And did you conduct some form of interview of
6 Mr. Dawkins?

7 A I need a copy of the arrest warrant, please.

8 (Whereupon, Counsel provided copy of arrest warrant
9 to witness.)

10 A Just give me a second. I need to refresh myself
11 right here real quick.

12 Q Take your time.

13 A I spoke to Mr. Dawkins on December 3rd of 2009, and I
14 got warrants on 12/4/2009, so December 4th. So I spoke to
15 Mr. Dawkins on December 3rd and obtained warrants on
16 December 4th.

17 Q What time on December 3rd, was it late?

18 A It may have been in the afternoon, but it was
19 definitely not late in the evening.

20 Q Who'd you talk to before you talked to Mr. Dawkins?

21 A The victim in this case which is [REDACTED].

22 Q Are you sure?

23 A I'm sorry?

24 Q Are you sure?

25 A Whom I talked to first?

1 Q Yes.

2 A No. In this case--

3 Q Yes.

4 A --to begin with I spoke with another officer from
5 another department.

6 Q All right. Well, in terms of any, there was an
7 illusion that Assistant Solicitor made about someone with
8 forensic assessments. Did you talk to anybody?

9 A I did have, I did have [REDACTED] I did have her
10 see a forensic psychologist or a forensic interviewer.

11 Q Prior to December 4th?

12 A No, this was after December 4th.

13 Q My question is prior, excuse me, a forensic evaluator
14 of some sort?

15 A Yes.

16 Q Did you have a chance to speak with that person
17 before you brought warrants against my client?

18 A No, I didn't need to at that point. I already had
19 interviewed the child myself personally.

20 Q Okay. And based upon that interview, you felt, to
21 bring the warrants for the two charges that you brought
22 against Mr. Dawkins?

23 A Actually, it was not until after I spoke to Mr.
24 Dawkins did I bring charges against Mr. Dawkins.

25 Q The exact charges?

1 A The charges; yes, sir. It was on the warrants.

2 Q So, Mr. Dawkins in talking to you, you're saying that
3 you gave information that would show that there was some
4 form of lewd act and this second charge based upon his
5 information?

6 A Altogether.

7 Q Altogether?

8 A Altogether. All the information. All of it, all of
9 it, altogether. There was definitely, definitely cause
10 for that warrant, both of them.

11 Q It was cause for a warrant but you, but again, my
12 question is, but just information you received from Mr.
13 Dawkins?

14 A Mr. Dawkins did give me information.

15 Q But you're saying you considered information that you
16 received from [REDACTED]?

17 A Well, I had to, you know, consider that information
18 considering the fact that I did interview her to begin
19 with. That's how I got that information to start with,
20 then did I move on to Mr. Dawkins.

21 Q Okay. Anyone else in between there?

22 A As far as who I may have interviewed?

23 Q In terms of the underlying allegations? You
24 interviewed [REDACTED] and you interviewed Mr. Dawkins?

25 A I did.

1 Q You did have a forensic evaluator at the time for
2 those?

3 A I did not need a forensic interviewer at that time to
4 interview the, [REDACTED] I did it myself personally.

5 Q Okay. So you're saying that you're an expert?

6 A I'm not an expert, but I've been in this field for a
7 long time. I've learned a lot, and I knew what I was
8 doing when I interviewed the victim.

9 Q So, again, my question to you is you talked to [REDACTED]
10 and you talked to Mr. Dawkins?

11 A I did.

12 Q And no one else?

13 A I probably talked to her mother. She was not home at
14 the time. Her mother was not home at the time. Her
15 mother was away. I had to call her mother in to let her
16 know what was going on.

17 Q When you talked to her mother, her mother was, when
18 you reached out to her, her mother wasn't home?

19 A No. That's exactly right. Her mother was not home.

20 Q Okay. And outside of talking to [REDACTED] and at some
21 point her mother, you let her mother know what was going
22 on?

23 A I did let her mother know.

24 Q Did you interview her mother?

25 A After I got done with her daughter.

1 Q Prior to speaking with Mr. Dawkins?

2 A Yes, I did speak with her that night, but I had to do
3 another, it wasn't like a real interview. I didn't like
4 sit, ask her a whole bunch of questions. Basically, just
5 asked her questions based on his background, because it
6 hadn't been too long.

7 Q So you didn't ask her any questions about any events
8 that allegedly could have occurred?

9 A I just don't recall. I'm not remembering right now.

10 Q Did you talk to this man?

11 A I don't, I'm not trying to be funny. I don't even
12 know who that man is.

13 Q So if I mention the name Stanley Dawkins, that
14 doesn't ring a bell to you?

15 A Is that his brother? I did talk to him on the phone
16 at some point in time.

17 Q Why would you talk to Stanley Dawkins?

18 A I don't remember. I don't. But I remember talking
19 to him.

20 Q So if I said you talked to Stanley Dawkins about a
21 murder, you would agree with me?

22 A No, I wouldn't, because I don't recall.

23 Q Okay. So you couldn't say that you did talk to him
24 about a murder, or you couldn't say that you didn't talk
25 to him about a murder?

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1 A I can't say that I did talk to him about a murder.

2 Q What about a stolen car?

3 A I don't see where that had anything to do with this.

4 Q Well, my question is you don't, you really don't
5 recall a lot of events that are surrounding why we're here
6 today, do you?

7 A Actually, I mean, I did pretty good about documenting
8 so I do have a good idea about what's happening. I even
9 have a good idea of what he told me himself. So I can
10 remember that. But do I remember him personally? No, but
11 I probably didn't see him either. I probably talked to
12 him on the phone.

13 Q You probably talked to him or did you talk him?

14 A I am, that name sounds too familiar to me, so I am
15 absolutely sure that it's somewhere on that folder.

16 Q So and would you agree with me or disagree with me
17 that the name Stanley Dawkins has come up before as
18 relates to these kind of charges that we're here for
19 today?

20 A I can say that I heard the name.

21 Q Based upon your investigation?

22 A For what reason, I do not--

23 MR. SHEEK: Your Honor, we got a matter for the Court
24 if we could approach real quick?

25 THE COURT: Yeah. Sure. Come on.

1 (Whereupon, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 Q So do you have any recollection of your conversation
5 with Mr. Stanley Dawkins on the phone?

6 A I do not.

7 Q But you know you talked to him?

8 A I do not. I do, just do not remember what I said to
9 him or talked to him about.

10 Q Did you talk to any forensic investigator in this
11 case at some point?

12 A I did speak with Jessica Bell.

13 Q Okay. And when did you speak with Jessica Bell?

14 A It would have been after that time at the, it would
15 have been after, at least after December 17th of 2009.

16 Q And why would you speak with Jessica Bell after you
17 brought the charges?

18 A I, the reason for sending [REDACTED], [REDACTED] I'm sorry.
19 There were a bunch of names together, altogether during
20 that time. The reason why I sent [REDACTED] to the, what was
21 known at that time as The Child's Place, it was for
22 forensic interviews and it was also for victim services.
23 And I felt like she needed victim services after I had
24 spoke with her and had an interview with her. So that was
25 one reason why I sent her to The Child's Place to begin

1 with; second to get an interview. I had already conducted
2 and I documented, and also to make sure that the child
3 received services.

4 Q Is that customary with what you typically would do?

5 A Yes, sir. That's what I do.

6 Q A standard procedure for you then?

7 A Yes, sir.

8 Q So it's nothing uncommon?

9 A Unless I have someone that, you know, is saying no,
10 this didn't happen or maybe I just would go ahead and send
11 them to have those services anyway, because I mean if you
12 have been through something like that you need some kind
13 of services.

14 Q So it's the ability for you to send someone to those
15 services, but you can't make a judgment call during that
16 time-period?

17 A I'm sorry. Well, I was able to assess that she
18 needed the services.

19 Q Okay. But you don't have a crystal ball and you
20 can't determine if something actually happened and that
21 you can only go off what someone said?

22 A Right. And I put what she said and what he told me
23 together and, basically, he told me a lot more than she
24 did.

25 Q Okay. But with that being said in terms of having

1 the ability to have a crystal ball--

2 A I don't have crystal balls.

3 Q --you don't have the ability to know what may or may
4 not happened, have happened, have happened?

5 A But I did have to investigate the case which would at
6 least bring things forth if something did happen or
7 something didn't happen. I was able to assess that by
8 what they were telling me and by all the evidence and
9 things that were around happening.

10 Q So you had a lot of evidence?

11 A No, not a whole lot, but there was some.

12 Q Did anyone go over with you any kind of evidence, any
13 kind of physical evidence, any kind of statements, any
14 kind of reports and do you have any of that, have you gone
15 over that with the prosecution?

16 A I haven't gone over anything at all in this, with
17 this case or with the prosecution at this time.

18 Q But you say there's evidence, so do you know of any
19 actual evidence that's going to be presented here today
20 based upon your investigation?

21 A Actually I can't say that I do, because I haven't
22 talked to the prosecution on this case.

23 Q And you haven't?

24 A No, I haven't.

25 MR. BROWN: I have no further questions, Your Honor.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 BY MR. SHEEK:

4 Q Ms. Childress, you no longer live in Laurens, do you?

5 A No.

6 Q So and traveling is not as easy for you as it may be
7 for other people?

8 A No, right.

9 Q And so prior to you arriving as we were actually
10 beginning our opening statements, have you and I talked
11 about this case?

12 A No.

13 MR. SHEEK: Now, if we could take a brief break, I
14 have something I'd like to address with the Court
15 regarding some questions I want to ask.

16 THE COURT: Okay. We have a legal issue here, y'all
17 step in the jury room. Don't begin discussing the case
18 and we'll have y'all right back in here in just a few
19 minutes.

20 (Whereupon, the jury is excused from open court for a
21 break.)

22 THE COURT: All right.

23 MR. SHEEK: Judge, based on the cross examination, I
24 would like to go on in with this officer regarding the
25 statements the defendant made since she was questioned

1 about the statements the defendant made. But that would
2 require, I think, a Jackson v. Denno determination on
3 that.

4 THE COURT: That's right. Mr. Brown?

5 MR. BROWN: Your Honor, we did touch upon the fact
6 that, that if she had any contact when she spoke with my
7 client. And it would be my objection, I didn't ask her
8 anything specific. I didn't ask her anything at all in
9 terms of what was mentioned there. So I'll leave that to
10 the Court's consideration.

11 THE COURT: What kind of statement did he give?

12 MR. SHEEK: And, Judge, what he did was and that's
13 one reason it is outside the presence of the jury is he
14 agreed to a polygraph which, obviously, we don't want to
15 mention polygraph in any way, shape or form. But he was
16 taken to SLED and I would be happy to term the question,
17 another law enforcement agency, officer along with her
18 interviewed the defendant so that the whole polygraph,
19 SLED don't come in. To answer your question, after he got
20 the results which the examiner said indicated deception
21 which, again, we don't intend to ask. But that he made
22 statements that he had given her a whipping. I don't
23 think that's necessarily relevant. But that he had walked
24 into her bedroom, this being the defendant walked into the
25 victim's bedroom and discovered her masturbating. He

1 further stated that she was performing the act with a
2 vibrator that he had provided her. He stated that she
3 asked him if she was masturbating correctly and that he
4 could show her how to do it. He stated that at about two
5 weeks later that he asked the victim if she had figured
6 out how to use the vibrator and she responded oh yeah.
7 And that he denied actually touching her.

8 THE COURT: Now, is that statement going to come in
9 through the other officer later?

10 MR. SHEEK: It would come in through the other
11 officer. And I'll be happy at this point and time to tie
12 it up and say, did you take the defendant and interview
13 him along with a Captain Morgan and not mention--

14 THE COURT: Maybe we can tie it together with a
15 question lodged at Mr. Morgan, is this a statement you and
16 Ms. Childress took together. Something like that.

17 MR. SHEEK: And we can actually bring the statement
18 in later. And all I would ask her for the Court's
19 purposes is about the advisement of rights so that we've
20 knocked that out of the way for the Jackson v. Denno which
21 we would complete with Captain Morgan's here.

22 THE COURT: That seems appropriate to me. And I want
23 to leave out all the inappropriate testimony and part of
24 the statement. We can make a determination with the
25 Jackson v. Denno whether it will be allowed or we can do

1 it now or we can do it then. Who advised the rights?

2 MR. SHEEK: The advisement of rights is actually
3 signed by Ms. Childress and Mr. Dawkins and, I think, Ben
4 Blackmon.

5 MS. CHILDRESS: Yeah, he would have witnessed it.

6 MR. SHEEK: But the rights were given, he was
7 advised. So at this point for the Court's purposes I
8 would just simply quickly ask her about advising his
9 rights, did he understand them and then we can move on.

10 THE COURT: Go ahead.

11 MR. BROWN: And, Your Honor, just for the purpose of
12 the record, I think that's a wonderful and unique way for
13 the prosecution to try to rehabilitate memory. We
14 understand, sir.

15 THE COURT: All right. Go ahead.

16 MR. SHEEK: Thank you.

17 JACKSON V. DENNO HEARING (SHANNON CHILDRESS)

18 BY MR. SHEEK:

19 Q I want to say Investigator Childress. Ms. Childress,
20 did you have an opportunity to talk with the defendant
21 about the allegations in this case?

22 A I did.

23 Q And prior to having that discussion, did you have an
24 opportunity to advise Mr. Dawkins about his constitutional
25 rights regarding speaking with the police?

1 A I did.

2 Q And does the Sheriff's Office have a form, an
3 advisement of rights form that you normally use when
4 giving a defendant his Miranda warning?

5 A Yes.

6 Q And did you advise the defendant of his Miranda
7 warning?

8 A I did.

9 Q And did you use the normal form in doing that?

10 A I did.

11 Q Okay. And can you tell the Court, does the form
12 indicate the warnings that he was given?

13 A Yes, it does.

14 Q And would you mind just stating those for the record
15 real quickly?

16 A You want me to read the whole thing?

17 Q If you don't mind.

18 A Okay. It says, before we or I ask you any questions
19 you must understand your rights. You have the right to
20 remain silent. Anything you say can be used against you
21 in Court. You have the right to talk to a lawyer for
22 advice before we or I ask you any questions and to give
23 him or her with or and to have him or her with you during
24 questioning. If you have no money to pay a lawyer's fee,
25 the Court will appoint one to represent you without cost

1 if you wish. If you decide to answer questions now
2 without a lawyer present you will still have the right to
3 stop answering at any time. You also have the right to
4 stop answering at any time until you talk to a lawyer. Do
5 you understand these rights that I have explained to you?
6 Do you want a lawyer? Do you want to answer questions
7 now? I have read this statement of my rights and I
8 understand what my rights are. I am willing to make a
9 statement and answer questions. I do not want a lawyer at
10 this time. I understand and know what I am doing. No
11 promises or threats have been made to me and no pressure
12 or coercion of any kind has been used against me.

13 Q Okay. So let me ask you for the purposes of the
14 record. You read him those rights prior to asking him any
15 questions?

16 A Yes.

17 Q And did he appear to be under the influence of
18 alcohol, drugs, or any other substance that would impair
19 his ability to understand?

20 A No, not at this time.

21 Q And did anybody, either yourself or anybody in your
22 presence, ever threaten him in order to make him answer
23 questions?

24 A No.

25 Q Did anybody promise him anything that if he talked

1 you would go easy on him, charges wouldn't be brought or
2 anything like that?

3 A No.

4 Q And did you ask him to initial and sign the form?

5 A I did.

6 Q And is that a copy of the form you used?

7 A It is.

8 MR. SHEEK: Then, Your Honor, for the purposes of, I
9 guess identification at this point, we would offer this as
10 State's 1.

11 THE COURT: Okay.

12 MR. BROWN: No objection.

13 (Whereupon, State's exhibit 1 was marked for
14 identification only.)

15 Q Were you present when he gave a statement to Captain
16 R. Morgan at SLED?

17 A Yes.

18 Q And was he also given his Miranda rights on that day?

19 A Yes.

20 Q And did you see anybody at that time threaten him,
21 coerce him or promise anything in order to make him give a
22 statement?

23 A No.

24 Q And did he at that point appear to be under the
25 influence of drugs, alcohol or anything else?

1 A No.

2 Q Now, can you tell us what statement he made to you or
3 in your presence along with Captain Morgan?

4 A Mr. Dawkins said that he walked into [REDACTED] bedroom
5 the past summer in 2009 and discovered her masturbating.
6 During the masturbating, he also said that the victim was
7 performing this act with a vibrator and this vibrator is
8 one that he actually gave her. So, he said that she asked
9 him was she doing it right and would he show her how to
10 use it. And he told her, he stated he didn't touch her or
11 anything at that time. But he said about two weeks later
12 there was, that he asked her did she figure out how to use
13 it.

14 MR. SHEEK: And, Your Honor, for the purposes of
15 Jackson v. Denno, I went ahead and had her state what he
16 said. I won't go into that in front of the jury with her.
17 I will ask her did she have an opportunity to interview
18 the defendant along with another officer. And I'll leave
19 it at that, that that officer did come in, finish the
20 Jackson v. Denno, the Court can make a determination and
21 if it is admissible we will talk about the statement then.
22 I would propose to do it that way if that suits the Court.

23 THE COURT: So that I'm clear, the statement she just
24 read was made to her or to her and the SLED agent?

25 MR. SHEEK: To her and to, to her and to Captain

1 Morgan: Am I correct on that?

2 A Yes.

3 MR. SHEEK: Okay.

4 THE COURT: All right. I'm confused now, because
5 y'all come up here.

6 (Whereupon, a bench conference was held.)

7 THE COURT: Let's bring the jury in.

8 (Whereupon, the jury came into open court at
9 approximately 11:53 p.m.)

10 THE COURT: Ms. Stokes?

11 MS. STOKES: Yes..

12 THE COURT: Do you mind being my foreperson?

13 MS. STOKES: I don't.

14 THE COURT: Okay. You looked like you were eager and
15 now I'm selecting you because of, thank you very much.
16 Ms. Stokes will be acting as our foreperson and I
17 appreciate, you don't get paid extra.

18 MS. STOKES: Okay. That's okay.

19 THE COURT: But you get first, you get first
20 selection of the candy and it gets, sometimes I use that
21 bench and it may be out in the audience because I don't
22 always feed everybody, but I got a small crowd today, so I
23 don't mind.

24 MS. STOKES: Okay.

25 THE COURT: And I buy that. The County doesn't.

1 That's from the Judge.

2 MS. STOKES: Okay.

3 THE COURT: Okay. All right. We got a little more
4 to finish up, I think, with Officer Childress, and then we
5 are going to take a lunch break and we'll come back and do
6 some more. So y'all bear with me.

7 MS. STOKES: Okay.

8 THE COURT: Mr. Sheek?

9 MR. SHEEK: Thank you.

10 CONTINUE REDIRECT EXAMINATION

11 BY MR. SHEEK:

12 Q Officer Childress, in response to cross-examination
13 you indicated that Mr. Dawkins had talked with you and
14 given a statement?

15 A That's right.

16 Q And was there another officer present with you when
17 that occurred?

18 A Yes.

19 Q And was that a Captain R. Morgan?

20 A Yes.

21 MR. SHEEK: Thank you. That's all the questions I
22 have of Ms. Childress.

23 THE COURT: Any recross?

24 MR. BROWN: No questions.

25 THE COURT: All right. Ms. Childress, you're done.

1 MR. SHEEK: We would ask that she be allowed to be
2 excused if she wishes.

3 THE COURT: All right. Sure.

4 MS. CHILDRESS: Thanks.

5 THE COURT: You need any help getting down? Okay.
6 We will come over here and assist you and Mr. Sheek, too.

7 MS. CHILDRESS: All right. Thank you. Thank you.

8 THE COURT: You're quite welcome. It was nice seeing
9 you again.

10 MS. CHILDRESS: You, too.

11 THE COURT: All right. We're going to take a lunch
12 break. It's 12:00 o'clock now. If y'all could be back in
13 the jury room by 1:15, we'll get started back as promptly
14 as we can. Remember, you can't discuss the case and y'all
15 can leave your notepads either in your seat or in jury
16 room. There's a way to get out. Mr. Bolt will show you.
17 You don't have to come to the courtroom, but you come
18 straight to the jury room. I'll see you at 1:15 and we
19 will get started as promptly as we can.

20 (Whereupon, the jury was excused from open court for
21 a lunch break.)

22 THE COURT: All right. We'll stand at ease till
23 1:15.

24 (Whereupon, a lunch break was taken.)

25 THE COURT: Let's bring the jury in, please.

1 (Whereupon, the jury came into open court at
2 approximately 1:18 p.m.)

3 THE COURT: All right, ladies and gentlemen, hope you
4 had a great lunch. We are ready to start. Mr. Sheek,
5 call your next witness.

6 MR. SHEEK: Thank you, Your Honor. The State calls
7 Patricia Whitmire to the stand.

8 PATRICIA WHITMIRE, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHEEK:

12 Q If you could state your name and spell your last name
13 for the court reporter?

14 A Patricia Whitmire, W-H-I-T-M-I-R-E.

15 Q And, Ms. Whitmire, where do you live?

16 A In Greenville County.

17 Q And who do you live with?

18 A Currently I live with my daughter and my fiancé.

19 Q And I believe, ma'am, you're planning on getting
20 married very soon, aren't you?

21 A Yes, Saturday morning.

22 Q Okay. Ma'am, give me your daughter's name?

23 A My daughter is [REDACTED].

24 Q And how old is [REDACTED]?

25 A Currently, she's [REDACTED] years old.

1 Q And is she in school?

2 A Yes, she's a student at South Carolina State
3 University.

4 Q And was [REDACTED], living with you in
5 November 2009?

6 A Yes.

7 Q And where were y'all living then?

8 A We lived in [REDACTED] and we
9 also lived in [REDACTED]

10 Q Okay. And when you lived in [REDACTED] which
11 county was that in?

12 A Laurens County.

13 Q What's your daughter's date of birth?

14 A Her date of birth is [REDACTED]

15 Q Now, in November of 2009, did you know the defendant
16 in this case, Mr. Brad Bernard Dawkins?

17 A Yes, we cohabitated together.

18 Q Okay. And do you recall when you began seeing Mr.
19 Dawkins?

20 A We started dating probably around the end of 2005,
21 beginning of 2006.

22 Q And how long did he live with you?

23 A We moved in together around about August of 2007.

24 Q And at some point, obviously, you stopped living
25 together?

1 A Yes.

2 Q And do you recall when that was?

3 A When he was arrested.

4 Q And he was arrested on the warrants that Ms.
5 Childress testified about regarding your daughter?

6 A Correct.

7 Q When you were living with him up until the point that
8 he was arrested, did your daughter live with you full
9 time?

10 A Yes, she did.

11 Q And now were there times where he may be alone with
12 your daughter?

13 A Yes, because she would ride the bus home from school
14 and I was working in Spartanburg. So there would be
15 probably a hour, maybe two hours before I got home from
16 work.

17 Q And prior to the arrest, did you ever have any reason
18 to suspect he may have in any way mistreated your
19 daughter?

20 A No.

21 Q How did you find out about the allegations that [REDACTED]
22 were making against Mr. Dawkins?

23 A The night I received the call from Ms. Childress to
24 come home in reference to the, something that happened at
25 my home.

1 MR. SHEEK: Thank you, Ms. Whitmire. Please answer
2 anything that the defense may wish to ask.

3 CROSS-EXAMINATION

4 BY MR. BROWN:

5 Q [REDACTED], is that where you lived
6 with Mr. Dawkins?

7 A Yes, in [REDACTED], correct.

8 Q That was his address?

9 A It was our address.

10 Q Y'all moved in at the same time, at that place at the
11 same time or was he living there first?

12 A We moved at the same time. We were living at [REDACTED]
13 [REDACTED] and then we had to move from that
14 location to the [REDACTED] location due to that home
15 being foreclosed.

16 Q How do you know it's in Laurens County and not in
17 Greenville County?

18 A Because it's in Laurens County.

19 Q But how do you know that?

20 A How do I know that?

21 Q Yeah.

22 A Just the address that was given to me at the Postal
23 Service. I'm assuming they're correct that it's Laurens
24 County.

25 Q So the Postal Service says it's Laurens County?

1 A I mean, it's what the zip, when you put in the
2 address of, that's the county, Laurens County.

3 Q Okay. And you said prior to you being contacted by
4 Ms. Childress and you were, you were in the courtroom when
5 Ms. Childress testified, correct?

6 A Say that again?

7 Q You were here when Ms. Childress took the stand, were
8 you sitting here?

9 A Correct, I was.

10 Q You heard the testimony?

11 A Yes.

12 Q Now, you said prior to being contacted by her, you
13 had no clue that any of this stuff supposedly was going
14 on?

15 A No, I did not.

16 Q Your daughter never acted weird around you or
17 different?

18 A No.

19 Q She never showed any signs of anything that could
20 have been going on?

21 A I mean, she was the normal preteen teenager.

22 Q Did she seemed distressed at any point, upset,
23 troubled?

24 A I mean, she was attending private school at one time
25 and back to public school. But, I mean, nothing out of

1 the ordinary that a normal teenager.

2 Q Did she ever act fearful around Mr. Dawkins?

3 A Around him?

4 Q Yes.

5 A Not around me, I didn't notice she was fearful of
6 him.

7 Q What would you describe his relationship with her?

8 A I assumed the relationship he had with her was one of
9 a parent and a child.

10 Q So from what you observed as her mother you saw him
11 assisting you in terms of being a parent of some sort?

12 A That's what I assumed.

13 Q And did he ever discipline her?

14 A Yes.

15 Q Did he ever talk to her about school?

16 A I mean, we talked to our children numerous times
17 about school and various things.

18 Q About things involving life?

19 A Yes.

20 Q And you and Mr. Dawkins, you had a normal
21 relationship?

22 A That was my understanding. Everybody have their
23 arguments and disagreements, but I assumed it was.

24 Q And you guys were loving towards one another?

25 A Our intent was to be married, so yes.

1 Q So you lived essentially as, without the actual
2 titled, you lived like married people?

3 A Of course, he was on my insurance at work. So we
4 were considered common law.

5 Q Okay. And you did everything that married people
6 would do?

7 A I did.

8 Q And you guys also had an active sex life?

9 A We did.

10 Q Did you ever have anything that you wouldn't want
11 your daughter to be exposed to in your possession?

12 A What do you mean did I have anything in, what do you
13 mean?

14 Q Any items?

15 A Such as?

16 Q Books, tapes, magazines, objects, anything that you
17 wouldn't want her to be exposed to as a young girl?

18 A We did have sex toys in our home; we did.

19 Q Okay. And you had those stored away?

20 A Yes.

21 Q Did you have them locked up or did you just simply
22 have them in your room?

23 A They were locked away.

24 Q Could she have had, ever had access to them?

25 A No, sir.

1 Q Why not?

2 A Why?

3 Q Yes.

4 A It was a coded lock.

5 Q Okay. And she would have never had, not really know
6 that you had those toys?

7 A No, sir.

8 Q She never heard you two talk about sex?

9 A With each other, no, not to my knowledge.

10 Q And as a young girl, she would have never known you
11 two to have sex?

12 A I think that's kind of a crazy question because if
13 you are a couple, I mean, that's what normal people do.
14 But I never sat and talked with my daughter about me and
15 him having sex with one another. That was very
16 inappropriate.

17 Q All right. But she was in the house with y'all and
18 could have been there at some time hearing what you guys
19 may have had sex?

20 A That's a possibility. She lived with us.

21 Q Anybody else that she could have been exposed to
22 during that time-period; any other younger children around
23 her age?

24 A I mean, his daughter was in our home.

25 Q Okay. Do you know of any conversations they could

1 have had about sex?

2 A I'm pretty sure they may have but not to my
3 knowledge. I mean, we talked with them about things of
4 that nature. But between them two, I'm not sure. I'm
5 pretty sure they did. They're teenage, were teenagers.

6 Q All right. Did you ever have any conversations with
7 your daughter about sex?

8 A I have already stated I did.

9 Q Did you ever have any concerns about your daughter
10 having sex?

11 A I mean, that's a normal parent's, I guess, thought.
12 You don't want your children to have sex before marriage.

13 Q Any issues with any boys come over to the house at
14 any point?

15 A At one point at a time, at our home, there was some
16 girls, his daughter there and two boys came by. But we
17 turned around and came back home. And, of course, the
18 young men left the home. Just like I said, normal
19 teenagers.

20 Q Okay. And you said you got, you and Mr. Dawkins
21 lived together up until the time of his arrest?

22 A Correct.

23 Q Did you ever have a chance to talk with him after
24 that?

25 A He called me from jail when he was arrested and he

1 stated to me that I never did anything to [REDACTED] I would
2 never do anything to [REDACTED] And that was the only
3 conversation in regards to this incident.

4 Q You never saw him again after that?

5 A Well, I've seen him numerous times. I mean, we lived
6 together.

7 Q So after that you were still involved for a
8 time-period?

9 A Well no, we've talked occasionally.

10 Q Did you ever see him?

11 A I have seen him face-to-face. I stated that, yes.

12 Q Did he come to your job?

13 A Yeah, he's come to my job, yes.

14 Q Were you guys still having relations as adults after
15 this?

16 A No.

17 Q I'll ask you again. You're kind of pausing. It's
18 not, not to try to make you look back, not trying to cause
19 any rift between you and your daughter.

20 A No, that's not being a rift caused between my
21 daughter.

22 Q Were you still involved with him for a time-period
23 after this?

24 A We talked to each other quite, you know, not every
25 day, but he would call and say that he was concerned about

1 me and that he still wanted to be involved with me.

2 Q And how did you feel about that?

3 A As someone who's in a position to where you are in
4 love with someone and intend or thought you were going to
5 get married. And to find out they did something to your
6 child, that's not a great feeling.

7 Q But you continued to see him at some point?

8 A We talked and he came to my job, yes.

9 Q And I know in talking with your daughter as time has
10 passed by and not saying you had to pick sides, but at
11 some point you and Mr. Dawkins stopped seeing each other?

12 A We stopped talking; yes, we did.

13 Q Why is that?

14 A I mean, I just, there was no reason to continue to
15 talk to him and there was just no need to.

16 MR. BROWN: Those are all the questions I have.

17 THE COURT: Any redirect?

18 MR. SHEEK: Thank you.

19 REDIRECT EXAMINATION

20 BY MR. SHEEK:

21 Q The attorney just asked you about having
22 conversations with Mr. Dawkins after he was arrested, you
23 recall that?

24 A Yes.

25 Q Did Mr. Dawkins ever tell you that he had engaged in

1 any sexual activity with your daughter?

2 A No, he did not.

3 Q Did he ever tell you that he had given your daughter
4 a sex toy, a vibrator?

5 A No, he did not.

6 Q If he'd have told you something like that, would it
7 have been pretty important for you to know as a mother?

8 A It would have been.

9 Q Can you imagine any circumstances where as a mother
10 you would have ever been okay with a man giving your
11 13-year-old daughter a sex toy?

12 A I would have not been.

13 MR. SHEEK: I've got no further questions.

14 THE COURT: All right. You may step down.

15 MR. SHEEK: Your Honor, the State calls [REDACTED]

16 [REDACTED] to the stand.

17 THE COURT: All right. Ms. [REDACTED], come forward to
18 be sworn.

19 [REDACTED] WHITMIRE, being
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SHEEK:

23 Q All right. [REDACTED] if you would, state your full name
24 and spell your first name, your last name for the court
25 reporter?

- 1 A I'm [REDACTED]
- 2 Q And, [REDACTED] how old are you?
- 3 A I'm [REDACTED]
- 4 Q When's your birthday?
- 5 A [REDACTED]
- 6 Q And what do you do now?
- 7 A Well, I'm currently a student at [REDACTED]
- 8 [REDACTED]
- 9 Q Okay. Where do you live at now?
- 10 A I attend [REDACTED] where I'm a
- 11 [REDACTED]
- 12 Q And what's your major?
- 13 A Speech Pathology.
- 14 Q And [REDACTED] do you recall how old you
- 15 were?
- 16 A [REDACTED]
- 17 Q And now I think you said your birthday is [REDACTED]
- 18 [REDACTED]
- 19 A Yes, sir.
- 20 Q And you would have been [REDACTED] the weekend before turning
- 21 14?
- 22 A Yes, sir.
- 23 Q Where did you live then?
- 24 A [REDACTED]
- 25 Q And what grade were you in at that time?

1 A [REDACTED]

2 Q Okay. Where did you attend school?

3 A [REDACTED]

4 Q [REDACTED] I'm going to give you a picture and ask you if
5 you can tell me who that is? Who's that? It's okay.
6 Take your time. You need to take a break? You ready to
7 continue?

8 A (Witness is crying.)

9 Q Okay. Who's in the picture?

10 A Me.

11 Q Okay. And was that when you were [REDACTED] years old?

12 A (Witness nods head.)

13 MR. SHEEK: Your Honor, I'd like to have that entered
14 as State's 2.

15 MR. BROWN: Without objection.

16 THE COURT: State's 2 admitted without objection.

17 (Whereupon, State's Exhibit 2 was admitted into
18 evidence.)

19 Q [REDACTED] do you know a man named Brad Bernard Dawkins?

20 A Yes, sir.

21 Q Do you see him in the courtroom?

22 A (Witness nods head.)

23 Q Can you point him out to me?

24 A (Witness points to Mr. Dawkins.)

25 Q You pointed to the man in the white shirt beside the

1 attorney here?

2 A Yes, sir.

3 MR. SHEEK: The record can reflect she has indicated
4 the defendant, Your Honor.

5 THE COURT: So reflected.

6 Q Did Mr. Dawkins live with you and your mother at that
7 time in 2009?

8 A Yes, sir.

9 Q Was he and your mother dating?

10 A Yes, sir.

11 Q Now, [REDACTED] I know at some point in time you had an
12 opportunity to go to a place called The Child's Place.

13 A Yes, sir. I'm sorry.

14 Q That's okay. That's okay. And they talked to you
15 about, do you recall them talking to you about touches,
16 good touches, bad touches, things of that nature?

17 A Yes, sir.

18 Q Was there ever a point in time when Mr. Dawkins, the
19 defendant, touched you in a way that made you
20 uncomfortable and made you think was wrong?

21 A Yes, sir.

22 Q If you could, please, tell this jury when that
23 started and what you remember happening?

24 A We lived in [REDACTED] and he would just--

25 MR. BROWN: Your Honor, I would object.

1 THE COURT: All right. Y'all come up here.

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: All right. I understand the objection to
6 the jurisdictional issue. I'm going to allow her to
7 answer the question but know the events in Greenville
8 County are considered by this jury, there are different
9 counties and what's before this Court and this trial is
10 what happened in Laurens County. So with that caveat and
11 limited instruction to the jury, Mr. Sheek, reask the
12 question.

13 MR. SHEEK: Okay.

14 THE COURT: And let her try to answer it again with
15 that understanding.

16 Q Ma'am, I think my question had been, does there come
17 a point in time when Mr. Dawkins touched you in a way that
18 you felt was wrong?

19 A Yes, sir.

20 Q And if you could tell the jury what happened and when
21 it happened to the best of your recollection?

22 A We were living in [REDACTED] I mean, [REDACTED]
23 and he would just make me play with toys in front of him
24 before anything happened.

25 Q And when you say toys, I need you to tell me what

1 you're talking about?

2 A A vibrator.

3 Q Okay.

4 A And a beige, I don't know how to describe it.

5 Q That's fine. To the best of your ability what you
6 remember. When you say he would have you play with it,
7 what would he have you do?

8 A I don't know how to--

9 Q That's okay. Would he tell you what to do or was
10 this something that you just did on your own?

11 A Yes, sir.

12 Q He would tell you what to do?

13 A Yes, sir.

14 Q Do you remember what he told you to do?

15 A Just, I don't remember.

16 Q Were you dressed at this time?

17 A Yes, sir.

18 Q Okay. Do you recall what you may have had on?

19 A No, sir.

20 Q Would he ever ask you to touch yourself with any of
21 these items?

22 A Yes, sir.

23 Q And where would he have you touch yourself?

24 A On my vagina.

25 Q Okay. And was this something that happened once or

1 more than one time?

2 A More than once.

3 Q At some point in time, you said it started when you
4 lived in [REDACTED]?

5 A Yes, sir.

6 Q At some point in time did y'all move to [REDACTED]?

7 A Yes, sir.

8 Q And was that the [REDACTED] address?

9 A Yes, sir.

10 Q Do you recall what county that was in?

11 A In Laurens County.

12 Q And did this kind of behavior continue at that
13 location?

14 A Yes, sir.

15 Q How often would something like this occur?

16 A It would just be random. I'd just come home from
17 school and he would tell me to come here or something.

18 Q And when this would occur, would he direct you what
19 to do?

20 A Yes, sir.

21 Q Did there ever come a point in time where he ever
22 touched you himself?

23 A Yes, sir.

24 Q Do you remember an incident occurring sometime around
25 November 30, 2009?

1 A Yes, sir.

2 Q And why does that date stand out to you?

3 A Because it's before my birthday.

4 Q Tell the jury, if you would, what happened on that
5 day?

6 A Sorry. Well, I came home from school as normal. And
7 I came in and he just asked me, he said later on we're
8 going somewhere, later on that night. So me being already
9 afraid of like just how his demeanor was and how he told
10 me to do stuff already, I just told my friend that what
11 was going, that he told me we were going somewhere
12 tonight. So we, I went to sleep and he came in and was
13 like let's go. So we got in the car and just drove,
14 darkness, the woods and we just drove and he pulled over
15 into some graveled area. He pulled over and, of course,
16 he attempted to pull my pants down.

17 Q Okay. Well, let me ask you, let me ask you a couple
18 of questions. So you were driving. Whose car were you
19 in?

20 A My mom's.

21 Q Who all was in the car?

22 A Me and him.

23 Q And I'm assuming you were [REDACTED] so he was driving?

24 A Yes, sir.

25 Q And where were you sitting?

1 A In the passenger seat.

2 Q At some point did he stop the car?

3 A Yes, sir.

4 Q Were you in Laurens County?

5 A Yes, sir.

6 Q I believe what you just said and you correct me if
7 I'm wrong, that he tried to pull your pants down?

8 A Yes, sir.

9 Q Did he ever get them pulled down?

10 A Not all the way; no, sir.

11 Q How far down did he get them? Okay. I know you're
12 pointing, but I can't see what you're pointing at.

13 A Mid-thigh.

14 Q What about your underwear?

15 A Yes, sir.

16 Q Did he pull them down also?

17 A Yes, sir.

18 Q What did he do?

19 A (No response.)

20 Q On this occasion did he ever touch you?

21 A Yes, sir.

22 Q Where did he touch you?

23 A My breasts.

24 Q And I need you to tell me, if you could, when you say
25 he touched your breasts, how did he touch them? Was it

1 with a hand, with an object?

2 A A hand.

3 Q Okay. Was it a quick passing brush? Was he touching
4 forcefully, what was he doing?

5 A Just--

6 Q Do you recall how long it lasted that he was touching
7 your breasts?

8 A No, sir.

9 Q Did it appear that it might have been accidental or
10 did it appear that he was doing that intentionally?

11 A Intentionally.

12 Q Any doubt in your mind about that?

13 A No, sir.

14 Q Did he ask permission, is that something he wanted to
15 do and wait for your response or is this something he did
16 on his own?

17 A He did something on his own.

18 Q Did you ever say anything to him?

19 A No.

20 Q Why not?

21 A I mean, no, I--

22 Q You said, you told him no. Okay. Okay. That's
23 fine. Okay. So you told me he touched your breasts and
24 he had pulled your pants down. Was he dressed?

25 A Yes, sir.

1 Q Okay. But at any point did he ever expose any of his
2 private parts?

3 A Yes, sir.

4 Q What happened then?

5 MR. SHEEK: Your Honor, would it be okay if we maybe
6 take a short break while the witness composes herself?

7 THE COURT: You stay right where you are. Let's take
8 a short break and let her have a few minutes. Anyway,
9 y'all step in the jury room. You can't discuss the case,
10 but if y'all need to step outside for fresh air, you can.
11 Will have you back in here shortly.

12 (Whereupon, the jury was excused from open court for
13 a break.)

14 THE COURT: We will take a short break and if she
15 needs some water get her some. You can't discuss your
16 testimony with anybody. If you want a piece of candy I
17 have got a whole box of it.

18 MR. SHEEK: With the Court's permission, I told the
19 mother she could step up there but they cannot discuss the
20 testimony.

21 THE COURT: That's correct. She can step down, we
22 will stand at ease for a few minutes.

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring them in, please.

25 (Whereupon, the jury came into open court at

1 approximately 2:00 p.m.)

2 THE COURT: All right. We ready to continue on. Mr.
3 Sheek, ask your next question.

4 MR. SHEEK: Thank you.

5 CONTINUE DIRECT EXAMINATION

6 BY MR. SHEEK:

7 Q And, [REDACTED] when we took a break I believe you said
8 that you parked on the side of the road, Mr. Dawkins had
9 pulled your pants down you said to about mid-thigh.

10 A Yes, sir.

11 Q At some point he exposed his genitalia?

12 A Yes, sir.

13 Q And if you could tell the jury what happened then?

14 A He attempted to have sex with me.

15 Q Did he stay in the driver's seat or get out of it or
16 something other?

17 A He, of course, moved.

18 Q Okay. Did he move, where did he move to?

19 A Towards me.

20 Q When you say he attempted to have sex with you, how
21 close to you did he get?

22 A On my vagina.

23 Q Did he attempt to put anything inside your vagina?

24 A Yes, sir.

25 Q Okay. What did he attempt to put in your vagina?

1 Well, just tell me what he did? I'm sorry. Just tell me
2 what he did.

3 A He tried to have sex with me, but I was fighting for
4 him to get off of me.

5 Q Was he ever able to penetrate your vagina with
6 anything?

7 A No, sir.

8 Q You said you were fighting him?

9 A Yes, sir.

10 Q Okay, you previously said you were telling him no?

11 A Yes, sir.

12 Q You were telling him, no, I think is the last thing
13 you said?

14 A Yes, sir.

15 Q At some point did he stop his, as you described, his
16 attempts to have sex?

17 A Yes, sir.

18 Q Do you know what caused him to stop?

19 A Because I was fighting.

20 Q Did he say anything to you?

21 A Don't tell my mom.

22 Q Anything else?

23 A If I do, he was going to try to hurt me and my mom.

24 Q Where did you go after that?

25 A Back home.

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1 Q Did you tell your mom?

2 A No, sir.

3 Q And why not?

4 A Because I was afraid to.

5 Q Did you tell anybody?

6 A Yes, sir; I did.

7 Q Who'd you tell?

8 A My friend at school.

9 Q And when did you tell her?

10 A The next day.

11 Q Thank you, [REDACTED] Let me, may I ask you this, you
12 said that building up to this that he had given you some
13 toys, directed you to use them?

14 A Yes, sir.

15 Q And this happened I think in [REDACTED] also?

16 A Yes, sir.

17 Q Did he ever have you penetrate any part of your body
18 with any of those toys?

19 A The beige one.

20 Q Where did he have you put it?

21 A In my vagina.

22 MR. SHEEK: That's all the questions I have.

23 THE COURT: Mr. Brown.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

1 Q [REDACTED] who do you recall talking to about what you
2 told us here today?

3 A Who do I recall?

4 Q Yeah, who do you remember talking to? You talked to
5 this guy, I mean, about the questions he's asking you.
6 Did you ever talk to him at any point prior to today?

7 A Yes, sir.

8 Q What about this lady, have you talked to her?

9 A Yes, sir.

10 Q You were here when the lady came up in a wheelchair.
11 Do you recall ever talking to her?

12 A Yes, sir.

13 Q You remember Ms. Childress?

14 A Yes, sir.

15 Q Do you also remember a place, I think he mentioned,
16 called The Children's Place?

17 A Yes, sir.

18 Q You remember talking to those people there?

19 A Yes, sir.

20 Q Did you ever talk to the people at The Children's
21 Place when they were asking about these events about that
22 man right there?

23 A Not that I recall.

24 Q You don't recall. Do you know who this guy is?

25 A Yes, sir.

1 Q Who is it?

2 A Mr. Stanley.

3 Q Mr. who?

4 A Stanley.

5 MR. SHEEK: Your Honor, we have a matter, an
6 objection.

7 THE COURT: Okay. We need to put it on the record?

8 MR. SHEEK: Yes, sir.

9 THE COURT: Very well. All right. Y'all step in the
10 jury room. There's something I need to put on the record.
11 So y'all step back there and don't begin discussing the
12 case. Have you right back in here.

13 (Whereupon, the jury was excused from open court for
14 a break.)

15 THE COURT: All right.

16 MR. SHEEK: Your Honor, I object to any questions
17 regarding any allegations of other individuals or other
18 events not related to this event being irrelevant unless
19 the defense can show some either relevance to the
20 allegations here or in some way that it affects her
21 voracity or truthfulness such as the prior inconsistent
22 statement or something to that--

23 THE COURT: All right. She tried to give responses
24 to the guy's name and the court reporter couldn't hear.
25 So I'd like to get that first for the record, what the

1 name was. Ask the question again.

2 Q The man I was asking about, what's his name, this
3 gentleman sitting right here?

4 A Mr. Stanley.

5 Q Mr. Stanley?

6 A Yes, sir.

7 Q Do you know his last name?

8 A Dawkins.

9 THE COURT: Dominic?

10 A Dawkins.

11 MR. BROWN: Dawkins.

12 THE COURT: Dawkins. Okay. Now, continue your
13 proffer where you intend to go then I can hear Mr. Sheek's
14 objection.

15 Q At the time-period in which you talked to the people
16 from The Children's Place, did Mr. Stanley's name come up?

17 A I don't recall. I don't remember.

18 Q This goes towards truthfulness. Have you ever told
19 anyone about Mr. Stanley, any type of allegations that are
20 similar to this?

21 A Yes, sir.

22 Q And would you agree with me that you told the people
23 at The Children's Place at the time-period that you were
24 13, that Mr. Stanley supposedly touched you?

25 A Okay. I guess if it's, yes sir.

19

1 Q Did you also tell Officer Childress that?

2 A I told--

3 Q The lady that was in a wheelchair that was here?

4 A I honestly don't remember..

5 Q Okay. Were you present when she testified that she
6 called Mr.--

7 A -- yes, sir.

8 MR. BROWN: Your Honor, I'm not trying to have this,
9 the truth of the matter asserted, just trying to explore
10 anything that she may have told The Children's Center as
11 well as Officer Childress at the time-period. Coupled
12 with the fact Officer Childress directly made a statement
13 in relation to Stanley Dawkins in regards to these
14 underlying matters. I'm not trying to say that anything
15 actually occurred, or just the information that she shared
16 with the officer at the time that came up during this
17 case.

18 MR. SHEEK: Our position and the State's position,
19 Your Honor, would be that under the terms of relevance,
20 it's obviously, you know, it tends to make the issue at
21 hand more or less likely. Whether or not Stanley did
22 something or is accused of doing something I don't feel is
23 relevant. I think perhaps if they had proved she had made
24 an allegation against another person and it was proven to
25 be untrue, then maybe that would go to veracity. I just

1 don't think this rises to that level. What I think it
2 does do is kind of goes slightly towards the third-party
3 guilt. There's another person she's accused and that
4 clearly, I think, would be inadmissible.

5 THE COURT: Y'all come up here.

6 (Whereupon, a bench conference was held.)

7 THE COURT: Let's go back in chambers.

8 (Whereupon, a conference was held in-chambers with
9 the Court and the attorneys.)

10 (Whereupon, a short break was taken.)

11 THE COURT: I'm going to summarize the conference we
12 had in-chambers. I reviewed the notes summarized by
13 someone from the interview at The Child's Place as well as
14 the officer's interview notes and the forensic interview
15 had been preserved, these copies are available. The
16 question was asked of the witness, do you remember telling
17 anyone at The Child's Place during the interview anything
18 about Mr. Reeder or Mr. Stanley Reeder. And she said, I
19 don't remember. That's her answer. I don't think
20 anything further we can go into that issue unless she
21 provided a statement which would refresh her memory. The
22 notes I reviewed were not her statements. Thus, if the
23 forensic interviewer wishes to play, by either side, the
24 foundation is properly laid or stipulated to, then we can
25 play that video at the appropriate time. Is that

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1 consistent with our discussion in-chambers, Mr. Sheek?

2 MR. SHEEK: That is my understanding, Your Honor.

3 THE COURT: Mr. Brown?

4 MR. BROWN: It is, Your Honor.

5 THE COURT: All right. Let's get them in.

6 (Whereupon, the jury came into open court at
7 approximately 4:36 p.m.)

8 THE COURT: Very well. We'll continue on. All
9 right. Mr. Brown, you can, reask your last question or
10 proceed on, whichever you like.

11 CONTINUE CROSS-EXAMINATION

12 BY MR. BROWN:

13 Q I asked you, did you know who this gentleman was?

14 A Yes, sir.

15 Q And did you recall talking to someone at The
16 Children's Place about him?

17 A Not that I, I can't remember.

18 Q Okay. So you talked to Ms. Childress. You talked to
19 an investigator. You talked to the prosecutor. When did
20 you talk to your mother by yourself about these
21 allegations?

22 A After the fact.

23 Q After the fact?

24 A Yes, sir.

25 Q Was it after the fact that you talked to law

1 enforcement?

2 A Yes, sir.

3 Q Was it after the fact that you say you talked with
4 some friends?

5 A Yes, sir.

6 Q What friends did you talk to?

7 A My friend, Jada.

8 Q Jada. Jada that was called out as a potential
9 witness? Jada Cain?

10 A Yes, sir.

11 Q Did you talk to someone by the name of Mike-Mike?

12 A Yeah.

13 Q Who was Mike-Mike?

14 A My friend.

15 Q Do you still talk to Mike-Mike?

16 A No.

17 Q Why not?

18 A Just lost contact.

19 Q Do you recall what you were telling Mike-Mike?

20 A Yes, sir.

21 Q What was that?

22 A I was going to call you.

23 Q Excuse me?

24 A I was going to call him.

25 Q You were going to call him?

1 A Yes, sir.

2 Q Well, you were going to call him about what?

3 A About this situation.

4 Q The same reason why you would talk to Jada?

5 A Yes, sir.

6 Q All right. And you stayed in contact with Jada since
7 you've been in college?

8 A I mean, I speak to her if I see her, but it's not,
9 we're not best of friends.

10 Q But you talk to Jada?

11 A Yes, sir.

12 Q Have you talked to Jada since this case has been
13 going on?

14 A Not really.

15 Q Not really or you have?

16 A I mean, if I see her, I speak. I don't sit here and
17 call her and have a conversation with her.

18 Q You mean if you see her when you come home from
19 school?

20 A Yes, sir.

21 Q So in seeing her, have you talked to her about this
22 case?

23 A No, sir.

24 Q So you guys haven't talked at all?

25 A No.

1 Q Do you know if she's had any contact with law
2 enforcement since this case has been going on?

3 A No, sir.

4 Q You don't know that or you don't think she has?

5 A I don't, I don't know.

6 Q All right. And in terms of your conversation with
7 Jada, you talked with her. What happened in your
8 conversation?

9 A I told her and I told her not to tell and she told.

10 Q Okay. You told her what?

11 A I told her what happened.

12 Q Do you recall how you told her or what you told her?

13 A No sir, I don't.

14 Q But you know that you told her, but what is it that
15 you told her?

16 A I told her the situation that happened.

17 Q How would you tell her that, though?

18 A I don't remember.

19 Q But you just know you told her something?

20 A I told her what happened.

21 Q But you just don't know what you told her? You
22 don't remember, do you?

23 A Don't remember what? What I told her?

24 Q Yes.

25 A No, sir. I don't remember what exactly, the same

1 exact words I told Jada Cain, I do not remember.

2 Q Well, in general, what do you think you told her?

3 A The situation that happened.

4 Q Did you tell her that you had feelings for somebody,
5 and you got involved or you told her that someone tried to
6 force themselves on you?

7 A No.

8 Q Did you tell her that something happened? What did
9 you tell her?

10 A I told her the, I don't know exactly the words, exact
11 words I told her.

12 Q Okay. Did you ever text her?

13 A Yes, sir.

14 Q When do you think you texted her?

15 A I don't know.

16 Q Has this gentleman or this lady showed you any text
17 messages that you sent to her? Has anyone from law
18 enforcement ever reviewed with you any text messages?

19 A No, sir.

20 Q But you told people that you texted her?

21 A Yes.

22 Q And you told her that, you told people that you
23 texted her in terms of what supposedly happened?

24 A Yes, sir.

25 Q But you haven't provided any text messages, have you?

1 A No, sir.

2 Q Did they get your phone?

3 A Not that I, no sir.

4 Q Did they ask for your text messages?

5 A I think, this did, yes sir. They said something
6 about they were going to, I don't remember.

7 Q All right. And how long were you around Mr. Dawkins?

8 A Just a couple of years.

9 Q You lived with him with your mother?

10 A Yes, sir.

11 Q Did you live with your dad at any time-period before
12 this or after this?

13 A No.

14 Q Did you have a good relationship with your dad?

15 A Not really.

16 Q Were you upset that you didn't have a relationship
17 with your dad?

18 A No.

19 Q Did you like Mr. Dawkins being in your mother's life?

20 A Yeah.

21 Q Why did you like him being in your mom's life?

22 A He was cool, I guess. I don't--

23 Q Cool. But if Mr. Dawkins was supposedly messing with
24 you would you have liked for him to have been involved
25 with your mother?

1 A No.

2 Q So, again, I ask you, how did you feel about Mr.
3 Dawkins being in your mother's life?

4 MR. SHEEK: Your Honor, if I could ask for defense
5 counsel to rephrase the question so we specifically know
6 if she's talking about how she feels now to then?

7 THE COURT: Yeah. Rephrase that.

8 Q During that time-period, how did you feel about Mr.
9 Dawkins being in your mother's life?

10 A I didn't have a problem with it.

11 Q But during that time-period, it's your allegation
12 before this Court that Mr. Dawkins was doing some things
13 that were improper?

14 A Exactly.

15 Q And the fact that you were afraid of Mr. Dawkins?

16 A That was a, yes, sir.

17 Q But you didn't have a problem with him being involved
18 with your mom?

19 A Because I didn't want them to--

20 Q It's hard to keep this going, isn't it?

21 A What do you mean it's hard?

22 Q What you're telling or what the prosecution has
23 brought before this Court, it's hard to keep this kind of
24 thing going, isn't it?

25 A I guess.

1 Q Did you know if your mother saw Mr. Dawkins after he
2 was arrested?

3 A No, sir.

4 Q Do you know if they still stay in contact?

5 A No, sir.

6 Q Did you ever see him after he was arrested?

7 A Once.

8 Q Where?

9 A Wal-Mart, but that was it. I haven't seen him since
10 then.

11 Q Did y'all speak at Wal-Mart?

12 A He said hey.

13 Q You said hey?

14 A He spoke. I didn't speak.

15 Q Were you with your mother?

16 A Yes, sir.

17 Q Did they talk?

18 A No.

19 Q Do you know his daughter?

20 A Yes, sir.

21 Q How well do you know her?

22 A I know her well enough. We stayed together.

23 Q And y'all stayed together. So would you say y'all
24 were friends or you were just around each other?

25 A We were, I called her my sister, yeah.

1 Q Did you ever tell your sister anything about your
2 stepdad?

3 A I didn't tell anyone, no.

4 Q Do you think your sister would have noticed if
5 something was going on?

6 A No.

7 MR. SHEEK: Objection. Calls for speculation, Your
8 Honor.

9 THE COURT: What is to her knowledge. Not what
10 anybody else knew about what was going on.

11 Q You were close with your sister?

12 A She wasn't staying there 24/7. She would come and
13 stay the night sometimes. It wasn't like she stayed with
14 us.

15 Q You close with your mother?

16 A Yes, sir.

17 Q You got a good relationship with your mom?

18 A Yes sir, I did.

19 Q Do you ever get emotional around your mom about
20 anything?

21 A Yes.

22 Q And get emotional about school with your mom?

23 A I guess, yeah.

24 Q You ever talk to your mom about boys?

25 A Now?

1 Q Back then?

2 A No.

3 Q You just talked to your mom about just the general
4 things in life?

5 A Yes, sir.

6 Q Your mother would know you pretty well?

7 A Yes, sir.

8 Q Did you ever tell anyone that Mr. Dawkins put his
9 mouth on your vagina?

10 A Yes sir, I did.

11 Q This is the first time you've said this in a court?

12 A It's my first time being in a court; yes, sir.

13 Q The first time you, without me asking you, that
14 didn't come out before, did it?

15 A It didn't come out.

16 Q Well, let me ask you specifically. Did you say Mr.
17 Dawkins at any point was doing this in Fountain Inn?

18 A Did I say it?

19 Q Did you tell anyone that he put his mouth on you in
20 Fountain Inn?

21 A No, sir. I didn't tell anybody.

22 Q You don't recall saying that to anybody that you met
23 with law enforcement? Well, let me ask you, is it
24 possible that you had told someone from law enforcement or
25 the Children's Place that that occurred?

1 A Yes, sir.

2 Q In Fountain Inn?

3 A Yes, sir.

4 Q Now, you say that at some point you came home on
5 November 30th and took a nap?

6 A Yes, sir.

7 Q Is that something you always did?

8 A Yes, sir.

9 Q And then at some point Mr. Dawkins woke you up or you
10 were awake and he said let's go for a ride in the car?

11 A Yes, sir.

12 Q And you say you rode in the car and it was dark?

13 A Yes, sir.

14 Q And there were trees around?

15 A Yes, sir.

16 Q How do you know you were in Laurens County?

17 A Because--

18 Q I mean, I know the prosecutor asked you were you in
19 Laurens County, but how do you know you were in Laurens
20 County if it was dark and trees were around?

21 A Because I, I'm familiar with the area.

22 Q So you were familiar with the trees in the darkness
23 at night?

24 A I mean, if it's, when it's light, daylight time I
25 know exactly where to go.

1 Q So you did know where you were at?

2 A So to speak, sure, yeah.

3 Q And you said someone, you two were parked and Mr.
4 Dawkins attempted to have sex with you?

5 A Yes, sir.

6 Q Now, you say he stopped because why?

7 A I was fighting him.

8 Q How were you fighting him?

9 A What do you, pushing him off.

10 Q Pushing him off?

11 A Yes, sir.

12 Q The prosecutor showed you a picture of yourself
13 around that time-period. Were you a strong person?

14 A I don't know how strong I was or how I wasn't strong,
15 how strong I wasn't.

16 Q Mr. Dawkins had a little size on him?

17 A Yes, sir.

18 Q Do you think you were able to push him off?

19 A I mean, if, if you're continuing to fight somebody.

20 Q Well, that's my question. How were you fighting?
21 You said you tried to push him off or you pushed him off.
22 Do you need a break?

23 A I'm just trying not to get frustrated. I'm sorry.

24 Q I understand. If you have to get frustrated, that's
25 fine. I'm just asking you questions. I'm not trying to

1 frustrate you. Did you punch him? Did you scratch him?

2 Did you try to bite him?

3 A I know I was kicking; yes, sir.

4 Q So you kicked him. Anything else that you recall?

5 A No, sir.

6 Q So you may have pushed him and you were kicking him.

7 You don't recall if you were swinging or if you were

8 trying to bite him or punch him?

9 A Yes, sir.

10 Q At some point Jada talked to your mother. Did you

11 talk to anybody else but Jada?

12 A No, sir.

13 Q Do you recall if her parents ever got involved?

14 A I mean, she told her parents.

15 Q And this is the first time you ever said anything

16 regarding any of this?

17 A Yes, sir.

18 Q How was your time-period during that week with Mr.

19 Dawkins? Had y'all had any arguments? Had he tried to

20 discipline you or anything?

21 A No, not, no sir.

22 Q How was his relationship with your mom during that

23 time-period?

24 A They were fine.

25 Q And 11:00 o'clock at night on November 30th, where

1 was your mom at?

2 A In her bed.

3 Q The same place where she stayed with Mr. Dawkins?

4 A Yes, sir.

5 Q And you say that Mr. Dawkins came and woke you up or
6 you were awake and you left with him?

7 A Yes, sir.

8 Q And Mom wasn't awake?

9 A No, sir. Not, not to my knowledge. No, sir.

10 Q Is the car parked outside in the driveway or was
11 there a garage or?

12 A It was in the driveway.

13 Q And it was your mother's car?

14 A Yes, sir.

15 Q How long you think you stayed gone?

16 A How long do you think I stayed home?

17 Q Stayed gone that night?

18 A I don't remember.

19 MR. BROWN: I beg the Court's indulgence.

20 Q Had you ever seen your mom with any sex toys?

21 A No, sir.

22 Q Did you ever know if your mom had any sexual videos
23 of any sort?

24 A No, sir.

25 Q Do you know if your mom and Mr. Dawkins were having

PS

1 sex?

2 A No, sir.

3 MR. BROWN: That's all the questions I have.

4 THE COURT: Redirect.

5 REDIRECT EXAMINATION

6 BY MR. SHEEK:

7 Q [REDACTED] Mr. Brown asked you about talking to me and
8 Ms. Chappell here. When is the first time you've ever
9 laid eyes on me?

10 A This year.

11 Q Do you recall when?

12 A A couple of months ago.

13 Q And prior to that had you and I ever discussed what
14 happened or what you allege happened or anything like
15 that?

16 A No, sir.

17 Q Has anybody coached you to say this or don't say this
18 or something of that nature?

19 A No, sir.

20 Q Whether from my office or your mama or your friends,
21 anybody?

22 A No, sir.

23 Q You talked about Mr. Dawkins having you use sex toys
24 to touch yourself?

25 A Yes, sir.

1 Q Where did you get those sex toys?

2 A From him.

3 Q Did you ever go sneak them out of a closet on your
4 own or anything like that?

5 A No, sir.

6 Q Mr. Brown also asked you about talking to them at a
7 Child's Place, do you remember doing that?

8 A Talking?

9 Q To people at The Child's Place about what Mr. Dawkins
10 had done?

11 A Yes, sir.

12 Q And was that shortly after these allegations had come
13 to light?

14 A Yes, sir.

15 Q And you told them about what had happened in

16 [REDACTED]

17 A Yes, sir.

18 Q Mr. Brown asked you about allegations of Mr. Dawkins
19 putting his mouth on your vagina. Do you recall where you
20 told them that happened, whether it was in [REDACTED] or

21 [REDACTED]

22 A No, sir.

23 Q Did they tell you they were recording that interview?

24 A I don't remember.

25 Q Well, when you talked to them, were you as honest and

1 accurate as you could be?

2 A Yes, sir.

3 MR. SHEEK: Your Honor, at this point, the State
4 would offer a copy of that taped interview into evidence
5 as State's Exhibit 3.

6 MR. BROWN: Without objection, Your Honor.

7 THE COURT: Okay. And in light of doing that, there
8 was an interview taken, y'all have been hearing about at
9 The Child's Place that was done by an interviewer and
10 recorded and she was placed on the video. Both sides will
11 be allowed to ask her questions after it's played. So she
12 can step down, but she's still going to be under oath if
13 she's recalled by either side. Are you done with her for
14 the time-being?

15 MR. SHEEK: I'm done with her for the time-being and
16 subject to any recross on the interview.

17 THE COURT: All right. So, ma'am, you can step down.
18 You can't discuss your testimony, because you may be
19 recalled. It's going to take us a few minutes to put the
20 video camera, camera, the projector in here.

21 MR. SHEEK: Your Honor, actually, and we beg the
22 Court's indulgence.

23 (Whereupon, a bench conference was held in the
24 presence of the jury but out of the hearing of the
25 jury.)

1 THE COURT: All right. Just so y'all know, I don't
2 think either side anticipated the video coming in and they
3 both would like the jury to see it. The lady that took
4 the video has it in her hand. She'll be here first thing
5 in the morning. So if y'all will blame that one on me,
6 these two lawyers will be ready to go first thing in the
7 morning. Would y'all be willing to start at 9:00 o'clock?
8 Can you be in here at 9:00 o'clock and we'll start fresh
9 with the video, and then several other witnesses. We
10 ought to be done tomorrow?

11 MR. SHEEK: Oh, yes. And the other two witnesses
12 from the State's have, or three witnesses is going to be
13 short.

14 THE COURT: So we're going to be finished tomorrow.
15 I don't want y'all, don't get worried that this thing is
16 going to go on and on. Normally, they are a day,
17 day-and-a-half. I told you that when I qualified you. So
18 put your stuff in the jury room and be back in the jury
19 room tomorrow morning first thing. Don't discuss the case
20 with anybody, tell anybody if you bump into them, the
21 Judge says don't discuss the case. Additionally, the
22 lawyers know, any of the witnesses know they are not to
23 communicate with y'all in any way. Good morning or good
24 afternoon is about as much as they can say and not violate
25 the rule from the Court to not try to influence y'all.

1 They influence you in here by presenting the case, not by
2 trying to be outside waiting on your ride. Mr. Bolt and
3 his staff will greet you. That is their job and we do
4 that, so he'll have coffee maybe in the morning, some
5 water and what-not in the jury room, so we'll see you here
6 at 9:00 o'clock in the morning.

7 (Whereupon, the jury was excused from open court for
8 the day.)

9 MR. SHEEK: We'll finish up with her, play that tape.
10 It's about a 40-minute tape.

11 THE COURT: The SLED agent?

12 MR. SHEEK: The SLED agent. Then, we got the SLED
13 agent and two other witnesses.

14 THE COURT: And anything Mr. Brown wants to do.

15 MR. SHEEK: My other two witnesses are the ones she
16 reported to. I'll limit my questions to time and place.

17 THE COURT: Okay.

18 MR. BROWN: Well, thank you.

19 THE COURT: All right.

20 MR. SHEEK: He'll stop me if I don't.

21 THE COURT: You'll present whatever you wish and
22 decide that then.

23 MR. BROWN: Yes, sir.

24 THE COURT: All right.

25 MR. BROWN: And Jackson v. Denno.

1 THE COURT: That's what they don't have.

2 MR. SHEEK: That's what we got to get over here.

3 THE COURT: That's what we're missing.

4 (Whereupon, the trial will resume the next morning at
5 9:00 a.m.)

6 OCTOBER 14, 2015.

7 THE COURT: Bring the jury in, please.

8 (Whereupon, the jury came into open court at
9 approximately 9:09 a.m.)

10 THE COURT: Good morning, we will wait in here.

11 MR. SHEEK: Okay, Your Honor, we are ready.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Yes, sir.

14 THE COURT: As I understand yesterday that we agreed
15 that the video was going to be stipulated, it was taken
16 properly under the statute by an interviewer at the
17 Child's Place. I don't know the interviewer's name but
18 that interviewer will not be called, the foundation to the
19 video is stipulated by both sides.

20 MR. SHEEK: Correct.

21 THE COURT: To be published to the jury first thing.
22 And if the defense or State wishes to recall the witness
23 to cross-examine her or reexamine her, both parties have
24 leave. The Court will call her back if either party asks.
25 Is that our agreement?

1 MR. BROWN: Yes, sir.

2 MR. SHEEK: Okay.

3 THE COURT: Okay. That's what I thought. All right.
4 Let's play the video.

5 (Whereupon, a video was published to the jury
6 starting at 9:21 a.m. and ended at 9:50 a.m.)

7 MR. SHEEK: Your Honor, I believe Mr. Brown and I
8 agree that that's the relevant portion and we'll stop it
9 there.

10 THE COURT: Okay.

11 MR. SHEEK: Marker 30:59 on the tape.

12 THE COURT: 30:59, 30 minutes, 59, that video was
13 hard to hear. When y'all are in deliberations, y'all can
14 have it again, you can hear it again. Perhaps, we can
15 make the sound work a little better, but you're welcome to
16 replay it. That's not uncommon for it to be difficult to
17 hear and you'll get to have that and you didn't have to
18 memorize it. All right. Now, for purposes of the video
19 and the presentation of Ms. Whitmire, does either side
20 wish to ask her any further questions about anything she
21 said during that interview? That's what's allowed now by
22 the State and/or the defense.

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

24 MR. BROWN: In light of the video, we would recall
25 Ms. Whitmire.

1 THE COURT: Okay. The reason that is folks is there
2 are statements made, statement so and so. I didn't want
3 her sitting up here and this is the way we do things.
4 Come on over here, Ms. Whitmire. You're still under oath.
5 Mr. Brown has a few more questions.

6 CROSS-EXAMINATION

7 BY MR. BROWN:

8 Q [REDACTED] you have, you've had a chance to see the
9 video?

10 A Yes, sir.

11 Q And does that refresh your memory in talking with
12 someone from The Children's Place?

13 A Yes, sir.

14 Q And now do you remember talking about Stanley--

15 A Yes, sir.

16 Q --Dawkins?

17 A Yes, sir.

18 Q And is Stanley Dawkins in the courtroom today?

19 A Yes, sir.

20 Q Is that the man sitting behind the bench here?

21 A Yes, sir.

22 Q So do you remember telling the interviewer something
23 about Stanley Dawkins?

24 A Yes, sir.

25 Q Do you remember telling the interviewer based upon

93

1 her questioning of you that he attempted to touch your
2 vagina?

3 A Yes, sir.

4 Q And do you remember telling her that he actually
5 touched the skin of your vagina?

6 A Yes, sir.

7 Q You also remembered that you said this was around the
8 time of the things that happened with Bradford Dawkins?

9 A Yes, sir.

10 Q And you say you're [REDACTED] at the time?

11 A Yes, sir.

12 Q What school were you going to?

13 A [REDACTED] e.

14 Q Where?

15 A [REDACTED] e.

16 Q Where is that?

17 A [REDACTED] e.

18 Q Did you ever go to school in [REDACTED]?

19 A Yes, sir.

20 Q You talked about Mike-Mike?

21 A Yes, sir.

22 Q Living in [REDACTED] e?

23 A Yes.

24 Q Where is [REDACTED] e?

25 A Where my grandparents stay.

1 Q Where is that?

2 A In [REDACTED]

3 Q Okay. And so when did you go to school in

4 [REDACTED]?

5 A My seventh grade year. I went my fifth grade to
6 seventh grade year.

7 Q How old were you in [REDACTED]?

8 A [REDACTED] I guess.

9 Q [REDACTED]

10 A Yes, sir.

11 Q So if you went to school in [REDACTED] when you were
12 13 years old, where were you living?

13 A In [REDACTED]

14 Q In [REDACTED]?

15 A I think so.

16 Q [REDACTED]?

17 A Yes, sir. I think.

18 Q Okay. And this would have been right around the time
19 you said something happened with Stanley Dawkins?

20 A Yes, sir.

21 Q And something happened with Brad Dawkins?

22 A Yes, sir.

23 Q What happened with Stanley Dawkins based upon you now
24 seeing the video?

25 A He was touching me and I told. That's what happened.

1 Q So is it true that you told your stepsister, Brad's--

2 A Yes, sir.

3 Q --daughter? You also said something to your mom?

4 A Yeah.

5 Q And she got upset?

6 A I know I told Daysa and Daysa told me that I should
7 tell somebody. And she told Brad, and then I guess he
8 told her. I didn't physically tell him myself. No, sir.

9 Q But your mom got upset about it even hearing this?

10 A Yes, sir.

11 Q And Brad heard about it?

12 A Yes, sir.

13 Q And Daysa knew about it?

14 A Yes, sir.

15 Q And y'all as a family went and talked to Stanley?

16 A Yes, sir.

17 Q So Brad confronted his brother about these issues?

18 A Yes, sir.

19 Q Your mother confronted Stanley about these issues?

20 A Yes, sir.

21 Q All right. But you didn't live with Stanley?

22 A No sir, I didn't.

23 Q Stanley stayed somewhere completely different?

24 A Yes, sir.

25 Q And what's Stanley's daughter's name that you know?

1 A Jasmine.

2 MR. SHEEK: Your Honor, objection. May we approach?

3 THE COURT: You may.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 Q So Jasmine was a friend of yours?

8 A Yes, sir.

9 Q You said that at some point you said on a Sunday
10 night Brad asked you to get in a car with him?

11 A Yes, sir.

12 Q You don't go to school on Sunday, do you?

13 A I was saying Sunday, I honestly don't remember.

14 Q Okay.

15 A And I was confused with the dates. I'm sorry.

16 Q But you did tell the person that you were talking at
17 The Children's Place that you had come home--

18 A I just got out of school; yes, sir.

19 Q Okay. So you came home from school and you took a
20 nap?

21 A Yes, sir.

22 Q So did you come home from school and take a nap or?

23 A Yes, sir.

24 Q So was that Sunday?

25 A I honestly don't remember.

1 Q Okay. And you say that you got into a car and drove
2 in the woods?

3 A Yes, sir.

4 Q You know for sure that when you drove that you were
5 in [REDACTED] or were you in [REDACTED]?

6 A [REDACTED].

7 Q How do you know for sure?

8 A Because I'm familiar with the area.

9 Q You were familiar with the deep woods?

10 A The way he turned, with the way he went, yes sir.

11 Q Which way did he go and we haven't heard that?

12 A Turn left, I mean, right out of our neighborhood.

13 Q Turned left?

14 A I said right.

15 Q You turned right out of your neighborhood?

16 A Yes, sir.

17 Q And then what?

18 A Went down the street.

19 Q You went down the street. Which street?

20 A The road.

21 Q What street? What road?

22 A I don't know the name or anything.

23 Q Well, let me ask you, did you have the chance at some
24 point to go with law enforcement or investigator to go
25 back over this area that you say?

1 A No, sir.

2 Q No one ever took you out to where this supposedly
3 took place?

4 A No, sir.

5 Q No one ever took you to a scene where you said
6 something occurred?

7 A No, sir.

8 Q No one ever took you to a place where you said a car
9 was parked?

10 A No, sir.

11 THE COURT: Asked and answered.

12 Q So you say you went down the road. What was the name
13 of that road?

14 A I don't know.

15 Q How far did you go?

16 A I don't know.

17 Q How long did it take you to get there?

18 A Not long.

19 Q Five minutes?

20 A I wasn't counting.

21 Q Ten minutes?

22 A I wasn't, I wasn't counting.

23 Q So you don't know?

24 A No, sir.

25 Q And what kind of car were y'all supposedly in?

1 A A Ford Focus.

2 Q Is that a big car?

3 A No, sir. It was a small car.

4 Q A small car?

5 A Yes, sir.

6 Q And you say that at some point Brad Dawkins
7 attempted--

8 A Yes, sir.

9 Q --something on you? And you say he got in on your
10 side?

11 A Yes, sir.

12 Q Did he get out of the car or did he--

13 A No.

14 Q --climb over the seat?

15 A No, sir. He pushed the seat back.

16 Q Okay. So if he pushed the seat back, did he get out
17 of the car and walk around--

18 A No, no, sir.

19 Q --and open the door?

20 A No.

21 Q So how did he supposedly get on your side?

22 A Got on top of me.

23 Q So he just climbed over?

24 A Yes, sir.

25 Q In a Ford Focus?

1 A Yes, sir.

2 Q Did you ever get embarrassed by Brad Dawkins walking
3 in on you doing something that was shameful?

4 A He honestly never walked on me, what do you mean
5 doing something shameful?

6 Q That you were touching yourself?

7 A No, he's never walked on me doing that.

8 Q He never have?

9 A No, sir.

10 Q And you never were embarrassed about that?

11 A He's never walked on me doing anything.

12 Q Did you ever tell anyone else that he walked in on
13 you or watched you masturbate?

14 A Yes, sir.

15 Q Who did you tell?

16 A The police.

17 Q Okay. Prior to that did you tell anybody that?

18 A No, sir.

19 Q Did you ever have a conversation with Brad Dawkins
20 about you masturbating?

21 A I mean, he told me to. Yes, sir.

22 Q You had a conversation with him about it because he
23 told you to?

24 A Yes, sir.

25 Q So he never walked in on you and you didn't get

1 embarrassed?

2 A He never walked on, in on me.

3 Q Did Brad Dawkins ever have a conversation with your
4 mother about the issue of you growing older and wanting to
5 learn more about sex?

6 A No, sir.

7 Q Did your mother ever get mad at you about the issue
8 of boys coming over to your house?

9 A Yes, sir.

10 Q Did your mother ever threaten to put you out of the
11 house?

12 A No.

13 Q Your mother never got mad at you over the issue of
14 you wanting to know more about sex and boys and never
15 threatened to put you out the house?

16 A She has never threatened me to put me out the house.

17 Q She's never gotten mad at you about those kind of
18 things?

19 A She's gotten mad, but she's never threatened me to
20 put me out the house.

21 Q How do you know she got mad?

22 A Because she, of course, she's going to be mad if boys
23 come over. I was punished for that, but she never told me
24 she was going to kick me out the house.

25 Q How were you punished?

1 A Everything was taken away from me.

2 Q Okay. Have you ever gotten a spanking?

3 A Yes, sir.

4 Q Who spanked you?

5 A Brad and my mama.

6 Q So they both corrected you?

7 A Yes, sir.

8 Q Do you think that was wrong at the time to correct
9 you?

10 A No, sir.

11 Q They were being parents?

12 A Yes, sir.

13 Q What's Mike-Mike's real name?

14 A Honestly, Mike, Michael. I don't know. I lost
15 contact.

16 Q You don't know his last name?

17 A No, sir.

18 Q Did you offer to give the interviewer his telephone
19 number?

20 A I don't know.

21 Q Or the interviewer didn't ask you for his telephone
22 number?

23 A No, sir.

24 Q And you didn't have any text messages to give the
25 interviewer?

1 A Yes, sir. I did. I had his phone number.

2 Q And my question is, during the interview did you
3 offer his telephone number?

4 A No, sir.

5 Q Did you have any text messages to give the
6 interviewer during what we saw?

7 A She didn't ask, so I didn't think of.

8 Q You didn't offer any text messages is my question?

9 A No, sir.

10 Q At some point, you talked to the interviewer. Did
11 you talk to anybody else in regards to this?

12 A No, sir.

13 Q You didn't talk to anybody?

14 A No, sir.

15 Q After the police came and arrested Brad, you didn't
16 talk to anybody else?

17 A The people that was in the house.

18 Q Okay.

19 THE COURT: This is cross examination. Just limit it
20 to interview. Not a whole other round of
21 cross-examination. I've kind of let you step outside of
22 that.

23 MR. BROWN: Yes, sir.

24 THE COURT: But you were done. I don't want to
25 rehash anything we have already gone through.

1 MR. BROWN: Okay.

2 Q And so you state that you talked to Jada?

3 A Yes, sir.

4 Q And Jada was your friend during the time-period?

5 A Yes, sir.

6 Q You said Jada had also apparently gone through
7 something herself?

8 A Yes, sir.

9 Q When'd you, when'd you talk to Jada first?

10 A The next day.

11 Q Well, did you not say that you felt, before you
12 supposedly got in the car earlier that day, that something
13 was going to happen?

14 A Yes, sir.

15 Q What'd you mean by that?

16 A I just had a feeling that something was going to
17 happen.

18 Q Something like what you said supposedly happened?

19 A Yes, sir.

20 Q How'd you know that?

21 A Because he's been making inappropriate stuff, so I
22 just had that feeling.

23 Q But you didn't know you were going to get into a car
24 and go deep into the woods?

25 A No, sir.

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1 MR. BROWN: That's all the questions I have.

2 THE COURT: All right. Mr. Sheek?

3 MR. SHEEK: No follow-up.

4 THE COURT: Okay. You done?

5 MR. BROWN: Yes, sir.

6 THE COURT: All right.

7 MR. SHEEK: Judge, if I could get a break, my next
8 witness has arrived.

9 THE COURT: You may stand down.

10 MR. SHEEK: Okay.

11 THE COURT: Because we been going a little more than
12 an hour in here, so y'all step in the jury room. You
13 can't begin discussing the case. Take a break and we'll
14 have you back in here in a few minutes.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 THE COURT: We'll stand at ease.

18 (Whereupon, a short break was taken.)

19 THE COURT: Jackson v. Denno hearing prior to calling
20 the next witness.

21 MR. BROWN: Correct.

22 THE COURT: Before I bring the jury back in.

23 MR. BROWN: Prior to bringing the jury back in; yes,
24 sir.

25 THE COURT: All right. Tell the jurors I got

1 something to deal with. If they want to step outside they
2 can.

3 BAILIFF: Okay.

4 THE COURT: Okay. All right. Let's go ahead and do
5 that.

6 MR. SHEEK: Thank you. The State would call Captain
7 R.D. Morgan.

8 R.D. MORGAN, being
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SHEEK:

12 Q State your name, please, sir?

13 A Russell Morgan.

14 Q And where are you currently employed?

15 A The City of Camden Police Department.

16 Q And how long have you been employed there?

17 A About 17 years now.

18 Q And did you have an opportunity to assist in an
19 investigation with Investigator Shannon Childress in the
20 matter of State vs. Bradley Bernard Dawkins?

21 A I did.

22 Q And did you have an opportunity to meet with Ms.
23 Childress and Mr. Dawkins in Columbia, I believe?

24 A Yes, at SLED.

25 Q And at that point in time, did you interview Mr.

1 Dawkins?

2 A I did.

3 Q At any point in time, was Mr. Dawkins threatened in
4 any way to make him give a certain statement?

5 A No, he was not.

6 Q Promised anything if he were to give a certain
7 statement?

8 A. No, sir.

9 Q Okay. And as a part and parcel of that meeting, did
10 he make a statement to you regarding a situation involving
11 him and a child by the name of [REDACTED]

12 A He did.

13 Q And could you state to the Court what it was he told
14 you?

15 A He told me that he had seen the victim, Ms. Whitmire,
16 in the past nude. He had one occasion told the victim to
17 remove all her clothing so that he could give her a
18 whipping, is what he said. He said that she might have
19 been as young as 11 at that time. He also stated that he
20 at one time walked into the victim's bedroom during this
21 summer and discovered that she was masturbating. And but
22 that he, that she was performing this act with a vibrator
23 that he had provided to her. He stated that the victim
24 also asked him if she was doing the procedure correctly.
25 And later on and, and, and supposedly asked the defendant

1 if she, if he would show her how to do it. And then he
2 went on to state that two weeks later he asked the victim
3 if she figured out how to properly use the vibrator and
4 she said that she had. But during the entire time he,
5 that I was speaking with him, he continued to deny
6 actually touching the victim's vagina and breasts.

7 Q Did he make any other statements?

8 A Not that I recall, no sir.

9 Q And did that conclude your participation in this
10 matter?

11 A It did.

12 MR. SHEEK: Your Honor, that's all the State has in
13 regards to the statements the defendant made.

14 THE COURT: All right. Mr. Brown.

15 CROSS-EXAMINATION

16 BY MR. BROWN:

17 Q Captain Morgan, you said you met within the SLED in
18 Columbia?

19 A That is correct.

20 Q Why is that?

21 A I was there assisting SLED.

22 Q You were assisting SLED. Were you assisting Ms.
23 Childress?

24 A That would be yes.

25 Q How were you assisting them?

1 A By interviewing your client.

2 Q And why were you interviewing him in Columbia at SLED
3 and not here in this county?

4 A Because that's where I was at the time.

5 Q And why were you there?

6 THE COURT: I thought we went over this yesterday.
7 He was assisting with a polygraph that you don't want to
8 get into and that's why it was done in Columbia, because
9 that's where the machine is. I mean, come on, you are
10 wasting my time now. Get to the point.

11 MR. SHEEK: I have instructed the witness not to
12 mention polygraph. I think what he's trying to do but
13 outside of the presence of the jury, please feel free.

14 A I was running polygraph examinations at SLED.

15 Q So you got his statement pursuant to taking a
16 polygraph?

17 A That is correct.

18 Q So he gave you this information while y'all were
19 examining him for a polygraph?

20 A At the conclusion, yes.

21 Q At the conclusion of the polygraph or before?

22 A He administered a polygraph examination which he was
23 determined to be deceptive to. And following that he gave
24 the admissions that I just told you about.

25 Q Well, how did he give his statement? You told me he

1 failed the polygraph.

2 A Yeah, we talked.

3 Q And you asked him to talk about it then?

4 A Yes.

5 Q And what date was this?

6 A Let me see, December 3rd, 2009.

7 Q How long had he been in custody?

8 A I have no idea.

9 Q Do you know why he was initially contacted, well, his
10 initial contact with law enforcement.

11 A I was told that [REDACTED] had stated that her
12 mother's live-in boyfriend, which I assume is Mr. Dawkins,
13 had taken her for a ride to a secluded area late one night
14 and made sexual advances to her. That she alleged that
15 among other things that he touched her vagina and breasts
16 and that a polygraph was requested to resolve the issue.

17 Q So when he was taken into custody, he immediately
18 came to you?

19 A No, sir. I had nothing to do with the arrest or
20 anything.

21 MR. SHEEK: Your Honor, if I could for clarification.
22 The record is clear that he wasn't arrested until the 4th
23 which was the day after this.

24 A Oh, okay.

25 MR. SHEEK: So he was not in custody.

1 Q And that's my question. I'm just saying, when did
2 you learn he had contact with law enforcement first, by
3 the police?

4 A The only time I had anything to do with your client
5 was during the time he was at SLED for the polygraph. I
6 don't know what he did before that or after that.

7 Q Okay. So you have no information about his state of
8 mind or whether he was intoxicated or anything?

9 A When he was talking to me?

10 Q Yes.

11 A He was not intoxicated and he appeared to be normal.

12 Q How do you know that?

13 A Because he didn't appear to be abnormal.

14 Q Did you have information provided to you that when
15 the police came to his residence he was arrested initially
16 for the use of drugs?

17 A I have no information on your client other than the
18 brief time that I was with him at SLED.

19 Q So does your examination or information that you
20 sought from him, did you clear it with them that he was
21 under any type of intoxicants during the time-period?

22 A There is a checklist that I go through prior to
23 administering a polygraph examination. If they have it, I
24 can read it to you if you'd like.

25 Q And nothing medical that you know of?

1 A No.

2 Q Okay. And you say he specifically said those things
3 to you that you just called out on the stand?

4 A That is correct.

5 Q Did you ever take a written statement?

6 A I didn't, no.

7 Q Do you know if a written statement was produced at
8 the time-period you were there?

9 A I have no idea, sir.

10 MR. BROWN: That's all the questions I have.

11 MR. SHEEK: That's all the State will have in regards
12 to the Jackson v. Denno. Captain Childress testified
13 yesterday regarding the advisement of rights the day
14 before and the day she took him to SLED. And so we have
15 nothing else in regards--

16 THE COURT: Is there any written statement taken or
17 just his oral statement.

18 MR. SHEEK: Just the oral statement.

19 THE COURT: All right. Well, consistent with Jackson
20 v. Denno, it appears to me that his rights were advised
21 in-writing, explained to him by two police officers
22 interviewing him and that he waived his rights to counsel
23 and right to remain silent and provided statements to both
24 Ms. Childress and Officer Morgan. And that's what it
25 appears to me.

1 MR. BROWN: Your Honor, do you want to hear from Mr.
2 Dawkins on the issue?

3 THE COURT: Sure.

4 CAPTAIN MORGAN: May I step down?

5 THE COURT: Yes, you may.

6 BRAD DAWKINS, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BROWN:

10 Q State your name?

11 A Brad Bernard Dawkins.

12 Q Do you remember talking with Captain Morgan?

13 A Yes.

14 Q Where did you talk to him at?

15 A At the SLED office in Columbia.

16 Q Were you in custody?

17 A Yes.

18 Q How long had you been in custody?

19 A About a day or two.

20 Q Okay. At the time-period once you were arrested,
21 what was going on?

22 A I was smoking marijuana.

23 Q Okay. And when you gave the interview, just for the
24 purposes of this hearing, were you clear in mind and clear
25 in thought?

1 A No.

2 Q Why would you say that?

3 A I had the repercussions from the marijuana.

4 Q Did you, were you asked that by the examiners?

5 A No, sir.

6 Q Had you seen a doctor?

7 A No, sir.

8 Q Had you had your blood drawn?

9 A No, sir.

10 Q But you're saying that you were not clear?

11 A No, sir.

12 Q Did you see me before you went to Columbia?

13 A Yes.

14 Q So you called me when you got arrested?

15 A Yes.

16 Q And I came to--

17 A Columbia, I mean to Laurens, excuse me.

18 Q And you were advised at that time?

19 A Yes.

20 Q Did you inform them that you were, that you had
21 counsel and that you wanted a lawyer present?

22 A Yes, I did.

23 Q In terms of what they deem as a statement or a
24 document that was given to you in terms of waiving your
25 rights, do you remember going through that?

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1 A No, I don't.

2 Q Do you remember signing off on anything?

3 A I don't.

4 Q Do you remember going through a checklist saying that
5 you waive your right to have your attorney present?

6 A No, I don't.

7 Q Why wouldn't you remember that?

8 A Because I, it didn't, because I was high, but I don't
9 remember it. I don't, I just don't remember it.

10 Q And when they talked to you, they talked to you right
11 after this examination took place?

12 A I don't remember that part. I don't.

13 Q Do you remember Ms. Childress and Captain Morgan
14 being together at the same time questioning you?

15 A No, they wasn't.

16 Q They wasn't?

17 A No.

18 Q When did Ms. Childress talk to you, did she talk to
19 you in Columbia or did she talk to you in Laurens?

20 A She talked to me in the car coming back up the road.

21 Q So she didn't talk to you in Columbia?

22 A She didn't, we didn't as far as statements or
23 anything like that. She told me that that's all she
24 needed to see was deception. And she didn't want to talk
25 about it anymore.

1 Q When the things were heard that Captain Morgan said,
2 do you agree that you said it, said those things?

3 A I don't remember. I disagree that I said those
4 things to him when I wasn't taking a polygraph test.

5 Q So you saying you said those things based upon his
6 questions with the polygraph?

7 A He might have asked me those questions while I was
8 taking the polygraph.

9 Q You don't recall him asking that after the polygraph?

10 A No, I don't.

11 MR. BROWN: That's all the questions I have.

12 CROSS-EXAMINATION

13 BY MR. SHEEK:

14 Q So it's your testimony that you were under the
15 influence of drugs at the time you were at SLED talking to
16 Captain Morgan?

17 A Yeah, I had been smoking marijuana prior to that.

18 Q Yeah, prior to that. How far prior to that?

19 A They arrested me that night. I went to SLED that
20 next day, I think it was. I think it was. I'm not sure.

21 Q And so you smoked marijuana you're saying the day
22 before you went to SLED?

23 A That, when they, I was smoking marijuana when they
24 arrested me.

25 Q Okay. Well, you didn't smoke it after you went to

1 the detention center, did you?

2 A No.

3 Q You didn't smoke it any that night while you were in
4 the detention center?

5 A No.

6 Q Smoke any on the way to SLED?

7 A No.

8 Q Okay. So the only marijuana that you say that you
9 had partaken in was at least the day before?

10 A Right.

11 Q How much had you smoked?

12 A At that time I was smoking a lot of marijuana.

13 Q Well, what's a lot? What's a lot to you may be
14 totally different to me or someone else?

15 A I used to probably smoke, probably about a quarter
16 bag a day.

17 Q When would you do this? Well, scratch that for now.
18 How would it affect you, would you still be under the
19 influence of that marijuana the next day, unable to
20 understand questions, make decisions, those type of
21 things?

22 A It depends.

23 Q Well, you said you smoked a quarter of a bag a day,
24 so while this was going on were you completely unable to
25 make decisions, answers questions on a daily basis?

1 A No, I was, I was capable of making decisions.

2 Q And the officers went over your Miranda rights, do
3 you recall that?

4 A They went over my, [REDACTED] went over my Miranda
5 rights when they arrested me for marijuana. And when they
6 got through with that, they gave me a bun and found me and
7 they drove me to Laurens and they just locked me in the,
8 locked me up. And that morning, they came, that morning
9 they came and brought me two warrants and they didn't read
10 me my rights then.

11 Q So in Laurens you're saying never did?

12 A No, [REDACTED] did.

13 Q Okay. I'm showing you what's been marked State's
14 Exhibit 1 for identification and ask you, is that your
15 signature on that page?

16 A Can I get my glasses?

17 Q Yeah, go ahead.

18 A Yes, that's my signature.

19 Q At the very top of it there's a label on that paper,
20 office of what?

21 A Of the Sheriff.

22 Q Not Fountain Inn PD, but Office of Laurens County
23 Sheriffs Department, isn't it?

24 A Right.

25 Q And that's Shannon Childress' signature there with

1 it, isn't it?

2 A Yes.

3 Q And did you initial those blocks?

4 A No.

5 Q So you signed it, but those aren't your initials?

6 A Yeah, I didn't initial. There ain't no initials on
7 the blocks.

8 Q Okay. Did you check them?

9 A No. I don't think, no.

10 Q Did you read it?

11 A Yeah, it says, do you understand each of these rights
12 I have explained to you. Do you want a lawyer and it says
13 I said no, but I already had a lawyer at that time. So
14 why would I not want a lawyer.

15 Q Why would you sign it?

16 A These boxes wasn't check then.

17 Q Okay. So you signed the blank advisement of rights
18 forms?

19 A I signed, that's my signature.

20 Q Okay.

21 A I can say that is my signature.

22 Q Thank you. I'll take that.

23 MR. SHEEK: Your Honor, at this point, we would move
24 to have this marked and entered as State's 1.

25 MR. BROWN: Without objection.

1 THE COURT: It'll be admitted.

2 (Whereupon, State's Exhibit 1 was admitted into
3 evidence.)

4 Q So it's your testimony then that Laurens County
5 brought you a waiver of rights form, got you to sign a
6 waiver of rights form but never told you your rights?

7 A No, they didn't say that I have a right to remain
8 silence or anything like that.

9 Q And let me make sure that I understand, moving beyond
10 the rights issue. You said when you were speaking to
11 Captain Morgan, I wasn't sure. Do you deny making the
12 statement to Captain Morgan that you had [REDACTED] remove her
13 clothes completely to give her a whipping?

14 A No, I didn't, I don't deny that.

15 Q Okay.

16 A You said, do I deny that that happened?

17 Q No. I'm just saying do you deny that you made that
18 statement to him?

19 A I don't remember making that statement to him, but it
20 did happen.

21 Q Okay. Do you deny making the statement to him about
22 walking in on [REDACTED] when she was masturbating?

23 A No, I don't deny those statements. But I might have
24 made those statements, he was the one that presented the
25 polygraph. So if I made those statements, I don't know if

1 I made them before he is saying that I have, was finished.
2 But I know I didn't make them when I was finished because
3 they didn't want to talk anymore. She said she was
4 through talking. She, she got what she wanted, deception
5 and we ready to go.

6 Q Okay. So in the interest of time for what we're
7 doing here today, you don't deny making any of those
8 statements he read, you may have an issue of when they
9 were made?

10 A Right.

11 Q Okay.

12 MR. SHEEK: Okay. Judge, I have no further questions
13 in reference to Jackson v. Denno.

14 THE COURT: I got a question. When was the attorney
15 contacted and met in the timing of all these things. And
16 go into that for me, Mr. Brown.

17 REDIRECT EXAMINATION

18 BY MR. BROWN:

19 Q When you were arrested, when were you arrested?

20 A I'm not sure of the day. It had to be December 1st,
21 I think it was.

22 Q Okay. Well, you recall a number of officers coming
23 to your house?

24 A Yes.

25 Q Fountain Inn police and someone from the Sheriff's

1 office?

2 A Yes.

3 Q Officer Simmons, Ricky Simmons, Shannon Childress. A
4 number of officers came to your house?

5 A Right.

6 Q And you were arrested?

7 A Yes.

8 Q What happened next in regard to you being transported
9 to the county detention facility?

10 A They brought me right out the house, put me in the
11 Fountain Inn car, charged me with possession of marijuana
12 and gave me a PR bond. And I asked them could I go and
13 they said no, you can't go, because you in much more
14 trouble in Laurens. And I said what are you talking
15 about. And he said I can't talk about that, he said, but
16 Laurens Police Department is coming to pick you up.

17 Q And at some point you were transported to Laurens?

18 A Yes, and then we went down to Laurens and I got to
19 the detention center. And I asked could I make a phone
20 call. I called Patricia. Then, I asked Patricia what was
21 going on and she told me that she didn't know what was
22 going on. And then the clerk said who were you on the
23 phone with, I think. And I said I'm on the phone with my
24 fiancé. And she said you can't be on the phone with your
25 fiancé. And then she made me hang up. And then I called

1 my brother to tell him to get me a lawyer.

2 Q And your brother being who?

3 A Frederick Dawkins.

4 Q And at some point while you're at the county
5 detention center, who is the next person you saw?

6 A You.

7 Q So I came to the detention center?

8 A Yes.

9 Q And spoke to the Judge to try to figure out what's
10 going on?

11 A Yes.

12 Q And then after that, you were transported to
13 Columbia?

14 A Yes.

15 Q Okay. So you had already talked to me?

16 A Yes.

17 Q And I informed you to not talk to anybody?

18 A Right.

19 Q And I also informed you that I would represent you on
20 these charges?

21 A Yes.

22 Q And I did file something?

23 A Yeah.

24 Q Were you able to get out on bond?

25 A Yes.

1 Q And you say you were arrested for marijuana initially
2 in Fountain Inn?

3 A Yeah.

4 Q And then they transported you to Laurens?

5 A Yes.

6 Q Would Laurens be, would Fountain Inn be incorrect if
7 they came to your house and said they found eight blunts
8 that had been smoked down?

9 A No, they might not.

10 Q And that would have been from that time-period when
11 they came to your house and smelled marijuana?

12 A Yeah.

13 MR. BROWN: I think that answers the question, Your
14 Honor.

15 MR. SHEEK: Your Honor, I don't know that I have much
16 to add other than a copy of a letter that was filed with
17 the Laurens County Clerk of Court by Mr. Brown that says
18 that I have been fully retained to represent the defendant
19 and that was dated May 13th of 2010.

20 THE COURT: You agree with that?

21 MR. BROWN: Oh, yes, sir.

22 THE COURT: All right. You can step down. Y'all
23 come up here.

24 (Whereupon, a bench conference was held.)

25 THE COURT: All right. Now, that we've had testimony

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1 of the two officers and of Mr. Dawkins, Mr. Brown, let's
2 hear from you as to the admissibility of the statements
3 made to Mr. Morgan.

4 MR. BROWN: Your Honor, as it relates to the entirety
5 of the case, my initial contact with Mr. Dawkins, I think
6 he relays to the Court that I was contacted by his family
7 and retained to come and see him and to advise him, as
8 well as to seek a bond at that time regarding the
9 underlying charges. With that being said, Your Honor, I
10 think Mr. Dawkins was very clear in terms of his contact
11 with law enforcement and, particularly, as it relates to
12 Captain Morgan and his involvement with SLED in Columbia.
13 He was there specifically to examine him for the purposes
14 of a polygraph. Mr. Dawkins has relayed that he spoke
15 with Captain Morgan pursuant to an actual polygraph
16 examination and nothing outside of it. And he also gives
17 information he did speak with Ms. Childress outside of
18 that polygraph examination. Clearly, any results from the
19 polygraph cannot come in. Clearly any information that
20 was obtained from the polygraph including any type of
21 examination that was given for the purposes of whatever
22 questions there were should not be able to come in. It's
23 our contention that the information that Captain Morgan
24 has presented to the Court directly related to that
25 polygraph examination. For that reason, we would ask that

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1 any statements that attributed to Mr. Dawkins not be
2 allowed. Furthermore, in terms of the preservation of
3 rights or the presentation of that form that's been
4 attributed to the County of Laurens, Mr. Dawkins has
5 already informed the Court that, you know, he told law
6 enforcement clearly that he didn't need an attorney
7 because he had an attorney. But the form I don't think
8 addresses that you waive your right to an attorney, if you
9 take a look at the form, Your Honor. With that being
10 said, still we're saying that he does have the
11 preservation of his rights to have his attorney present
12 and telling the Court that he did have a lawyer at that
13 time. And anything else that came from that, Your Honor,
14 we would think should be suppressed.

15 THE COURT: Didn't we have testimony from Captain
16 Morgan that the rights were given at SLED also and this is
17 the form that was used?

18 MR. SHEEK: No, no. That's the form that was used by
19 Shannon Childress when she advised him of the rights, and
20 she testified that she advised him of his rights. Captain
21 Morgan did not advise him a second time. But she was
22 present at SLED and taken down there as the defendant has
23 stated.

24 THE COURT: What time was the polygraph interview
25 done?

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1 MR. SHEEK: I cannot remember the time.

2 MR. BROWN: I can clearly show you that on 12/2,
3 which there are three warrants were issued. The very
4 first one that he's referencing, my client was issued on
5 12/2 with Ms. Childress and that's 12/2. Anything else
6 that came after that, the other two warrants came from
7 12/4, after this examination.

8 THE COURT: All right. We want to go off the record.

9 (Whereupon, a bench conference was held.)

10 THE COURT: Let's take a break.

11 (Whereupon, a short break was taken.)

12 THE COURT: All right. Based upon the objection that
13 I'm hearing, it appears to me that the advisement of the
14 rights was properly advised by, I'm going to call her
15 Detective Shannon Childress. At the time, she was the
16 chief investigating officer for Laurens County. She
17 advised him of the rights on 12/2 at midday, 12:09 p.m.,
18 signed by the defendant. It's been admitted at State's
19 Exhibit 1. He waived his right to have counsel and did
20 provide statements and consented to being transported to
21 SLED for further examination. My ruling would allow
22 statements made to Ms. Childress, which she's already
23 testified and she was present during parts of the
24 polygraph interview but not all parts. She did not relate
25 to the record any statements made to her. And so that's

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1 not part of the record and what she claims he has said.
2 So I'm not ruling on that. But to the extent statements
3 were made during the polygraph examination to Captain
4 Morgan, I'm going to find those are freely and voluntarily
5 made consistent with a waiver of advising of rights by
6 Detective Childress, Captain Morgan having met them in
7 Columbia to conduct this interview. I would limit, of
8 course, and we discussed this off the record, that any
9 reference to polygraph examination, any results, any
10 relevance to use of drugs unless the defendant wants to
11 open that door, the State will not be allowed to say any
12 comments about his use of drugs or why he was taken into
13 custody the night before or that the interview in Columbia
14 was a part of any polygraph examination, it was an
15 interview.

16 MR. SHEEK: Correct.

17 THE COURT: And that will be my ruling.

18 MR. BROWN: Your Honor, the defense would, for
19 purposes of the record, respectfully object to the Court's
20 ruling based upon what we would deem to be the actual
21 initial interview and only interview that we know of by
22 Ms. Childress which took place in the time period in which
23 Mr. Dawkins was being arrested for possession of
24 marijuana. As Mr. Dawkins relates to the Court, he was
25 answering based upon that particular waiver of rights on

1 December the 2nd which was contemporary to him being
2 arrested for marijuana and the questions that were
3 associated at that time during, with that arrest.
4 Subsequent to that, he was transported to Columbia. This
5 polygraph examination was given not by Ms. Childress but
6 with Captain Morgan's assistance and, of course, there was
7 a separate line of questioning. And it's our belief that
8 that would be a separate line of questioning that requires
9 a separate process and, of course, a separate advisement
10 of rights. We haven't heard any testimony from Ms.
11 Childress in regards to anything that was said during that
12 examination. She didn't remember it for the most part of
13 this case. She definitely didn't relay any information as
14 a way to anything that occurred in Columbia.

15 THE COURT: And it'd certainly have to be allowed for
16 argument purposes, you can summarize testimony presented
17 as you like. All right. And that now will conclude our
18 Jackson v. Denno hearings. Statements, oral statements
19 made to Captain Morgan would be admitted subject to the
20 restrictions the Court has put on the record. Now, we're
21 ready to go. All right. Y'all ready.

22 MR. SHEEK: I don't believe we need a break, Your
23 Honor. I will, just for the purposes of letting us know
24 how we're going to be able to proceed, I'm going to ask
25 Captain Morgan did he memorialize these statements in his

1 records so the jury understands how he can remember what
2 was said. Obviously, I will not move to enter the report.
3 There is no way we could redact this enough to get all the
4 polygraph and things off of it.

5 THE COURT: Okay.

6 MR. BROWN: Of course, I'm going to object, because
7 it's clearly stated on the face of this document, this is
8 a South Carolina Law Enforcement Division Polygraph
9 Report.

10 THE COURT: No, it won't be admitted, but if his
11 memory needs to be refreshed, he took notes of the
12 interview and that is how it will be utilized.

13 MR. BROWN: Yes, sir.

14 THE COURT: All right. Bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 10:58 a.m.)

17 THE COURT: All right. Folks, we had a, had
18 something I took up on off the record, I mean on the
19 record without your presence yesterday. I had to do some
20 more of that this morning and didn't realize that that
21 was, they would get that done too during that break. So
22 we didn't want to start and send y'all right back out.
23 So, all right. Mr. Sheek, call your next witness.

24 MR. SHEEK: Thank you, Your Honor. The State calls
25 Captain R.D. Morgan to the stand.

1 R.D. MORGAN, being
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SHEEK:

5 Q Thank you, sir. If you would, please state your name
6 for the court reporter?

7 A Russell Morgan.

8 Q And where are you currently employed, Mr. Morgan?

9 A The City of Camden Police Department.

10 Q Okay. And how long have you been in law enforcement?

11 A 34 years now.

12 Q And what is your rank with the Camden City Police
13 Department?

14 A Captain.

15 Q And how long have you been with Camden?

16 A About 17.

17 Q Captain Morgan, in part of your work and your duties
18 as a law enforcement officer, do agencies from
19 time-to-time assist each other in investigations?

20 A Yes.

21 Q And did you have an opportunity to assist Laurens
22 County regarding the case of State of South Carolina vs.
23 Brad Bernard Dawkins?

24 A I did.

25 Q And as part of your assisting them, did you have an

1 opportunity to actually conduct an interview with Mr.
2 Dawkins and Shannon Childress of the Laurens County
3 Sheriff's Department?

4 A I did.

5 Q And do you recall the date of that interview?

6 A December 3rd, 2009.

7 Q And the result of that meeting with Mr. Dawkins, did
8 he make any statements to you regarding allegations that
9 had been made against him from [REDACTED]?

10 A Yes, sir.

11 Q And if you would, sir, well, let me ask you this.
12 That's been six years ago. Did you memorialize in notes
13 the statements that he had made to you?

14 A I did, sir.

15 Q Okay. And have you reviewed those notes to refresh
16 your recollection to prepare to testify today?

17 A As much as can be at 62, yes.

18 Q Okay. Can you tell this jury the statements that Mr.
19 Dawkins made to you?

20 A Yes.

21 Q Thank you.

22 A Mr. Dawkins in my interview stated that in the past,
23 he admitted to seeing the victim, [REDACTED], in the
24 nude. He stated that in the past he had told the victim
25 to remove all her clothing so that he could whip her. He

1 also stated that at that time that the, [REDACTED] was
2 approximately [REDACTED]. He told me also that he had
3 walked into the bedroom one, I guess, evening in the
4 summertime and discovered that she was masturbating. And
5 that during the masturbating incident he stated that she
6 was performing the masturbation with a vibrator that he
7 had provided to her. He also stated to me that [REDACTED]
8 [REDACTED] asked him if she was doing it correctly and if he
9 would show her how to do it. He went on to say that about
10 two weeks later he inquired of [REDACTED] if she had
11 figured out how to properly use the vibrator and she had
12 responded she had. But at that time, the interview was in
13 conjunction with the allegations that Mr. Dawkins had
14 touched the victim's vaginal area and breasts. And he
15 continued to deny actually doing that.

16 Q Does that conclude the statements that he made to
17 you, sir?

18 A That's all I got.

19 Q Thank you, sir. Did you have any other involvement
20 in any other investigation?

21 A And just the interview, sir.

22 Q Thank you, Captain Morgan. Please answer anything
23 the Defense may have.

24 CROSS-EXAMINATION

25 BY MR. BROWN:

1 Q Captain Morgan, you said he continued to deny
2 touching her breasts at that time?

3 A Yes.

4 Q Why would he have to be asked repeatedly?

5 A He wasn't asked repeatedly by me. He just denied
6 that. That was the allegation. That's why I was there to
7 interview him.

8 Q So you're saying that he was accused of doing that
9 and he just said, no, I didn't do that. That's what you
10 mean by continuing to deny?

11 A Okay. Yes. Sure.

12 Q So it wasn't repeated questions of the same sort that
13 he continued to say no, no, no, no?

14 A I don't remember the entire course of the interview;
15 no, sir.

16 Q Did you get him to write down anything for you?

17 A No, sir.

18 Q You don't have a written statement from him?

19 A I do not.

20 Q How long have you been in law enforcement?

21 A 34 years.

22 Q Is it customary, based upon your training and
23 experience, for someone who is giving a statement to have
24 that statement reduced and what has been said
25 memorialized?

1 A If I was the investigating officer, I would have done
2 that. I was not. I was there to interview him.

3 Q So you're here to say after six years off of some
4 notes that he said some things, but you don't have a
5 written statement?

6 A That's correct.

7 Q And who was the investigating officer?

8 A Ms. Childress.

9 Q And you have not reviewed any documentation that's
10 been provided to you by way of a written statement from
11 Mr. Dawkins?

12 A No.

13 Q And you say that he said that he whipped her without
14 her clothes on?

15 A Correct.

16 Q And then he said he walked in on her while she was
17 masturbating?

18 A Correct.

19 Q From the vibrator that he provided her?

20 A That's what he said.

21 Q Did he tell you how he provided it, do your notes
22 tell you that?

23 A No.

24 Q Did he say that he gave her access to it?

25 A All I know is that he said that he provided a

1 vibrator.

2 Q Did he say that I may have left the closet open or
3 the box was there and she got the vibrator out of the box?

4 A I said that he told me that he had provided her with
5 a vibrator.

6 Q Okay. In what manner do you mean by providing her?

7 A I would not know.

8 Q You don't have it in your notes?

9 A No.

10 Q So can you definitely disagree with me that he told
11 you that he may have left it in a box?

12 A I would tell you that leaving it in a box would not
13 be providing anybody with anything.

14 Q Can you tell me that he said that?

15 A That he left it in the box?

16 Q That it was in a box in his home and she may have
17 gained access that way?

18 A No, he did not say that.

19 Q He didn't?

20 A No.

21 Q He said I handed it to her?

22 A He said he provided her with a vibrator.

23 Q So you don't have an explanation of what provides
24 means, do you?

25 A No.

1 Q Okay. Did you interview anybody else in regards to
2 this case?

3 A No.

4 MR. BROWN: That's all the questions I have.

5 THE COURT: Any redirect?

6 MR. SHEEK: No redirect, Your Honor..

7 THE COURT: Captain, thank you very much.

8 CAPTAIN MORGAN: Thank you very much.

9 MR. SHEEK: Can Captain Morgan be dismissed?

10 THE COURT: Absolutely.

11 CAPTAIN MORGAN: Thank you, sir.

12 MR. SHEEK: Can we approach real quick, Judge?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: Is that it?

18 MR. SHEEK: The State rests, Your Honor.

19 THE COURT: All right. Folks, take a quick break. I
20 have to put a couple of things on the record and then
21 we'll proceed from there. Do not begin, you're not
22 allowed to begin discussing the case. I'll have you right
23 back in here.

24 (Whereupon, the jury was excused from open court for
25 a break.)

1 THE COURT: Did we mark the video as State's Exhibit
2 3? I know y'all stipulated it was in and I didn't put
3 that on the record. I didn't put the exhibit number on
4 the record. Well, you stipulated it was in and the
5 foundation was proper and it was properly done. State's 3
6 is in evidence.

7 (Whereupon, State's Exhibit 3 was admitted into
8 evidence.)

9 THE COURT: Are we going to put any motions on the
10 record very quickly, Mr. Brown?

11 MR. BROWN: Yes, Your Honor. I'm looking for the
12 actual indictments.

13 THE COURT: And Ms. Lancaster took them with her, and
14 then brought them back to me. All right. Mr. Brown, let
15 me hear your motions.

16 MR. BROWN: Your Honor, the defense would not have
17 been able to gain the information for this trial to seek
18 to make a motion to quash the indictments but for the
19 testimony that was given during the course of the State's
20 presentation. I know that our Supreme Court has recently
21 addressed some of these issues in State v. Baker, having
22 that reviewed in February of this year. But it will be
23 our contention that both the indictments says relates to
24 the lewd act and the criminal sexual conduct should be
25 quashed because it seems to be that this will be overly

1 broad. We've heard testimony in regards to the actual
2 physical home that was given in Fountain Inn and
3 attributed to be in Laurens County. But any actual
4 allegations of any touching that we heard, initially, from
5 the video that we saw which young [REDACTED] was being
6 interviewed occurred at [REDACTED] which is in
7 Greenville County. Any other actions that we've also
8 heard attributed to something that happened in a car, a
9 car that was driven, as she said, deep into the woods. At
10 some point it was stated that it was in Laurens County but
11 without a degree of specificity outside of this residence
12 which would, which again we didn't hear any testimony and
13 didn't receive any evidence that anything took place of a
14 physical nature that would be the underlying actions both,
15 to be considered both for a lewd act and the criminal
16 sexual conduct. We would feel that it hadn't met the
17 standard. They are overlapping accusations between the
18 counties. This paints a broad brush for both of the
19 indictments, not just for [REDACTED], but we also
20 heard at some point there may have been some interaction
21 with Spartanburg of some sort. But, Your Honor, we're
22 saying it was virtually impossible to try and defend any
23 accusations that began in Greenville allegedly, that
24 teetered over into [REDACTED] and ultimately went to an
25 undisclosed, unidentified location somewhere in the woods.

1 To state that it simply was in Laurens without any exact
2 description, Your Honor, cause us to say that it's
3 impossible for us to try to seek the defendant. I think
4 the State v. Gentry has covered this both and in certain
5 matters, of course, obviously it would be first the
6 defendant's right to question the manner in which the
7 accusation has been presented. But, secondly and most
8 importantly, it's up to the Court's determination as to
9 whether the offense is stated with sufficient certainty
10 and particularity to enable the defendant to know what
11 he's called upon to answer and whether he may plea to get
12 an acquittal. That would be our exact contention as to
13 what's been presented or what has not been presented in
14 this court, Your Honor.

15 THE COURT: Well, let's start with that one first.
16 Mr. Sheek?

17 MR. SHEEK: Thank you, Your Honor. The case to which
18 Mr. Brown is referring to, the breadth that the Court had
19 problems with when they said the indictments were overly
20 broad. And that matter was a case where the State went
21 back and reindicted over a large length of time. I think
22 in this case, the case they're referring to was like a
23 five or a six year period. And then there was some
24 discussion about indictments of a two year period being
25 okay. But what the Court had a problem with is they said,

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1 look, you put over such a broad period of time, how does
2 the defendant even know exactly what it is he's being
3 accused of or when it is? In this case, as I understand
4 the defense's argument, they said it's not specific enough
5 in its area of where it occurred. And I think the State
6 has certainly put the defendant on notice of sufficiently
7 of what he was to defend. And that is a lewd act and/or
8 criminal sexual conduct that happened on or about, we
9 actually got specific in the timeframe which is not
10 required and that it happened in Laurens County. And then
11 of course, there's testimony that it was in Laurens
12 County. He can certainly argue to the jury, well, how did
13 you know that she was right, that it was in Laurens
14 County. But that would be an issue for the jury to take
15 up and I don't think it's one for sufficiency of the
16 indictment. I think the indictment sufficiently apprizes
17 him of the allegations that he had prepared for trial.
18 Nothing came up in this trial outside the realm of what it
19 was. There was some testimony regarding things that
20 happened in Greenville that were allowed under res gestae
21 but those are not going to be submitted to the jury for
22 the purposes of McGill, (phonetic). We wouldn't be
23 allowed to argue because he had done that, he's therefore
24 guilty. That's clearly a different jurisdiction. But she
25 was clear on what happened in Fountain Inn in Laurens

1 County.

2 THE COURT: All right. I think the interview she
3 gave with The Child's Place interviewer, that things
4 happened in the Fountain Inn house and she related to
5 that. And I think that's sufficient to get the time and
6 jurisdiction sufficiently alleged in the indictments that
7 there's facts testified to get by directed verdict on that
8 issue. And so for that reason, I'll deny on the vagueness
9 of the document or insufficiency of the documents, I'm
10 going to deny the directed verdict motion and that's what
11 I understood that motion to be about. The issue of
12 whether or not the incident in the car occurred in Laurens
13 County, there is sufficient evidence and the young lady
14 testified that she believed it to be Laurens County. She
15 went on a short drive in the woods. She believes herself
16 to be in Laurens County. I think that's another factor to
17 sufficiently say it's in Laurens County. Where I have a
18 problem, it just happened and never say where. She said
19 she believed in Laurens County. So on that issue also
20 it's the jurisdiction of where the incident in the car
21 took place to be in Laurens County. I'll deny directed
22 verdict. I thought you had another one that I may have
23 split them up.

24 MR. BROWN: No, Your Honor, you covered the gist of
25 both the attempt to quash the motion as well as a motion

1 for a directed verdict.

2 THE COURT: All right.

3 MR. BROWN: And, Your Honor, just for the purposes of
4 the record, I want to think I heard you make a positive
5 statement in regards to my previous motion in regards to
6 the Jackson v. Denno.

7 THE COURT: For the purpose of the record, on the
8 Jackson Denno issue, a sufficient, a lengthy record was
9 made regarding when the rights were given and whether Mr.
10 Dawkins had elected to have counsel present and waived
11 those rights sufficiently. It appears to the Court, based
12 upon State's Exhibit 1, and the testimony of both officers
13 that the rights were waived and the statements made to
14 Captain Morgan were within the parameters of knowingly
15 intelligent waiver of his rights to remain silent, to have
16 counsel present and those statements were freely made to
17 Captain Morgan. No written statement is taken. No
18 written statement has been admitted. There were only the
19 oral statements to Captain Morgan and those have been
20 admitted. But to the extent the objection was made and
21 all of the bases on the record, your record is protected
22 on that issue. We had a sidebar where I described another
23 case I had regarding the rights waiver, voluntariness and
24 all that sort of thing. A full record is made and I
25 allowed, subject to objection, placed on the record by

1 call Ms. Priscilla Burgess.

2 Priscilla BURGESS, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q If you'll please state your name?

7 A My name is Priscilla Burgess.

8 Q And where do you live?

9 A I live in Greenville, South Carolina.

10 Q Do you know this gentleman seated at the far right
11 table?

12 A I do. That's my daddy.

13 Q That's your daddy?

14 A He's not my biological daddy, but he's my daddy.

15 Q Could you tell us what, why do you call him your
16 father?

17 A Because he's done everything a daddy supposed to do.
18 That's my daddy. He came into my life and turned my life
19 around, because I was wild. He came into my life and
20 taught me how a lady is supposed to act. That's my daddy.

21 Q So he was married to your mom at one point?

22 A Right.

23 Q All right. And how old were you when he came into
24 your life?

25 A 14, 15.

1 Q And are you a mother?

2 A I am. I have three beautiful children.

3 Q Does he have the opportunity to see your kids?

4 A Of course. We've lived with my dad. I have a
5 five-year-old daughter. She loves her Papa to death.

6 Q You weren't here yesterday, but you've had the chance
7 to know some things about his case which you've been
8 present during testimony?

9 A Yes.

10 Q Do you know what your dad is accused of?

11 A Well, I heard them say sexual conduct with a lewd act
12 or something.

13 Q Is your father the kind of man that would do that?

14 A No.

15 MR. SHEEK: Objection, Your Honor.

16 THE COURT: She can't answer that.

17 Q Has your father ever done anything to you?

18 A No.

19 Q Has he ever done anything to your children?

20 A No.

21 MR. SHEEK: Same objection, Your Honor.

22 THE COURT: Move on, what happened in this case is
23 going to be the issue for the jury and someone can't come
24 in and testify that, I don't believe that happened, can't
25 do that. So that's why I'm limiting this testimony.

1 Q So your father has been there for you?

2 A Yes.

3 Q And he's still there for you?

4 A Of course. He keeps my children while I work till
5 this day.

6 Q And you have no problem with him being around your
7 children?

8 A No. He teaches them right from wrong just as he
9 taught me. So, I mean, my dad is the, a great dad.
10 That's my daddy.

11 Q Please answer any questions the State may have for
12 you.

13 MR. SHEEK: Your Honor, I apologize. I do have a
14 small matter for the Court that I probably need to take up
15 outside of the presence of the jury.

16 THE COURT: All right. Y'all step in the jury room.
17 We got to put something on the record. You can't begin
18 discussing the case.

19 (Whereupon, the jury was excused from open court.)

20 MR. SHEEK: Your Honor, obviously, the nature of that
21 testimony caught me somewhat by surprise because it was
22 largely in the nature, I feel, of a charactering
23 bolstering testimony.

24 THE COURT: I agree.

25 MR. SHEEK: Especially the way the questions are, you

1 I very much believe that character had been presented
2 through this witness, through several questions even after
3 I gave the jury a curative instruction as to the ultimate
4 issue. I'm going to allow the cross-examination by the
5 State as to the conviction and the conviction to the
6 particular charge. I think that's allowed to show and
7 refute the character, now that the character has been
8 presented. Had it not been presented either with
9 consistent or normal or just mention the defendant
10 testified to a felony in federal court. But I think the
11 nature of the charge, the conviction comes in now that
12 character has been presented in some large degree through
13 this witness. I certainly didn't expect it that way. All
14 right.

15 MR. BROWN: Thank you.

16 THE COURT: I understand your objection. Bring them
17 back in.

18 (Whereupon, the jury came into open court at
19 approximately 11:50 a.m.)

20 THE COURT: All right. You may continue.

21 MR. SHEEK: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SHEEK:

25 Q I think you testified that, obviously, you know him

1 well because you considered him your father?

2 A Right.

3 Q And that this is the man who keeps your children on a
4 daily basis?

5 A Uh-huh.

6 Q Is that a yes?

7 A Yes.

8 Q You're fine with that?

9 A Yes.

10 Q And you're aware that that's the same man that was
11 convicted in federal court in 2005 for possession with
12 intent to distribute crack cocaine, correct?

13 A Right.

14 Q He did five years in the federal penitentiary, is
15 that correct?

16 A Right.

17 Q And that's the man that you're all right leaving your
18 kids with?

19 A It is, because--

20 MR. SHEEK: Thank you. I have no further questions.

21 THE COURT: She can finish her answer if she wants
22 to.

23 Q Oh, I'm sorry. Go ahead.

24 A It is, because I didn't, we didn't know, he didn't
25 portray his self. We didn't grow up around that. I never

1 was around any of that.

2 Q Sure.

3 A So no, I didn't, for me to say that's what I grew up
4 around, that's what he brought into my life, no I cannot
5 say that. And I didn't know anything until he had to go
6 to court, until he was convicted and it came as a shock to
7 me.

8 Q Right. Because it's not something he did around you,
9 right?

10 A Right.

11 Q It was something he let you know about, right?

12 A Of course.

13 Q And, I mean, there was a whole side of his life he
14 kept completely separate from you, right?

15 A That. Yes, he didn't bring that around us.

16 Q Right. He just kept that separate. That illegal
17 activity he hid from you, correct?

18 A I didn't know anything about it, correct.

19 Q You didn't know about it, did you?

20 A No.

21 THE COURT: All right. Any redirect?

22 MR. BROWN: And none, Your Honor.

23 THE COURT: Okay. You can step down. Okay.

24 MR. BROWN: Your Honor, we call Stanley Dawkins.

25 THE COURT: All right. Mr. Dawkins, come forward to

1 be sworn.

2 STANLEY DAWKINS, being
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Please state your name for the record?

7 A Stanley Leon Dawkins.

8 Q And where are you a resident of?

9 A 18 Dunrovin Street in Greenville, South Carolina.

10 Q All right. And do you know that man seated to my far
11 left?

12 A Yes, that's my brother, Brad.

13 Q And do you know [REDACTED]

14 A Yes, I do.

15 Q And how do you know her?

16 A Brad started dating her mom in 2000 and her and my
17 daughter and my niece around the same age. They spent a
18 lot of time together. They slept in the same beds
19 together often at my house.

20 Q And so you were around her from time to time?

21 A Yes, I was.

22 Q And you've been present during the course of this
23 trial?

24 A Yes, I have.

25 Q You've heard [REDACTED] testimony?

1 A Yes, sir.

2 Q You've also heard what was presented today via video?

3 A Yes, sir.

4 Q Did you hear your name brought up?

5 A Yes, I did.

6 Q And you heard what was said about you?

7 A Yes, I did.

8 Q Did you hear what was said about you and your
9 brother?

10 A I have.

11 Q Based upon what was said about you, is that true?

12 A No, sir.

13 MR. SHEEK: Clarify the question. Is he asking what
14 [REDACTED] said about him untrue?

15 THE COURT: I am not sure.

16 Q Based upon what you heard about you and what [REDACTED]
17 said or what she was asked, was that true?

18 A It's untrue.

19 Q It's untrue?

20 A Yeah, it's not true.

21 Q Have you ever touched her in a wrong way?

22 A No, I haven't.

23 Q Based upon the incident, were you confronted by your
24 brother?

25 A I was.

1 Q And her mother?

2 A I was.

3 Q And his other stepdaughter?

4 A I was. We all, at that time that incident occurred,
5 we all sat down as a family and I think [REDACTED] needed an
6 explanation for what she felt to be uncomfortable and we
7 gave her that explanation.

8 Q Okay. And nothing ever else came of that?

9 A No, sir.

10 Q So you didn't touch her on her vagina?

11 A No, I did not.

12 MR. BROWN: That's all the questions I have.

13 THE COURT: Any cross?

14 CROSS-EXAMINATION

15 BY MR. SHEEK:

16 Q The incident occurred, whether or not you touched her
17 on the vagina, the incident with her in bed and you doing
18 whatever with the covers, that did occur?

19 A Yes, she was in the bedroom on the bed with my
20 daughter and my niece and her in the wintertime. So the
21 cover had come all the way over on her side. To try to
22 readjust the cover to cover both, all three, you know, she
23 must have felt uncomfortable. I didn't hear her say
24 anything or anything like that. I just done that and then
25 left the room.

1 Q Okay. So when she told the interviewer that she was
2 touched--

3 A Right.

4 Q --that was true?

5 A I could imagine so, because all the cover had kind of
6 went up under her body. She had kind of turned herself
7 into all the cover.

8 Q And was she saying that she talked to somebody the
9 next day and they came as a group and confronted you, that
10 was true?

11 A Oh, that was true.

12 Q And when she says you said you were adjusting the
13 covers and that was your explanation, that was true?

14 A That's true. I mean, I spent a lot of time with
15 [REDACTED] in those two years. We really, you know, as a
16 family in church events always supported [REDACTED] and
17 encouraged her to be a young lady. Out of all the young
18 ladies that come over to the house, it's never been a
19 incident where, you know, it's been inappropriate action.
20 And I just felt kind of like that was a situation where we
21 could talk about that and so she could feel more
22 comfortable.

23 MR. SHEEK: Thank you. I have no further questions.

24 THE COURT: Anything else?

25 MR. BROWN: No, Your Honor.

1 THE COURT: You made a decision?

2 MR. DAWKINS: Yes, sir.

3 THE COURT: And you going to testify?

4 MR. DAWKINS: Yes, sir.

5 THE COURT: Very well. Let the record reflect he was
6 amply and timely noticed that he could testify or not, his
7 right's there. And he has had an opportunity to discuss
8 it with his lawyer and he made his decision with knowledge
9 and voluntarily of his own decision. No coercion. All
10 right. Go get the jury.

11 (Whereupon, the jury came into open court at
12 approximately 1:15 p.m.)

13 THE COURT: We ready to continue? Mr. Brown.

14 MR. BROWN: Thank you, Your Honor. We would call Mr.
15 Brad Dawkins to the stand.

16 THE COURT: All right. Mr. Dawkins, come forward to
17 be sworn.

18 BRAD DAWKINS, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BROWN:

22 Q Sir, if you could please state your name for the
23 jury?

24 A Brad Bernard Dawkins.

25 Q And where do you live, Mr. Dawkins?

1 A Greenville, South Carolina.

2 Q And you are familiar with the issues of this case?

3 A Yes, I am.

4 Q Well, Mr. Dawkins, let me ask you something at the
5 outset. Something that was brought up when Ms. Priscilla
6 was on the stand.

7 A Yes.

8 Q What relationship do you have with Priscilla?

9 A I was married to her mother and she was my
10 stepdaughter.

11 Q Okay. And how long were you in that relationship?

12 A With her mother?

13 Q Yeah.

14 A 10 years.

15 Q And Priscilla was living with you--

16 A Yes.

17 Q --during that time-period?

18 A Yes.

19 Q Something came out of a question from the prosecution
20 was that you've had a previous drug conviction?

21 A Yes, I have.

22 Q Tell the jury about that drug conviction?

23 A It was a federal drug conviction. A guy came and
24 asked me did I knew someone that had some drugs, and I
25 didn't have the drugs. I told him that Joseph had the

1 drugs. He had Joseph's number. He contacted Joseph on
2 his own and they did a drug transaction. When they
3 convicted, charged Joseph, they charged it in a conspiracy
4 meaning everyone that was around dealing with that case
5 got convicted. And I didn't get convicted for five, I
6 didn't do five years. I got out after 18 months. Came
7 home. They gave me five years supervised release. I got
8 through with supervised release after 365 days in the
9 Thirteenth Circuit in Greenville, South Carolina.

10 Q So it's because this was a federal case, you found
11 yourself getting convicted off a phone call?

12 A Yes, yes.

13 Q Did you ever put your hands on any drugs?

14 A No, I didn't.

15 Q You ever transport any drugs?

16 A No, I did not.

17 Q Did you have any drugs in your house?

18 A No, I did not.

19 Q And did you ever have any drugs that the federal
20 government came in, observed you holding, taking from one
21 place to the next?

22 A No.

23 Q So this is a true conspiracy as you've said?

24 A Conspiracy, yes.

25 Q Well, you recall talking with an Investigator

1 Childress?

2 A Yes, I do.

3 Q At some point, did she come to serve you with the
4 charges that you are facing here today?

5 A Yes.

6 Q And you've been present on the entire testimony
7 during this trial?

8 A Yes, I have.

9 Q And you heard the people that come and take, took the
10 stand?

11 A Yes.

12 Q And, particularly, you've heard Captain Morgan?

13 A Yes.

14 Q Tell us about your conversation with Investigator
15 Childress and the information that Captain Morgan shared
16 with us?

17 A He was correct. I have disciplined [REDACTED] with her
18 clothes off. I disciplined her at the same time that I
19 disciplined my 16-year-old, 17-year-old. They got in
20 trouble together and both of them took their clothes off
21 and both of them got a spanking.

22 Q They were living with you at the time?

23 A Yes.

24 Q And anything in addition from your conversation?

25 A He said that I provided [REDACTED] with a toy. I didn't

1 hand [REDACTED] toy. I didn't do that. Me and my fiancé
2 then, we had toys in our house and whether I left them out
3 somewhere or didn't and she got a hold of it, then when
4 they asked me yeah, we did have toys in our house and we
5 did use those toys. And if those toys was, she got a hold
6 to it, yeah, it might have been my fault because I didn't
7 put the toys back where they were supposed to be.

8 Q Well, I know you've heard her testimony and I know
9 you've seen the video as it relates to certain events that
10 she said occurred over a time-period. Did any of that
11 happen?

12 A No, not at all.

13 Q And your testimony is that you didn't have [REDACTED]
14 perform acts on herself as you watched her?

15 A No, not at all, at all.

16 Q She specifically referenced that at some point it was
17 four or five times a month that were increasing over time.
18 Would that have been possible?

19 A No. It wouldn't have been possible because during
20 the time that she was speaking of, [REDACTED] was going to
21 school in Spartanburg. And her mother was working in
22 Spartanburg. And after she got out of school she went to
23 her grandmother's house. Her mother got off work at 5:00,
24 5:30, went to her mother's house and picked her up and
25 they came home together, every night. So what I, the

160

1 opportunity she is saying that I could have messed with
2 her four or five times a week, it's ludicrous, because I
3 didn't have access to [REDACTED] alone during that time-period
4 for four or five times a week.

5 Q Okay. So at some point, you heard her testify that
6 she was in seventh grade and she was going to school in
7 Spartanburg?

8 A Yes.

9 Q And that was during this time-period?

10 A She was going to [REDACTED], yes.

11 Q And at some point she began to go to school in
12 Laurens County or Fountain Inn?

13 A She had begun to go to school in Greenville County.
14 We were staying in, we moved to [REDACTED] and her
15 mother took her out of private school and put her in
16 public school.

17 Q Okay. And you were present when her mother testified
18 as well?

19 A Yes.

20 Q And you heard her mother say that she went to school
21 eventually here in [REDACTED]?

22 A Yes.

23 Q And at some point there was some discussion about
24 some events that related to November 30th?

25 A Right.

1 Q What were you doing on that day?

2 A I had just started a contract with the state
3 government, Department of Health and Human Services. I
4 left out the house. I came down to Laurens and provided
5 after school snacks to the YMCA and the daycares and the
6 elementary schools around in Greenville, in Laurens and
7 Honey Path.

8 Q Okay. Let me ask you this then. How are you able,
9 with a drug conviction on your record, how were you able
10 to do that?

11 A I worked for a, my church rebuilt the nonprofit,
12 Baptist Church Community Development. And we obtained the
13 contract to provide those snacks to these people for free.

14 Q Okay. And you were able to do your job that way?

15 A Yes. Yes.

16 Q And during that time-period, [REDACTED] was going to
17 school in [REDACTED]?

18 A Yes.

19 Q All right. Specifically, as it relates to Monday,
20 November 30th, 2009, what happened over the course of your
21 day?

22 A Okay. I got through serving snacks. My daughter
23 worked at Little Caesars down here in Laurens. I stopped
24 by there. I picked up a couple of pizzas and I came home.
25 [REDACTED] was already home then. When I got home, I typed in

1 a couple of things as far as the attendance for what I was
2 doing. Had been out all day, set on my chair to look at
3 T.V. [REDACTED] came to get something out of the kitchen and I
4 told [REDACTED] you know, your mama going to the grocery store
5 today. So make sure you go to the grocery store with your
6 mama, because she don't get the snacks we like. She said,
7 okay. Patricia came in the house, spoke. I went to sleep
8 on my, in my chair. I woke up and didn't see Patricia,
9 didn't see [REDACTED] I called for Patricia's name. When I
10 called for Patricia's name, she didn't answer. [REDACTED] came
11 out the, her room and said mama gone to the store. I said
12 why didn't you go to the store with mama because you know
13 she don't pick up the snacks that we like? She said, I
14 just didn't want to go. And I said, okay. So a few
15 minutes after that I was sitting down and the police
16 knocked at the door and they asked me, they said they had
17 questions about my home and do a [REDACTED] stay here.
18 And I was like, yes, she does. And they say, can we see
19 her. I went to [REDACTED] door and knocked on her door.
20 Asked her what did you do at school, the police is here.
21 She said, I don't know why the police is here. I said
22 okay. After that, well, that was the day after. I'm
23 sorry.

24 Q But that's December 1st?

25 A Yeah.

1 Q November the 30th the day in which--

2 A Okay. Oh, yeah. After that--

3 Q --it's alleged.

4 A I left out. Yeah, I left out. I went over a
5 friend's house. I stayed over at a friend's house to
6 probably about 10:30, 11:00 o'clock, somewhere in there.
7 Came back home. Set and watched T.V. Went outside and
8 smoked a cigarette when I did, I used to smoke cigarettes.
9 Came back in and went to bed and got up the next morning.

10 Q So you clarify this for the jury. On November 30th,
11 the day that you heard that supposedly you got into a car
12 and left with [REDACTED] at some point. What was your day like
13 on that day leading up to what you just said?

14 A The day that I supposed to got her in the car?

15 Q Yes. The day that you just said?

16 A Yeah.

17 Q What were you doing earlier before you got home and
18 then when you got home?

19 A Yeah, I was providing snacks to after school
20 programs. I stopped by and got a pizza, brought the
21 pizza. Sat down like I said. Asked her, talked to her
22 about, her father was getting married and [REDACTED] didn't
23 then have a good relationship with her father. And she
24 didn't like the fact that her father was getting married
25 because she wanted her mother and her father to get back

1 together. And I told [REDACTED] well, you know, I'm dating
2 your mother and she's happy and your father is going to be
3 happy. So if they're both happy then you should be happy
4 for your parents. And I don't think, she didn't like
5 that. We talked about her father was having a wedding and
6 she wasn't a part, he told her that she was going to be in
7 the wedding, I think, and she wasn't a part of the
8 wedding. So she was a little upset about that. And after
9 that I came and sat down and watched T.V. for a minute and
10 went to sleep. When I went to sleep, by that time
11 Patricia was in the house and Patricia told me that, yes,
12 I'm getting ready, because she supposed to had went to the
13 grocery store the day before. She didn't go. She went
14 that day. She left to go to the grocery store. I told
15 [REDACTED] to go to the grocery store with her. No, I didn't
16 feel like going to the grocery store. While her mother
17 was gone to the grocery store the, yeah, and the police
18 knocked at the door.

19 Q Speak up.

20 A When, after I took the nap, I woke up. I didn't
21 think no one was in the house. Called out for Patricia,
22 called out for [REDACTED] [REDACTED] came in the living room and I
23 asked her why she didn't go with her mother. She said,
24 because she didn't want to go with her mother. After
25 that, like I said, I got in the car. I went to, over to a.

1 friend's house and stayed over to the friend's house. I
2 came back from the friend's house and sat back down and
3 looked at T.V. for a minute. I think I went outside and
4 smoked a cigarette, came back in and went in the bedroom
5 with Patricia and went to bed.

6 Q And so the next day when you got up that's when you
7 had contact with law enforcement?

8 A Yes. Yes.

9 Q In terms of what we heard of you having some type of
10 interview with Investigator Childress, is that the point
11 in which you told her the fact of how you would discipline

12 [REDACTED]

13 A Yes.

14 Q And everything else was said?

15 A Yes. I didn't, that's how I disciplined my kids.
16 And I didn't, I whooped both of my kids. I'm the kind of
17 father I try to discipline my kids. But I try to deter
18 from it because I used to try to talk to them, because
19 I've been working with kids for 27 years. I've been doing
20 counseling, pregnancy prevention. So I was talking to my
21 kids and I didn't want to discipline but when it was to
22 the point to where it was, that's when I disciplined my
23 kids and that's when I disciplined them.

24 Q So that's when, Patricia was correct in terms that
25 you acted as a parent along with her in terms of helping

1. raise [REDACTED]

2 A Yes, I was the, I was most of the time the
3 disciplinary in the home. I remember that, I remember one
4 time she whooped [REDACTED] for the little boys coming over.
5 She whooped her that day and she took her clothes and said
6 that [REDACTED] has to go, she has to go stay with her father.
7 She packed, literally packed her clothes and put them on
8 the porch. I talked to Patricia and told Patricia that
9 her father don't have nothing to do with her now so if she
10 moved with her father, she just going to stay with her
11 grandmother. And that's, this is our house now and we
12 going to raise our kids together in our house.

13 Q Captain Morgan also related information that you
14 supposedly told him that you walked in on [REDACTED] at some
15 point?

16 A Oh, yes. I was, [REDACTED] was, it was during the
17 summertime, I think. I think it was during, right at the
18 end of the summer. I came in and [REDACTED] was in Patricia
19 and I, our room and we had a DVD player, VCR, I done
20 forgot which one it was. And [REDACTED] was masturbating
21 looking at the movie and she had a vibrator in her hand.
22 And I told her to get up and she went, got up, put her
23 clothes on, went in her room, came back out. I talked to
24 her about, talked to [REDACTED] times before about boys. And
25 [REDACTED] was like, I want to be with a young man. And I was

1 telling her. this is not the time to be with a young man,
2 okay. What you was doing, you do that in the privacy of
3 your own room. You lock your door. I'm not telling you
4 to do it or not to do it but that's what you do in the
5 privacy of your room. For one, where I get on you, at you
6 was in my room looking at my movies, our movies, Patricia
7 and our movies. And she was a little bit upset about it
8 and got mad at me. I told her that's it. I'm not going
9 to whoop you or anything but that's not what we do.

10 Q You say you were the disciplinarian. Were you a
11 sweet father and sweet parent or were you the main parent?

12 A I was kind of both. You know, I disciplined. If
13 Trisha told me that I need to get on them about something,
14 I got on them. But at the same time, I didn't try to be
15 that overbearing father that they couldn't come and talk
16 to. Because with all my kids, I'm the person that they
17 have always came and talked to. With my ex-wife, my
18 daughters talk to me about, one of my daughters' mother
19 wanted to go and put her on birth control. She come back
20 and tell me, Daddy, I'm not sexually active. When I do
21 get sexually active, I will talk to you about it. Months
22 or a year or so later she came back and said, Daddy, I'm
23 ready to be sexually active. Okay. Now, let's take the
24 necessary precautions so you don't get pregnant and my
25 daughter was out of high school during that time. So I

1 pretty much did both.

2 Q All right. You say daughters, how many daughters?

3 A I got three daughters, three daughters, six
4 grandkids.

5 Q You were present during the testimony involving your
6 brother, Stanley?

7 A Yes.

8 Q Do you remember the circumstances of surrounding
9 that?

10 A Yes. We were at church and [REDACTED] began to cry in
11 church and I didn't know why. And my daughter came and
12 said, Daddy, you need to come outside, we need to talk.
13 And she said come outside, we need to talk. Okay.
14 Because I see it's a problem, so she told me at the church
15 that my brother, Stanley, had touched her in an
16 inappropriate way. So I was like, okay, that's, I was
17 upset about it because I've always treat, I've never
18 treated [REDACTED] different than I've treated Daysa. So when
19 we went outside I asked my brother, did you actually touch
20 her or put your hands on her. He said, no. He said, let
21 me explain. I said, well, let me get [REDACTED] Jazz, Daysa,
22 Patricia and Tiffany. We all sat down and we talked about
23 it. And after we talked about it, things were clarified.
24 I asked my daughter and my niece, did you hear anything
25 happen or was anything happening. They told me no. I

1 asked [REDACTED] do you think he did this intentionally. And
2 they went from yes to I don't know to maybe. And so after
3 me and Patricia talked about it, I asked her what course
4 do she want to take. Do you want to call, you know, we
5 want to talk to the police; we want to do anything about
6 it? We were fine with what answers we got to those
7 questions.

8 Q During that conversation, at that point do you
9 remember anybody saying that Stanley touched her vagina--

10 A No.

11 Q --the skin of her vagina?

12 A No, not at all.

13 Q Okay. But you were present when the video was played
14 and the interviewer asked her about touching the skin of
15 her vagina?

16 A Yes.

17 Q But that never came up in your conversation?

18 A No.

19 Q And what kind of car did Patricia have?

20 A Like a 2001 or 2002, somewhere in there, Ford Focus.

21 A real small car.

22 Q A Ford Focus?

23 A Yes.

24 Q And you said you had a daughter that was living there
25 with y'all?

1 A Yes, my daughter, Daysa, at that time, during that
2 time she was staying with me during the summer and staying
3 with her mother during the school year. Yeah, she was
4 staying with us off and on during that time. But during
5 that period of time, I don't know what had transpired
6 between the girls. But when we moved to Fountain Inn,
7 Daysa didn't stay with, over at the house. She went and
8 spent the night over at my brother, Stanley's, house
9 during the summer. She didn't stay there anymore and I,
10 during that period of time I seen my daughter every day
11 because I ran a summer after school program for the kids,
12 a summer program for the kids. So my daughter, Jasmine,
13 [REDACTED] all came and I knew it was some kind of problem but
14 I was, the girls, I'm going to let them work it out.

15 Q And that's the same summer that this alleged
16 incident--

17 A Yes.

18 Q --that involved your brother came up?

19 A Yes. Yes.

20 Q And then some time-period later on, a few months
21 later, you found yourself accused of the same thing--

22 A Yes.

23 Q --or something similar?

24 A Yes.

25 Q So, again, it's your testimony that on the evening of

1 November 30th, you didn't get in a car--

2 A Not at all.

3 Q --with [REDACTED]

4 A Not at all.

5 Q You didn't take a trip to the woods somewhere?

6 A Not at all.

7 Q You didn't try to cross over the cabin of this Ford
8 Focus in an attempt to have sex with her?

9 A I was 300 pounds. How would I get over there? Not
10 at all, no. No, not at all.

11 MR. BROWN: Please answer any questions the
12 prosecution may have.

13 CROSS-EXAMINATION

14 BY MR. SHEEK:

15 Q And, Mr. Dawkins, in your testimony just now, you
16 talked about summer programs with kids and doing some
17 after school counseling with kids, taking snacks by school
18 for kids?

19 A Yeah, that was my job. I worked at a nonprofit.

20 Q What nonprofit did you work for?

21 A In the beginning when I started working, I worked for
22 Latchkey kids.

23 Q Okay. And how long did you work for them?

24 A I worked for them probably five, about four or five
25 years.

1 Q And when did you quit your employment with them?

2 A The beginning of 2009.

3 Q Okay. And what did you do for that program?

4 A I was assistant director.

5 Q Okay. And where are they located?

6 A Greenville.

7 Q Okay. And as assistant director, you went to schools
8 and worked directly with children?

9 A No, not directly on a everyday basis.

10 Q Well, you said you were taking snacks by the school,
11 is that something you did as part of your employment?

12 A I didn't do that with Latchkey. I did that with
13 Lion, COCC.

14 Q Okay. And when did you start working with them?

15 A We started probably right before the summer, right
16 before the summer started.

17 Q The summer of what year?

18 A 2009.

19 Q Okay. And what were your duties with them?

20 A I was executive director.

21 Q Okay. And as executive director, you went to schools
22 and worked directly with children?

23 A No, I just dropped off snacks. I didn't actually
24 hands on with those kids. On Mondays I would, Monday was
25 the only day that I delivered snacks.

1 Q Okay.

2 A I would deliver snacks to the Y, the director and
3 drop them off and just keep on going. I didn't see the
4 kids, I was there and gone before they got out of school.

5 Q Okay. So you worked with children or children's
6 programs now for several years?

7 A Yes.

8 Q And you say, of course, you got your own daughter?

9 A I got, yeah, my biological, I got three daughters.

10 Q And you've been very active in their lives?

11 A Yes. Right now my daughter, I'm a single father and
12 my daughter has been living with me ever since she was in
13 the sixth grade and now she's in the twelfth grade.

14 Q You consider yourself then well-experienced in the
15 matters of children, raising daughters?

16 A Yes.

17 Q If you could explain to the jury and as a father of a
18 stepdaughter, I'm curious as to how it came about that you
19 decided it was a good idea to have your teenage
20 stepdaughter strip naked so you could discipline her and
21 how that thought process came about?

22 A When I got ready to whoop them, both of them had on
23 thick jogging suits. And they were trying to keep, I
24 think they had on the jogging suits, they had on thick
25 clothing. And I was like we're not going to go through

1 that. Both of you all get your clothes off. Both of you
2 all. It wasn't just my stepdaughter, it was my daughter
3 also.

4 Q You told your teenage stepdaughter, instead of, hey
5 go put on a pair of shorts or go put on something normal,
6 you told her to strip naked?

7 A Yeah, that's how I, yeah, I mean, that, they got
8 whooped like that.

9 Q It made perfect sense to you, right?

10 A It did, yes.

11 Q Okay. And this is the same teenage stepdaughter
12 that, now, is this before or after you discovered her with
13 this sex toy that you've explained?

14 A Before.

15 Q Okay.

16 A This when we stayed on [REDACTED]

17 Q Now, let's talk about that. You also testified to
18 Mr. Brown, well, this couldn't have happened the way she
19 said because she wasn't around enough for this to have
20 happened with the frequency that she testified to. Is
21 that what you told Mr. Brown?

22 A I told Mr. Brown that she stated in her testimony
23 that during the time we stayed on Georgia Road that we,
24 she said that I was messing with her four or five times
25 out the week. Okay. And out of those four or five times

1 out the week, her mother was around, we never, her mother
2 never went to the grocery store four or five times out the
3 week. She didn't, her mother came home with her. Her
4 mother came home with her. At night time her mother was
5 in the house all the time. So, yeah, that's during that
6 period of time.

7 Q Well, then why weren't you having her mother
8 discipline her instead of you telling her to strip naked
9 so you could discipline her. I mean, if her mother was
10 around all the time?

11 A Well, her mother, that's what we said. Her mother
12 told, I disciplined. I did the discipline in the house.

13 Q But her mother told you to do it that way?

14 A She didn't tell me particular how to do it but that's
15 how I did it that day.

16 Q So you're saying she was aware that you were having
17 her daughter get naked so that you could spank her?

18 A She was aware and my wife was aware.

19 Q Well, where exactly were you going to spank her that
20 you needed to take all of her clothes off?

21 A I spanked her on her butt, her back, her legs. I
22 spanked her where ever I touched her at for what they had
23 done.

24 Q Okay. And it wouldn't have been sufficient to have
25 her just maybe, if this jogging suit is that thick, to

1 have her pull that down so that her underwear--

2 A -- it might have been, but I probably was angry
3 enough to where I just told them, y'all get all y'all
4 clothes off, I'm fixing to whoop y'all.

5 Q Angry enough you made her take shirt, bra, everything
6 off?

7 A I told them to take everything off, yes.

8 Q Now, as you were just explaining about her mother
9 being around, you said that she had gone to school in
10 Spartanburg and, therefore, she went with her mother in
11 the afternoons.

12 A No, she went over to her grandmother's. Her mother
13 didn't get off till 5:00.

14 Q Okay.

15 A She left and went over to her grandmother's house.
16 They never got home at, before 8:00, 9:00 o'clock at
17 night.

18 Q That's right and that's what you're telling this
19 jury, right?

20 A Yes.

21 Q Okay. Because, in fact, when this [REDACTED]
22 [REDACTED] he was in [REDACTED] wasn't she?

23 A I don't know.

24 Q And you lived there? Where was she in school in
25 November of 2009? If you were so involved where was she

1 in school?

2 A And no, in November 2009 she had just started public
3 school.

4 Q Just started?

5 A Yes.

6 Q She went to public school that entire year, didn't
7 she?

8 A She went to public school, this happened in November
9 2009.

10 Q Right. And where was she in school? Tell me that
11 first.

12 A I think she was in school.

13 Q Tell me where.

14 A In November 2009, she was in school in [REDACTED]

15 Q Right. She was in school [REDACTED]
16 wasn't she?

17 A Right.

18 Q That wasn't in Spartanburg?

19 A No.

20 Q And she started at [REDACTED] the beginning of
21 that school year when the rest of the kids started, didn't
22 she?

23 A Right.

24 Q If we get those school records, in August of 2009
25 when that school is beginning, that child is enrolled at

1 Bryson Elementary, isn't she?

2 A Correct.

3 Q And that summer she wasn't in summer school, was she?

4 A No.

5 Q So from June, July, August, September, October,
6 November of 2009, the six months prior to she making these
7 allegations, she wasn't in school in Spartanburg, was she?

8 A No.

9 Q Okay. I just want to make sure we're not telling
10 them something that's not true.

11 A No, we're not telling them something that is not
12 true, but we was speaking, I was speaking of the time when
13 we stayed on Georgia Road. When we stayed on Georgia
14 Road, she didn't go to [REDACTED] then.

15 Q Well, let's speak about the time you're in Laurens
16 County.

17 THE COURT: We've purposely stayed away from Georgia
18 Road, Greenville County. That's kind of been kind of a
19 non-focus. We are focused on Laurens County. So, let's
20 focus on that time.

21 MR. SHEEK: And that's what I'm going to focus on.

22 THE COURT: For the benefit of the jury and the
23 Judge.

24 Q So when she's alleging that this has occurred after
25 y'all have moved to Fountain Inn, from that time on she's

1 enrolled at [REDACTED]?

2 A Correct.

3 Q Not in Spartanburg, that's out of the picture?

4 A Correct.

5 Q Now, did you or did you not say to Captain Morgan
6 that you came in and you caught her masturbating with a
7 sex toy that you had provided her?

8 A No. I said I caught her masturbating with a sex toy.

9 Q Okay. So when he said from the stand you provided it
10 for her, you deny making that statement to him?

11 A No, he said to me--

12 Q No, sir. What he, I'm asking you, did you make the
13 statement to him that you provided her the sex toy, yes or
14 no?

15 A No, I did not.

16 Q Okay.

17 A No, I did not.

18 Q And at the time you talked to Captain Morgan was
19 there any reason your thinking wouldn't have been clear?
20 Were you under the influence of any type of substances
21 that would have clouded your ability to answer those
22 questions?

23 MR. BROWN: Your Honor, I would object. I don't know
24 the relevance. That foundation hasn't been laid.

25 THE COURT: And we went through that waiver of right

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1 statement when Detective Childress was on the stand and
2 she testified he appeared to understand what was going on
3 and was lucid and whatnot. So it's a yes or no question.

4 Q Yes. Were you clear-minded when you answered those
5 questions?

6 A I don't know what you mean was I--

7 Q At the time you spoke to Captain Morgan were you as
8 clear-minded to him as you are right now with us? Was
9 there any reason you didn't understand or accurately
10 portray your thoughts to Captain Morgan?

11 A I accurately portrayed my thoughts.

12 Q Okay. And did you say to him that she asked you, is
13 she doing it right?

14 A No, I did not say that.

15 Q You never said that to him?

16 A Never at all.

17 Q And did you tell him a couple of weeks later you
18 asked her if she found out how to use it right?

19 A No, I did not.

20 Q You never said that to him?

21 A No, I did not.

22 Q And it's just completely inaccurate?

23 A Inaccurate.

24 Q All right. Mr. Brown asked you at the beginning of
25 your testimony about your criminal incident. You were

1 indicted in Greenville for conspiracy--

2 A Right.

3 Q --to possess with intent to distribute crack cocaine?

4 A Right.

5 Q You pled to possession, didn't you?

6 A Yeah, I think so.

7 Q You didn't plead to a conspiracy, you pled to
8 possession?

9 A Right. I don't know how I pled.

10 Q You don't know what you pled to?

11 A I pled guilty to the crime of drugs, yeah.

12 Q And that situation was something you kept from the
13 stepdaughter that you called a, or was called as a
14 witness, right?

15 A I kept it from her?

16 Q Did she know about it?

17 A She knew that I had went to jail, yeah.

18 Q Well, beforehand did she know about it?

19 A No. It wasn't something that I did, it's something
20 that happened then and it wasn't something that I didn't
21 live a life as a drug dealer or anything. I talked to
22 somebody that talked to someone else. This what happened.
23 It wasn't a regular thing as to where I needed to hide
24 that from my daughter.

25 Q I believe you said and your explanation to Mr. Brown

1 was somebody called you about where to get drugs and you
2 called someone else to see if they had them?

3 A No. I told Mr. Brown that someone called me about
4 some drugs and I told them that Joseph, I'm sure Joseph
5 got the drugs that he wanted it. And he called Joseph on
6 his own and they set that drug deal up between each other.

7 Q How was your relationship with [REDACTED]

8 A How was my relationship with [REDACTED]

9 Q Prior to November 2009, what was your relationship
10 like?

11 A My daughter.

12 Q Close?

13 A My daughter, period.

14 Q Okay. She was close to you?

15 A My, my daughter, period. Loving daughter. I loved
16 her like she was my daughter.

17 Q And at that time your relationship with Patricia
18 was--

19 A -- was my fiancé.

20 Q And there hadn't been any incident where you had, let
21 me ask you this. Y'all split up afterward, correct?

22 A Correct.

23 Q And you don't, obviously, have to pay child support
24 or anything because that's not your natural daughter. I
25 understand you say it's your daughter but not in a legal

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1 sense?

2 A Right. Well, not in the legal sense, but I treated
3 her no different than I treated my other daughters.

4 MR. SHEEK: Thank you. I have nothing further.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. BROWN:

8 Q You grew up from the old school, would that be a
9 correct statement?

10 A Correct.

11 Q In terms of how you learned how to discipline?

12 A Yes.

13 Q And that's the way you disciplined your daughters?

14 A Yes.

15 Q And you shared that information with Investigator
16 Childress?

17 A Yes... I mean, that's how I was disciplined.

18 Q And after you told her that, you were later served
19 with warrants?

20 A Yes.

21 MR. BROWN: That's all.

22 THE COURT: You may step down.

23 MR. DAWKINS: Sir?

24 THE COURT: You can step down.

25 MR. DAWKINS: Thank you.

1 MR. BROWN: That's it.

2 THE COURT: Okay. For the same reasons I denied in
3 the close of the State's case, I'll republish your record
4 made in full at the close for your case. And, again,
5 respectfully denied and there are facts for the jury to
6 consider. This will be an issue before the jury and I
7 would deny your motion for a directed verdict on all the
8 issues presented at the close of the State's case. So
9 you're protected through everything.

10 MR. BROWN: Yes, sir.

11 THE COURT: All right. Anything special about these
12 instructions, because I've been kind of listening and it
13 seems to me no expert testimony, so these are my outlined
14 points if y'all want to listen to them. The jury is the
15 fact finder, witnesses's credibility, circumstantial and
16 direct evidence, the jury weighs the evidence, the Court's
17 the instructor of the law, the burden of proof is on the
18 State. Reasonable doubt, the kind of doubt that would
19 cause a reasonable person to hesitate to act. Criminal
20 intent. Specifics, CSC 2nd, one count, a lewd act which
21 is codified as CSC 3rd. I'll tell you what I intended to
22 say on those two and tell me if I'm wrong. CSC with a
23 minor, second. The State, the code says that a person in
24 CSC second degree, acts or engages in a sexual battery.
25 The victim is more than 11, less than 14. And a battery

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1 is defined as normal, all the parameters of Judge
2 Anderson's charge, y'all have heard them. Intercourse,
3 any intrusion however slight with body or an object in the
4 genital/anal, that charge. The victim, got to prove more
5 than [REDACTED] less than [REDACTED] Consent, willingness, indifference
6 or ignorance does not justify it. A lewd act, a lewd act
7 of a minor. The actor is [REDACTED] willfully, commits
8 or attempts to commit a lewd or lascivious act. It's
9 parts under a child under 16 with the intent of arousing
10 or gratifying lust, passion, sexual desires. And then all
11 the independent definitions of what lewd and lascivious
12 and all that means. Anything else? Do you want an
13 instruction on the defendant's record, prior record? And
14 I thought about that after, I did this earlier before he
15 testified.

16 MR. BROWN: That's correct, Your Honor, just for a
17 point of clarification. Also I just wanted to inquire if
18 the Court, if the Court considers State v. Drayton. Based
19 upon the testimony. Basically, it's based upon the
20 testimony, the evidence that should be considered if this
21 would be a lesser included offense of ABHAN. I know the
22 Court is well aware of the elements or the circumstances
23 of aggravation involved in that.

24 THE COURT: And you want it charged?

25 MR. BROWN: I think specifically from the evidence,

1 if it was inferred from the lesser charge as opposed to
2 the greater. That could be a consideration of the Court,
3 and I'm just asking if that was in the Court's
4 consideration.

5 THE COURT: Well, to be honest or be candid with you,
6 I have not thought about a lesser included.

7 MR. SHEEK: I would think if the assault occurred
8 which I know he denies. And the aggravating circumstance
9 would be the indecent liberties or anything else, that
10 kind of satisfies the lewd act elements. If the assault
11 didn't occur ABHAN is not. I don't think it's warranted
12 under the facts, Judge. You know, and that's just my
13 thoughts on it.

14 MR. BROWN: Taking indecent liberties or
15 familiarities with a female is one of the circumstances of
16 aggravation as it relates to ABHAN.

17 THE COURT: You mean, the old common law or you
18 talking about the new one?

19 MR. SHEEK: Well, the new one wouldn't apply on the
20 timeframe. It would have to be under the old common law.

21 THE COURT: The new law came in in '12?

22 MR. BROWN: Yes, sir.

23 MR. SHEEK: Which I know indecent liberties under the
24 old law was an aggravated circumstance.

25 THE COURT: So is it the lesser included on one or

1 both? I didn't intend to charge a lesser included. But
2 it seems like if it was, it'd be under both and lewd act
3 doesn't, what does it carry?

4 MR. SHEEK: Lewd act is 0 to 15. The ABHAN 0 to 10.
5 And to be honest with you, Judge, it's whatever the Court
6 thinks is proper. I don't think it's necessary because
7 again, our position is if the assault occurred and it was
8 an indecent liberties part, that establishes lewd act and
9 I think it's confusing to the jury.

10 THE COURT: I think it's going to be with a minor but
11 not a lesser included.

12 MR. BROWN: Based upon the timeframe, Your Honor, you
13 don't think that the ABHAN would come into consideration.

14 THE COURT: Now, I don't, I don't like, this is off
15 the record.

16 (Whereupon, off the record.)

17 THE COURT: I think the age parameter in the element
18 prohibits it from being a lesser included. It eliminates
19 it from being lesser included, and I'm going to stick to
20 my ruling and decline to charge that as a lesser included
21 of either one. Do you want to put that case in the
22 record, now's your chance?

23 MR. BROWN: I can pull some cite in State v. Drayton
24 of 2012, Your Honor. Also as I said, State v. Knoten, 347
25 S.C. 296. The State's directed that the law to be charged

1 must be determined from the evidence presented at trial.
2 Of course, it would be our contention that it could be
3 inferred that indecent liberties or familiarities were
4 alleged to have taken than, of course, you know, the age
5 disparity, the gender difference. All the circumstances
6 of aggravation as to the law was during 2009. State v.
7 Drayton is what I cited, specifically the the trial Judge
8 is required to charge a jury on a lesser included offense
9 if there is evidence from which it could be inferred the
10 lesser rather than the greater offense was committed.
11 And, of course, that's 293 S.C. 417, 361 S.E.2d 329.

12 THE COURT: Okay.

13 MR. BROWN: Yes, sir.

14 THE COURT: I'll tell you what I'm going to do,
15 decline to charge the lesser included, but your record is
16 complete.

17 MR. BROWN: Thank you.

18 MR. CLOSE: All right. Anything else, prior record
19 of the defendant, I'll put that in there.

20 MR. BROWN: Yes, sir.

21 THE COURT: Anything else y'all want?

22 MR. SHEEK: Nothing from the State, Judge.

23 MR. BROWN: Can we approach, Your Honor?

24 THE COURT: Yes, sir.

25 (Whereupon, a bench conference was held.)

1 THE COURT: Go get them.

2 (Whereupon, the jury came into open court at
3 approximately 2:10 p.m.)

4 THE COURT: All right. I think we got everything
5 ready to go. We're ready to go, Solicitor Sheek.

6 MR. SHEEK: Thank you, Your Honor. May it please the
7 Court?

8 THE COURT: Yes.

9 MR. SHEEK: Madam Forelady, ladies and gentlemen of
10 the jury, again, let me start out by thanking you for
11 being here for the last couple of days. I know it can be
12 inconvenient especially as you go back and forth in and
13 out of that jury room while we take care of matters. But
14 you've sat here patiently and you listened to the
15 testimony and that I really do appreciate. Because this,
16 like I said, at the beginning of the case this is how we
17 do the justice system in this State and this is the
18 realism of these type of cases. Because I, along with
19 Wendy here, we handle the prosecution of the sexual
20 assault cases. And the realism of what we do is very much
21 different from a lot of people's perception of how it goes
22 because, like I said at the beginning, what you see on
23 T.V. Realistically, by the very nature of this crime, it
24 is one that is done in secret, behind closed doors. You
25 don't have someone on videotape. It's not a robbery at

1 the convenience store where you have three or four
2 witnesses that see someone running out. It's not a drug
3 case where you got your drugs in your pocket and the
4 police have the lab test. I mean, it's just not that.
5 Fortunately, in this case, we don't have the trauma and
6 other things that we may have in a serious violent rape
7 case where you have the bruising and things like this. So
8 we don't have that evidence and because the actual act
9 wasn't completed, we don't have some of the DNA or things
10 that you might would look for. I've learned in doing this
11 for a lot of years, the common practice is to put the
12 police on trial or put the prosecution on trial; you
13 should have done this, you should have done that. The
14 bottom-line question that you people have to ask when you
15 go back into that jury room is, do we have sufficient
16 evidence to convict this man for the crime of which he's
17 accused and what is he accused of? The Judge is going to
18 read to you, again, at the end of all of my talking and
19 all of Mr. Brown's talking, he's going to read to you the
20 law that you have to apply, but you got two charges,
21 Criminal Sexual Conduct on a minor in the second degree.
22 That means that the defendant has committed a sexual
23 battery upon the body of a child between the ages of [REDACTED]
24 [REDACTED] years old. Well, you've heard, it's
25 uncontradicted, the age of [REDACTED] You heard her birth

1 date, how old she was at the time this occurred. [REDACTED]

2 [REDACTED] Born in [REDACTED] She was going to
3 turn [REDACTED] years old that year. She was [REDACTED] when this was
4 going on. You're going to have to ask yourselves was
5 there a sexual battery. And the Judge, again, is going to
6 give you the definitions of sexual battery, it can be a
7 number of things but one of the things it's going to be
8 intrusion, however slight, into an opening of the body.
9 In this case, you've got testimony that the defendant was
10 having the child perform certain sexual acts on her, in
11 addition to the assault he committed in the car. One
12 question that always comes up in this trial setting in
13 cases like this is the credibility and that is the
14 believability of who's talked to you. One thing that I
15 have learned that criminal defendants really rely on is
16 it's going to be your word against mine. If you tell what
17 happened, that's going to be your word against mine.
18 Every pedophile knows it, you know, most of them have said
19 it to the kid. If you tell it's your word against mine.
20 And they're going to count on the fact that in any
21 situation I say A, someone else says B. How are you, the
22 jury, going to determine that? Well, it's the process
23 that every jury goes through in every case that we bring
24 and in every person that's convicted and every person
25 we've had, that's the standard that's been met.

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1 Oftentimes, I hear the testimony, I just want to describe
2 beyond a reasonable doubt it's some mythical, so high
3 standard that you'd never get there. I told you at the
4 beginning of the case you can argue about anything. Trust
5 me. I know with my kids, you can argue about anything.
6 The common sense reality of it, the Judge is going to give
7 you a definition of reasonable doubt. The kind of
8 reasonable that would cause, the kind of doubt that would
9 cause a reasonable person to hesitate to act. What it
10 doesn't mean is if you, the jurors, take your time and you
11 look over this evidence and the testimony mainly that
12 you've got and you consider it carefully and you talk
13 amongst yourselves and you're thoughtful and deliberate in
14 reaching your conclusion, it doesn't mean you have a
15 reasonable doubt. That actually is your job. If you go
16 back there and you say, wait let's think about this and
17 talk about it first, that doesn't mean there's a doubt.
18 What reasonable doubt means is after doing all that you're
19 still not convinced. That's another definition our
20 Supreme Court has used at the time, firmly convinced.
21 And that's what I want you to ask yourselves when you go
22 back at this time. You going to look at the credibility.
23 Is this a statement where Mr. Dawkins gets on this stand
24 and he tells you she's lying, she's lying, making it up.
25 Not only is she lying, Captain Morgan's lying. I didn't

1 say those things to him. He's lying. Now, this is one of
2 these situations where because of the circumstances as
3 they arose in 2009 in the investigation, he just happened
4 to be assisting in this interview. He's not from around
5 here. He's got no axe to grind. I can promise you he's
6 already gone back to Camden. He's not going to get a
7 feather in his hat if he's convicted. He's not going to
8 get demoted if the man's not convicted. He's just up here
9 telling you what he did and what occurred in 2009 when he
10 interviewed the defendant. Why would he make it up and
11 why would he lie to you. And I asked him did you
12 memorialize it because obviously, 2009 to 2015 in his job,
13 I don't expect him to have a clear independent
14 recollection of what happened. Yeah, I've memorialized it
15 and this is what he said. Mr. Brown can say, well, you
16 didn't get a written statement from him. You didn't do
17 this. You didn't do that. That's fine. You think that
18 Captain Morgan has come up here from Camden P.D. and made
19 up a lie, then that is your choice as fact finders to
20 decide. But I think it's interesting the things that the
21 defendant does want to agree to. Why would he make up a
22 lie about she was doing it with a sex toy that he provided
23 to her? In the attorney's own questioning he wanted to
24 argue with Captain Morgan about what provided meant.
25 Well, could it have meant that he had it at the house and,

1. therefore she got it, that's what provided meant? Well,
2. why are you in an argument over that if your client says I
3. never said it. Never said it, he's making it up. But she
4. just happened to mention the sex toy, something that Mr.
5. Dawkins will tell you that they did have there. She just,
6. I guess, got lucky with it. You got to look at it from
7. the mindset of Mr. Dawkins himself. This is a man that
8. has chosen to make his career out of working with
9. children. Comes into this courtroom and tells you that he
10. thought it was a good idea to discipline his teenage
11. stepdaughter and his older daughter by having them strip
12. naked so that he could spank them. And I asked him to
13. tell y'all, tell them what kind of mindset, what kind of
14. process is going on in your head when you decide that was
15. a good idea? I've got a stepdaughter and I can tell you
16. it's never crossed my mind because I wanted to discipline
17. her or needed to discipline her to have her strip naked.
18. And I'm not sure what kind of person has that kind of
19. thought process, that that was the first thing he thought.
20. He said, well, maybe I just got mad. So the first thing
21. on your mind when you lose your temper with this girl is
22. take your clothes off? You associate anger with having
23. her strip naked. That doesn't make sense to us, ladies
24. and gentlemen. It doesn't make sense at all. And then
25. the statement of, well, she came back a few weeks later

1 and asked me if she's doing it right. Well, of course, he
2 says I never said that. Captain Morgan is lying about
3 that, but it fits with what she said was going on. She
4 didn't come and ask him anything. The way she understood
5 to use the toy is because he had given it to her prior to
6 that. This is something he had done. It's a thing we
7 call grooming. You start in with little bits and you work
8 your way up to what occurred in the end of November of
9 2009 when he was going to accomplish the full act in that
10 car, but she fought. She said no. So he told her to keep
11 her mouth shut and go home. And he probably assumed she
12 would keep her mouth shut. It'd been going on for a year
13 and she hadn't said anything. And you got to look at it
14 from the mindset of a [REDACTED] girl who's living in a
15 home with this guy. He's worked his way up to this point.
16 Why didn't she take, why didn't she go to mom. Don't look
17 at it from an adult, from my standpoint. Somebody
18 assaults me, oh, heck yeah, I'm going to tell. I'm going
19 to fight. I'm going to do a lot of things. Well, I'm a
20 49-year-old prosecutor. I've been through a lot in my
21 life. She was a [REDACTED] child living at home with
22 this guy. What's going to happen if she tells? Maybe
23 somebody is going to say she's lying, it didn't happen,
24 she's making it up. The exact thing that's happened in
25 this courtroom this week. And she's put on the stand and

1 treated like she's got something to explain, she's got
2 something to answer for. She's the victim. That's the
3 reason. Many victims of assaults keep their mouths shut,
4 because children don't know what's going to happen. Who's
5 going to believe them? The adult is going to say I'm
6 lying when I'm saying this happened. She talked about
7 what happened with Stanley. What happened? Well, they
8 got together and they went and talked about it and he
9 said, oh, I don't think it is anything like that. It's
10 done. So what's the lesson she's learned there?
11 Interestingly, Stanley's own account and Brad Dawkins' own
12 accounts substantiate what she said in that forensic
13 interview. You saw the videotape. That was done December
14 the 17th of 2009, a couple of weeks after this assault.
15 Now, I wanted y'all to see that, because we are six years
16 into the process now and that's no fault of [REDACTED] that's
17 no fault of her mama's. That's the criminal justice
18 system and for a variety of reasons. In this case, it's
19 moved even slower than it normally has. Nobody expected
20 Shannon Childress to be in here in a wheelchair having
21 lost a leg in something completely unrelated, but she is
22 retired from law enforcement. Nobody expected those
23 things, but it happened and this case is delayed. But
24 that's not what this case is about. What this case is
25 about is what occurred in November of 2009. She hesitated

1 to tell it for a variety of reasons and when she told
2 exactly what I'm sure she thought would happen has
3 happened. She's been called a liar by Brad Dawkins.
4 She's been called a liar as she sat on the stand. Why
5 didn't you do this? Why didn't you do that? She did what
6 a 13-year-old does. Look back at it and they can sit here
7 and say, well, you didn't remember on the stand some of
8 the things you said in that forensic interview. The
9 question was posed to her, do you remember saying this
10 when you talked to the Beyond Abuse, do you remember
11 saying that? And some of the things she remembered, some
12 she didn't remember saying to them. It wasn't that she
13 didn't remember the assault. They're very clear on that
14 from the time she talked to the police till the time she
15 talked to the Beyond Abuse to the time she sat on the
16 stand. And as I thought about that I was talking to Wendy
17 about it and I said, you know, to me I understand that
18 very clearly. Because I remember September 11th, 2001,
19 the day the jets were flown into the Towers in New York.
20 I remember where I was when somebody told me that the
21 first tower had been hit. I thought maybe it was an
22 accident. I remember exactly where I was and what I was
23 doing that day. I remember the fact that I'd gone in my
24 conference room in my office, had the T.V. on when the
25 second plane hit and everybody knew this wasn't an

1 accident. I remember the case I was trying that day. It
2 was a Family Court case. I remember the Judge I was with
3 who's passed away. It was Judge Tunstall over in
4 Greenwood. That was a big event and that was just
5 something somebody else did in New York. But to me it was
6 a big thing. And so I remembered things about that day.
7 Now, that was a big event and I'm sure on September the
8 12th and the 13th and the 14th I talked to a lot of people
9 about it, because everybody was talking about it. I can't
10 remember who I talked to or what I said to them because
11 how I relayed it to someone else or the matter of what we
12 discussed about, that wasn't the big event. But I can
13 tell you what I was doing on that day and the fact that I
14 can't remember what my wife and I probably discussed about
15 it that night doesn't make what happened any less real, it
16 doesn't make my memory of it any less clear. But I can't
17 tell you what we talked about it later. Now, we would
18 have a problem, I would think, is if she comes in and says
19 she assaulted me in X manner and know what she said in
20 November, I mean, December of 2009 was completely
21 different from that. There would be something that you as
22 a jury would have to say, well, we got to consider this.
23 But the fact that she did or didn't remember saying
24 something about Stanley or what she said about Stanley to
25 Ms. Bell at The Child's Place six years ago, ladies and

1 gentlemen, that's just normal memory. But what happened
2 in that Ford Focus sitting on the side of the road, she
3 remembered. But, of course, the defendant's explained it
4 all, it's all a lie. Well, when I look at cases like this
5 and I hear them say, well, it's all a lie, then I as a
6 normal person, the first question I ask myself, and I
7 think it would be a reasonable question for you the jurors
8 to ask, okay, if it's all a lie, why? There's one thing
9 that I learned and my daddy taught me as I was growing up
10 is people do things for reasons, son. People don't do
11 things for no reason and there is a motive, okay, so she's
12 lying. She has made up a lie that has got this man
13 arrested. She has stuck with it consistently and she has
14 come to this courtroom in the middle of a criminal trial.
15 She has looked at you the jury, she has sworn to tell the
16 truth and she has told that same story, why? That's the
17 reason I asked him, well, how were you, did y'all have a
18 good relationship, were there problems there? He might
19 not understand why I was asking that, no, a great
20 relationship. And he loved her, a good relationship with
21 her mom. There were no problems. She's making this up.
22 So I asked what do you mean, is it child support? You
23 know, you're not her legal daddy, but maybe mama was
24 leaving him and she wanted child support and she wanted a
25 reason to stick it to him. No, we didn't have that

1 situation. Did you hear any testimony about mama bringing
2 a lawsuit or trying to take anything from him or doing
3 anything after that. In fact, Mr. Brown asked mama, well,
4 you talked to him several times after this, didn't you?
5 So where's the motive? Mama putting her up to it?
6 Absolutely no basis for that either. And while you can
7 talk about Stanley and say well Stanley get up here and
8 say, oh, it didn't happen. Stanley said it happened.
9 What he said was his motives weren't evil and he didn't
10 touch her vagina. And isn't it interesting that the one
11 thing they say is making all these things up, even agreed
12 that that happened just like she said in December of 2009.
13 Where she said and how she said, the people come and
14 confronting Stanley, just like she said. Even they
15 confirmed the accuracy of her memory as it goes to that.
16 Now, would the defendant have a motive to lie? Of course,
17 he does. One, nobody molested, nobody wants to take
18 responsibility anymore. We see that in society. Our
19 society, it's not my fault anymore. I've got a sickness.
20 I've got a condition. I've got something else. He
21 doesn't want to take responsibility but bottom-line, he
22 won't stand up and say that he did and take his punishment
23 for it. I wish there was some other magical way that I
24 could bring some wonderful piece of scientific equipment
25 into a courtroom and just bam, it happened, it happened,

1 we can prove it and we all go home. This is how we do
2 things. So when you go back to that jury room and you ask
3 yourselves who's telling me the truth, which story do I
4 believe, because it's one or the other, ladies and
5 gentlemen, and it really does come out that simple.
6 Either [REDACTED] lying for whatever reason she's made this
7 story up. She told the police the story. Told her
8 friends. She didn't even tell the police and she didn't
9 even tell her mama. And that I thought was interesting,
10 too, because one is consistent with these type of
11 children; two, if she's so evil she's making it up, why
12 did she tell her friend and then her friend tells who
13 calls the police and the police calls Patricia. No
14 extortion, no blackmail, no benefit whatsoever. I can
15 promise you this little girl who sat on that stand, that
16 sophomore from South Carolina State with the emotion she
17 displayed isn't getting some personal satisfaction out of
18 what's happened this week. She didn't enjoy it. It's not
19 fun. When I showed her the picture of herself back at
20 that time because, one, I just wanted to acknowledge that
21 in six years she's a young lady and she wasn't then, she
22 was 13 and you saw the reaction when she saw the picture.
23 And you got to ask yourselves what causes that kind of
24 reaction. Was that real? What is it about being 13 that
25 makes a child who is now 19 burst into tears? What causes

1 that kind of trauma? Most 13 year olds, when they're
2 19-year-old as you show them the picture, oh, yeah, that's
3 when I was in seventh grade. They don't burst into tears
4 and sit there and hang their head. She got nothing to be
5 ashamed up. Was it us that gave her the story? How many
6 times have you met with this lady? How many times have
7 you met with me? Through all this and she meets me for
8 the first time and talks to me for the first time two
9 months ago. Is there somebody here that has put that
10 story in her mind because for some reason we picked this
11 guy out of everybody that we want to prosecute? Ladies
12 and gentlemen, it comes down to who's telling you the
13 truth, because she's not lying to you. He committed the
14 offense which is a second offense of lewd act on a minor
15 and that is touching the child for a lewd or lascivious
16 purposes, to satisfy my own desires. What we call child
17 molestation. When he put his hands on her in any way for
18 the purpose of his sexual gratification. But everybody is
19 lying about it. [REDACTED] is lying about it, all for some
20 reason that we can't figure out. But you go back to the
21 jury room and look at the testimony and evidence. I want
22 you to think about what she said happened. I want you to
23 think about what she said in that interview. I want you
24 to think about what she said in this courtroom. I want
25 you to think about the fact that he said they all lied. I

1 want you to ask yourselves why the police made it up, why
2 is she making it up and if you are firmly convinced that
3 she's telling you the truth, this man put his hands on
4 her, attempting something that didn't happen, then your
5 verdict is guilty, because that's what justice is. We
6 folks, I told you at the beginning of this case, we run
7 our counties. The police can make arrests, His Honor can
8 convene a court, I can come to the courtroom, but until
9 you, the jury's, make a decision, justice is on hold and
10 that's fine. That's the way our law is. I appreciate the
11 fact that Mr. Brown comes in here and puts a vigorous
12 defense up for his client, because that's the way our
13 justice system works. But the only one here that's part
14 of this court system that doesn't have an oath binding him
15 to seek justice is the defense attorney. The Judge has
16 that job. I have an ethical obligation as a prosecutor to
17 seek justice. Mr. Brown has an ethical obligation to seek
18 beneficial for his client and I respect that. I don't
19 have a problem with it. But don't think for a second his
20 job is to simply shine a light on the truth for your
21 benefit, because it's not. Otherwise, he wouldn't have
22 asked questions about what does provide mean when his
23 client says it didn't happen. He wouldn't wave every red
24 flag over here to the left hoping you don't keep your
25 sights on the one issue that matters. So if [REDACTED] lied,

1 she's made all this up, brought it to you and one question
2 I leave you with is this: Why didn't she make it up
3 better than this. He accomplished the act. He stuck his
4 fingers in my vagina. He held me down. He did it
5 multiple times. He pulled out his penis and put it inside
6 me. No, she told what happened. She told when it
7 happened and the way it happened. She had no motive to
8 make it up and with remarkable consistency between now and
9 then. Brad Bernard Dawkins likes to be around kids. He's
10 chosen that for his career. He's got some odd notions
11 about how to deal with them. He doesn't mind telling her
12 to strip naked. He wants to tell you everybody lied about
13 it, but he put his hands on her and he needs to be held
14 accountable for that and that's what I want to ask you to
15 do. Thank you for your attention.

16 THE COURT: Mr. Brown.

17 MR. BROWN: At the outset of this case I talked to
18 you about a bell being rung. You had a chance to hear the
19 testimony. You had the chance to weigh any evidence that
20 could have been handed to you from this stand and most
21 important you have a video of a young girl that was taken
22 on December 17th, 16 days after the first time she came in
23 contact with law enforcement. In fact, one person from
24 law enforcement that came to this stand, Investigator
25 Childress. Well, what do we know about Investigator

1 Childress? We heard at some point from Captain Morgan and
2 not through Investigator Childress that there was some
3 conversation that was had by Mr. Dawkins and law
4 enforcement in which he said I did discipline [REDACTED] I
5 disciplined my daughter the same way. Secondly, I walked
6 in on her and he told you how he walked in on her and what
7 object she had and how she obtained it. And he said he
8 disagrees with anything about something that was
9 supposedly said two weeks later. So then we hear him say
10 that they're lying. He didn't say that in terms of his
11 conversation with law enforcement. But one of the clear
12 things we don't have that was very clear to all of us, the
13 person that had the initial conversation and the person
14 that brought the charges was Investigator Childress. She
15 had that initial conversation on December 1st and she
16 testified that at some point she went back and had a
17 conversation with [REDACTED] of course, with her family.
18 After speaking with [REDACTED] and with Mr. Dawkins, what did
19 Mr. Dawkins tell law enforcement and what was consistent
20 with what was provided in this court; an odd way of
21 disciplining a child, to make someone strip buck naked.
22 Ms. Childress, she said she simply would provide
23 information and send it on. In fact, what did I ask her,
24 standard procedure. Investigator talking to a
25 13-year-old, having talked to Mr. Dawkins and making just

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1 as he has done as a father and a stepdaughter, a judgment
2 call. Is it odd for a man to tell a girl to take your
3 clothes and I'm going to whoop you with my daughter? Life
4 experiences, that's what we talked about at the outset of
5 this case. Is that a, does that make it some type of
6 crime or is that some way in which he has chosen by his
7 own admission to go to the old school. Think about it,
8 common sense experiences. Have you ever heard anything
9 like that? Think about it. Have you ever heard anyone
10 getting whipped with a stick, with switches? You go
11 collect your switch off the tree. Don't pull the leaves
12 off. Leave them on there for me as a parent would tell
13 you. Boy, I got this old, old leather strap for you.
14 And, unfortunately, some of us can say, hey, whatever mama
15 had in her hand or grandma, will whip you with a drop
16 cord. Would that have been right? Is that criminal or
17 does it rise to the level of the charges that he's facing
18 in this court. It's the method in which he went about in
19 terms of trying to discipline at that time-period. A
20 judgment call made by Investigator Childress to take it
21 further from what she heard. She didn't like what she
22 heard. What man would discipline a girl that's living in
23 his house that's not related to him and whip her in that
24 manner? Didn't try to flesh out everything in terms of
25 that's the way he does it. Now, some of you may have been

1 exposed to the education system. There's a duty to report
2 things that are said. But on the flip side of it, what
3 things are done in someone's house that may not be viewed
4 as appropriate in terms of the way they disciplined, is
5 that said to be completely wrong. Do we paddle anymore in
6 school? Is it okay for your neighbor to whoop your child,
7 no. Corporal punishment is no longer allowed. You face,
8 just as many people have faced in this county and through
9 this judicial system the chance of getting in trouble if
10 you discipline a child. And I submit to you that's what
11 began this whole conversation with Investigator Childress.
12 Now, if I were to say to you, you like chicken, don't you?
13 That was a good apple pie that mama made. I sure like
14 that ice cream, don't you? What are you supposed to say
15 in regards to those kind of questions. You give a
16 response based upon the notion of what's being asked of
17 you and it's not asked in the abstract. From a
18 professional like Ms. Bell that you have had a chance to
19 see here, you may have a chance to look at it again,
20 notice the kind of questions that she asked of [REDACTED] The
21 exact same questions she asked of Stanley Dawkins, she
22 asked regarding Brad Dawkins. And, particularly, did he
23 touch you and touch the skin of your vagina. Young [REDACTED]
24 said, yes, Stanley touched the skin of her vagina. Not
25 accidentally. It had to be a conscious effort if he touched

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1 the skin of her vagina. The same question was asked about
2 Brad Dawkins, December 17th. Well, he spoke about people
3 in these kind of cases. Well, in terms of interviewers in
4 these kind of cases, there's a common term known as
5 suggestibility. You talk to a young child and you
6 question them in such a manner which you have seen laid
7 out on the video. The exact same questions are asked of
8 two different people, of two supposedly different
9 situations that happen at one time supposedly. It
10 happened supposedly when [REDACTED] stayed over Brad's, Stanley
11 Dawkins' house and supposedly what could have occurred on
12 November 30th, October 30th, in regards to these
13 allegations, suggestibility. And those two questions I
14 asked [REDACTED] in regards to the interview that she had,
15 Mike-Mike, a friend. She started relaying events about
16 someone in Spartanburg. When you talking about
17 Spartanburg, Mike-Mike your friend in Spartanburg, but
18 you're saying this happened in Laurens County supposedly,
19 but you also had a friend that was with you the other day,
20 Jada. Start asking questions, when I look around here
21 today, there's no Jada. Jada was supposedly a friend that
22 she told via text. We don't have that in evidence,
23 because I submit to you it doesn't exist. It didn't
24 happen. On the video that you had the chance to see, did
25 you hear the interviewer ask her about text messages, no.

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1 Did you hear her say, okay, well, you talked to your
2 friend. And, well, what's your friend's telephone number.
3 Not there, no point of contact, no point of reference,
4 December 17th from December 1st. Something supposedly was
5 told to Investigator Childress. Was it the manner in
6 which Mr. Dawkins relayed the information at the same time
7 to law enforcement? Yeah, I whooped them, I whooped them
8 buck naked. Childress makes some kind of determination
9 and begins to talk to young [REDACTED] talks to [REDACTED]
10 mother. And as time builds up for a young child under the
11 notion of suggestibility, certain questions can be asked
12 up until the point that you get down to December 17th and
13 you watching this interview. And was there touching of
14 the skin of the vagina; yes. Was there touching of the
15 skin of the vagina; yes. Two different people. Why,
16 because a child will not want to disappoint an adult in
17 authority situations and especially as it relates to
18 something that they quote/unquote got started. From the
19 1st to the 17th, the child found themselves up until the
20 point on that video. Prior to that, did you hear anything
21 that came out of any other situation related to Brad
22 Dawkins? You didn't and you heard from [REDACTED] mother.
23 She seemed to be a normal child. Everything seemed to be
24 okay. Who better to know this than the mother of a
25 daughter? A mother that upon something being said about

1 Stanley got mad and immediately wanted to have this looked
2 into. And who's the person that went, that was called
3 upon and confronted people in this situation, Brad
4 Dawkins. No, mama, he shouldn't be the person that talks
5 to his brother, X, Y, Z. It's his brother. Why? Oh, no,
6 let me tell you what also has been occurring? What better
7 time to relay that to your mother than that time-period.
8 It didn't happen. Think about it. Investigator Childress
9 had a conversation based upon her point of view of some
10 sort. But that unfortunate part about all of us in this
11 courtroom, what did she tell you? She didn't remember.
12 She couldn't contribute most of anything. We had to get
13 Captain Morgan to talk about the interview that took place
14 with Investigator Childress. No information from the
15 chief principal investigator in this case. But yet, they
16 had to come forth some six years later and proceed with
17 the case and the case was on the docket. It's getting
18 old, it's old. But again no information that came out.
19 Consider those factors as it relates to the crux of this
20 case. Time-period from December 1st to December 17th.
21 Well, let me talk to an investigator. Let me talk to
22 another investigator. Let me talk to another member of
23 law enforcement. At some point, we talked to a member of
24 prosecution. Let me talk to someone from The Children's
25 Place. I'm being recorded. Five, six, seven, how many

all

1 people was she exposed to at this point. Something was
2 occurring in her life that changed the way she looked at
3 stuff dramatically and it definitely was going to change
4 her living arrangement. You heard how she stated that she
5 was living first in Greenville County and it wasn't the
6 best situation. Then came and began living with Brad and
7 they moved to [REDACTED]. Life got a whole lot better.
8 We can only try to speculate if she had not done in the
9 course of this process what was in her mind. When you had
10 the conversation with a man that is very serious with your
11 mother, and then you hear that your father is getting
12 married. As a young child, you going to want your parents
13 to be together. But, unfortunately, they weren't going to
14 be together. And the disciplinary guy that he is, the one
15 who provided the whippings comes to you and says something
16 in regard to your dad. Would you like that? I say to you
17 that you wouldn't. We can't know what was going on in
18 [REDACTED] head. The thing that we can know about is what
19 Brad freely and openly told police at the time-period,
20 December 1st to December 17th and no additional
21 conversations, no additional information and they didn't
22 choose to write anything down in terms of what he said.
23 Quick to judgment and quick to bring charges and
24 everything else that unfolded for a young [REDACTED] who
25 at this time-period, as her mother stated, was no longer

1 living with Brad. The unfolding part of having law
2 enforcement repetitively ask you question after question
3 after question. What is there to be expected out of this
4 situation? They want to make it in the terms of the
5 situation they're saying it's his word against her word.
6 Look at what was going on during the time-period. Look at
7 what's been alleged in particular on that evening which
8 she says what occurred. Her mother was at home.
9 Supposedly she got up. Brad Dawkins had her come with him
10 in a Ford Focus, leave for the purpose of some form of
11 sexual activity. They come back home after this alleged
12 incident and nothing is said to the mother, no commotion,
13 nothing. Prior to that supposedly there was some kind of
14 conversation from Jada and Jada's parents in regards to
15 whatever that conversation was to contact law enforcement
16 and that's when he had a conversation with law
17 enforcement. Not about something that she told her mother
18 but something that she told Jada. We don't have Jada here
19 to find out what that conversation was. But again, he
20 told law enforcement, yeah, I whooped them buck naked.
21 You hear that as a law enforcement officer, that's not
22 right. That's not your daughter. You can't whoop her
23 buck naked. Does that rise to the level of the charges
24 that he's facing here today? Keep that in mind, because
25 once you ring that bell, you can't unring it and once you

1 tell that story as a child, you got to keep that story
2 going. You can't change that. You forever change where
3 you are living and people coming to you asking you
4 questions upon questions. And you can watch the video and
5 see if the questions are suggestive. See if actions are
6 suggestive from those questions. It's on the video.
7 Touching of the vagina? Watch the video. I submit to you
8 because there's some question in regards to the events
9 that are alleged to have happened on one day, they can
10 talk about all this supposedly leading up to this, he's
11 not charged with that. He's charged with, they say
12 happened on one day. Questions of she says trying to
13 recall, no he didn't touch me, yes he did touch me, but
14 we're going to say in unison in terms of these charges he
15 touched me on the day in which he was charged with
16 criminal sexual conduct with a minor and lewd act. Well,
17 I thought about in regards to what Mr. Dawkins has told
18 you, a 300-pound gentleman. You saw the video. [REDACTED]
19 about the same size, height, almost the same weight she
20 was during that time-period. And you heard about the Ford
21 Focus. Well, I looked up the Ford Focus on Ford.com and
22 the interesting thing that I found about the interior
23 cabin--

24 MR. SHEEK: Objection, Your Honor, on any facts not
25 in evidence, Judge.

1 THE COURT: Sustained. The jury can, he's testified
2 it was a Ford Focus but nothing else. It was never
3 referred it was another model Ford.

4 MR. BROWN: And the interesting thing is, think of
5 the cabin space in a Ford Focus. Can you imagine? From
6 the roof to the end. From the roof to that end, Ford
7 Focus. And now I say can you imagine this 300-pound-plus
8 man in a Ford Focus and this young lady and supposedly,
9 he's supposed to make his way over the seat, over the
10 console and attempt to do something within that cabin
11 space of a Ford Focus. If nothing else appeals to your
12 common sense, just think about that in itself. But,
13 secondly, but once, for someone to say they, after
14 December 1st of having questions placed before them till
15 December 17th and notice her demeanor on the tape, notice
16 her demeanor. Did she seem to be distraught? Was she
17 laughing? Was she smiling? Did she have tears? Notice
18 that demeanor. For it to be said that we know the first
19 time then, December 17th, that no, he didn't get out of
20 the car. He didn't come around and try and open the door
21 to get in on the same side I was on. Supposedly, he tried
22 to climb over and in climbing over he was able at some
23 point to get on top of me. And the ability, in this
24 limited space, not only was he able to get on top of me,
25 he was able to try to pull my pants down and pull my pants

1 down. And he was able to pull his pants down and
2 attempted sex, and I was able to fight him off, I was able
3 to push him off or kick him. Common sense, ladies and
4 gentlemen, think about those facts. For whatever reason,
5 let that appeal to what your good common sense knows would
6 be virtually and physically impossible. The second thing
7 is the prosecution alluded to DNA, medical evidence of
8 some sort, just as this chair is empty, this stand is
9 empty without any paperwork or anyone that could sit in
10 this chair and talk about those kind of things, there
11 isn't any medical evidence. Furthermore, there isn't any
12 photos, any proof that comes with any file to show any
13 photos of a 300-pound man trying to pin down a [REDACTED]
14 and trying to forcibly, as you've heard the term, rape,
15 criminal sexual conduct force himself for a sexual act.
16 Where's the bruising? Where are the photos of that?
17 Where are the scratches? Photos, mugshot of this
18 gentleman showing that someone had tried to fight him off?
19 Slapped him, kicked him, punched him, bit him, none of
20 that. Let that appeal to your common sense and it's not
21 trying to appeal to your common sense to say, hey, we know
22 absolutely this is impossible. That's not the standard
23 that you have. The Judge will charge you with that
24 standard. The standard you must consider of what the
25 State is alleging, did it happen beyond a reasonable

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1 doubt? Keep that standard in mind, the kind of doubt that
2 the court is going to instruct you. Let me appeal to your
3 common sense. Remember what her mother said. Brad
4 coparented with her. Brad was a father to her and not
5 only to her, to some stepdaughters and one biological
6 daughter. Never had this kind of situation. Similar
7 things said about Stanley, him trying to cover some girls
8 and goes from touching the cover to let me ask you via
9 this question, did he touch the skin of your vagina?
10 Yeah. Did Brad touch the skin of your vagina? Yeah.
11 Suggestibility. I submit to you the facts don't line up
12 with what's been presented and what's been presented by
13 the State. They're trying to attempt to say that there
14 have been two charges and two crimes that have been
15 committed. You heard Brad Dawkins. Consider his
16 demeanor. Consider what he shared with you. Did he seem
17 to be a person that was up here trying to lie? In fact,
18 we had one of his stepdaughters come and clearly she told
19 you what she knew about him and he had no problem telling
20 you. Not a State case and not a case in which you saw me
21 with any forms of drugs. Someone called me and said I'll
22 call someone for you and that person got with that person.
23 They physically got together and transacted drugs and the
24 federal government says you can't make those phone calls.
25 You can't pick up our telephone and try to facilitate

1 someone dealing drugs because if you do, you're going to
2 find yourself in a conspiracy and the prosecutor was
3 absolutely correct. He was charged with distribution
4 which is a higher charge, but he pled to possession. Pled
5 down what he was facing. Part of the process that happens
6 at times. Came here openly, freely and honestly and told
7 you what was going on, nothing to hide, and the Judge will
8 give you instructions as it relates to that. Being on the
9 phone and being a father are two different things. Keep
10 that in mind, ladies and gentlemen, and what we submit to
11 you, have you heard testimony, have you heard information
12 that's been presented here to you that would be credible
13 in the sense to find Brad Dawkins guilty beyond a
14 reasonable doubt? If you have that doubt, then it's your
15 duty for this process of reaching a verdict as the finders
16 of fact to find him not guilty on both charges.

17 THE COURT: Mr. Sheek, rebuttal.

18 MR. SHEEK: Thank you, Your Honor. And some things
19 you hear are noteworthy and make notice of this, a child
20 would not want to disappoint an adult in authority
21 positions. Mr. Brown is exactly correct and it's the one
22 thing that I've struggled with in this job is the reason
23 why children often delay telling, because they're dealing
24 with an adult in authority positions. You can't unring
25 the bell. It's about suggestibility. It's about [REDACTED]

7,18

1 getting caught in a story that she can't change, and so
2 she's merely stuck with it throughout the years and it's
3 come to court with her. That's what he wants you to
4 believe. I guess it would be a colossal universal
5 convergence of bad circumstances for Mr. Dawkins. One,
6 that Jada's father decided to call the police and say,
7 hey, that this girl's been assaulted, you need to talk to
8 me. Not because it happened. Because see that story that
9 she told was just because of suggestibility of a forensic
10 interviewer. Just a really bad luck that Jada's father
11 called the police. Uncontradicted that he called them.
12 Uncontradicted that he called them, because Jada told him
13 what she told Jada. So what about the phone records?
14 Well, does anybody seriously doubt that she told Jada it
15 happened or does anybody seriously doubt that Jada's
16 father called and the police went out there? Maybe Jada's
17 father was making it up, too. Suggestibility; somebody
18 suggested it to him. He had no reason to think it. He
19 just thought that tonight I'm a little bored, I think I'll
20 call the police and tell them that Dawkins guy molested
21 his daughter, his stepdaughter. Yeah, that's what I'll
22 do. But as you know that's not what happened. Why am I
23 going to argue with you about why Jada's father called the
24 police or why am I going to bring you in here to say I
25 called the police, because my daughter was told by someone

1 else that this happened. Hearsay upon hearsay that I
2 couldn't bring to you if I wanted to. And then he wants
3 to say, well, it's merely suggestibility, because look at
4 these questions that Jessica Bell asked, and she was
5 suggestible. Isn't it amazing his interview with the
6 police, his interview with the police is two weeks before
7 her interview with The Child's Place. But it's just
8 suggestibility that made her tell that story. Really?
9 Shannon Childress said yeah, I talked to him and based on
10 what I heard, I went and got the warrants. But because of
11 procedure as we present evidence, the officer that
12 actually conducted the interview that Shannon Childress
13 was a part of or witness to was Captain Morgan. So I'll
14 wait till Captain Morgan comes in to tell you what was
15 said. That's how evidence is presented. Any other way
16 would be the improper way. It's just a matter you got to
17 call one before the other. I could have called Captain
18 Morgan first and have him tell you before I called Shannon
19 Childress. But what you're going to hear is what he said
20 in the interview, whichever order I call them in. But
21 it's just really unfortunate, as it was that Jada's father
22 decided to call the police, it's so unfortunate that we've
23 got this officer from Camden with over 30 years in law
24 enforcement and now the Administrative Chief at the Camden
25 Police Department has come down here and he's decided to

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1 lie to you to help conflict this man for something he
2 never did. Because if he's not lying to you, you know
3 what this man says? You know what he says to the police
4 he did, if that officer is not lying to you, he says he
5 gave that girl a sex toy. He provided it to her. It's
6 not an argument about what provided means. He's says it's
7 a complete lie, I never told the officer that. We can
8 come up here and argue, but we're not saying somebody
9 lied. If John Doe says I did it and I told him I did it,
10 and I say I never told him that, I'm saying John Doe is
11 lying. And that officer says he told him I caught her
12 with a sex toy that I gave, I provided to her. Just a
13 horrible convergence of bad luck that that officer has
14 made that up on me. Why would you give a child, you know,
15 you can say we discipline from the old school, I make my
16 stepdaughter strip buck naked so I can discipline her,
17 because that's the way we used to do it. And I never
18 heard that; fine. Well, why are you giving her sex toys?
19 Who gives a [REDACTED] child a sex toy and thinks that's
20 okay? And if you walk in and you catch a child either
21 with a sex toy or watching a video she's not supposed or
22 something like that, she's your [REDACTED] stepdaughter,
23 what are you going to do? The fact that I'm going to be
24 horrified, what's the first thing I'm going to do? I'm
25 going to go to her mother and say hey, tell you what

1 happened, you need to deal with this. Now, this is what I
2 caught, I walked in and this is what your daughter was
3 doing and, honey, you need to talk to her about it. Any
4 testimony that he ever did that from her, from him, from
5 anybody? Nope. Nope. Because why is he going to go to
6 his wife and say talk to your daughter about sex? He
7 ain't going to do that. You're right, she can't unring
8 that bell. Imagine if you can, imagine. Some things in
9 life I cannot imagine. When you sit as a juror I am going
10 to tell you to use your common sense, of course you want
11 to imagine you do, you want to understand it. It needs to
12 make sense, doesn't it. Does any man does something like
13 this to a 13-year-old child make any sense and can you
14 even get your mind into a place where you can understand
15 it. That is so far outside of what is reasonable and
16 understandable and acceptable that the average person
17 can't get there and we want to, by our very nature say,
18 people don't do that, people don't do that. But
19 unfortunately we know they do. Predators in the world,
20 that prey on the weak and defenseless, they go after a
21 13-year-old girl who they think doesn't really have
22 anything that she can do about it. So one of my
23 obligations in this job is to stand up for people who
24 can't stand up for themselves. That is something that I
25 don't take lightly. It is something that I am proud of.

1 So when I sit and imagine this case, I imagine [REDACTED]
2 little girl, a man that lives with my mama, I am going to
3 be at night at the side of the road and he is trying to
4 climb over on top of me. He has got my pants down
5 mid-thigh. Now, understand she is making it all up and
6 lying, she doesn't say he stripped me naked then. She
7 doesn't say all of that. But he has got it down to
8 mid-thigh, which in that type car probably is reasonable
9 to consider what he is doing. And he is trying to get on
10 top of her and she says he didn't get it accomplished, he
11 didn't. But do you think for a second that if that man
12 sitting up there at night, he didn't struggle trying to
13 get her pants down and get his down. Because he thought
14 based on what had been going on he was going to be able to
15 do that. And just like before, she wasn't saying
16 anything. It wasn't I am going to beat you up and tie you
17 up and forcibly rape you, he thought he was going to get
18 her to go along with it. That is what these guys think.
19 She didn't, did he stop because she physically beat him
20 up. No, he stopped because she was fighting and it was
21 going to cause an issue. Thank god he stopped, some
22 don't, some do. No, you can't unring the bell. Nobody
23 will ever undo to [REDACTED] what happened to her. The things
24 she has accomplished and there are more things she is
25 going to accomplish. But it happened and justice needs to

1 be done. Folks, do use your common sense in one thing.
2 It is not amazing conversions of bad circumstances from a
3 group of people lying about Brad Bernard Dawkins. And if
4 you want to, see the part of the video was played in here,
5 you can, it is in evidence and you can tell the Judge you
6 want to hear it. Listen to her and see if she is being
7 suggestive as to what to say as opposed to being asked
8 about what happened. And then you make your
9 determination. It has been six years and that is too
10 long. But justice delayed is still justice and that is
11 what I am going to ask you to do. I am just going to ask
12 you to follow your oaths. You have heard the testimony
13 and you have heard the evidence. You decide for yourself
14 who is telling the truth and you return a verdict for your
15 county that you think seeks justice. Thank you.

16 THE COURT: Folks, my instructions are sometimes
17 lengthy, these are not too bad. I will read them to you,
18 I am right here, Ms. Holston will be able to hear us. If
19 y'all need a short break I guess this will take about
20 fifteen minutes, maybe less.

21 (No response.)

22 THE COURT: Once I finish I will explain to you the
23 next step and then about deliberations. Ms. Stokes and
24 members of the jury, the State of South Carolina in this
25 case has charged the defendant, Brad Dawkins, with one

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1 count of second degree criminal sexual conduct with a
2 minor and one count of lewd act with a minor. You will
3 bear in mind that he has pled not guilty. And by that
4 plea he denies all of the elements of the allegations
5 within the two indictments.

6 Mr. Dawkins comes into court clothed with a
7 presumption of innocence which I instructed you early on.
8 And this presumption of innocence continues throughout the
9 case and entitles him to a verdict of not guilty unless
10 and until it is dispelled by the evidence satisfying you,
11 as a group of twelve, that the State has proven the
12 elements of those charges beyond a reasonable doubt and he
13 is guilty of those offenses charged. I tell you the State
14 must prove each and every element of each indictment
15 separately. So he could be not guilty on one and guilty
16 on the other, depending on your findings or your facts.

17 The same constitution and law which makes me or you,
18 the finder of fact, makes me the instructor of the law.
19 So you must accept the law, and I explained this to you,
20 you must accept the law as I am instructing it today and
21 not, if you have a different view or what the law is or
22 heard it might be, you must disregard that understanding
23 and accept the law as I am giving it to you today.

24 Now, if there is an error made in my instruction of
25 the law there is another time and another place for that

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1 error to be considered and if appropriately made can be
2 reversed and that can be corrected at that time. For our
3 purposes you must accept the law as I am giving it to you
4 right now.

5 In a criminal prosecution the State has the burden of
6 proving the case. That is why their table is closer to
7 the jury box, it is their burden to prove the guilt of
8 someone accused. A person accused has no duty whatsoever
9 to prove or disprove anything, that wouldn't make sense.
10 Thus in our case the law, we prepared the constitution
11 established in the United States, the founding fathers
12 established a constitution which requires the State
13 government or the Federal government to prove their case
14 against someone accused beyond the standard of proof
15 called beyond a reasonable doubt. Now, if the State fails
16 to meet that burden of proving the case then the defendant
17 will be entitled to a verdict of not guilty.

18 Now, the same constitution which makes me the
19 instructor of the law and the ruler or the, consideration
20 of the legal issues, makes you the judges of the facts.
21 You must determine the facts in this case based upon the
22 evidence which has been presented, testimony which has
23 been presented. And basically surrounding that is you
24 must judge the credibility or the believability of the
25 witnesses who have testified. And I tell you you can use

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1 anything in your life experiences in judging a person's
2 credibility in this case as you have sat and listened and
3 watched and heard the testimony presented by the parties
4 in this case. Now, I suggest to you there is some ways
5 maybe you have thought about them in the past but to judge
6 a person's credibility or believability you can take into
7 account many things. Common sense is one, what was the
8 manner and appearance of the witness who testified, was
9 the witness straightforward or was the witness hesitant in
10 answering. How did the witness come to know the facts.
11 What was his or her ability to know or remember these
12 facts. Is there some reason a witness would want to give
13 testimony which would help or hurt one side or the other.
14 In other words, was the witness biased or prejudiced in
15 any manner. Was the testimony of a witness strengthened
16 or weakened by other testimony or other evidence. You may
17 believe as much of the testimony as one witness' testimony
18 as you deem proper, you can believe the testimony of one
19 witness against that of the others, you can believe the
20 others against a single witness, you can believe part of a
21 witness' testimony and disregard or disbelieve the rest.
22 The fact that testimony is not controverted does not mean
23 you must accept it as true, you still must gauge the
24 credibility of the witness who testified and through that
25 testimony make findings of fact.

1 Now, weighing evidence, and to make a determination
2 as to what happened, that is entirely a mental process.
3 You do not count the number of witnesses one side called
4 versus what the other side called to make a determination
5 of that. You must weigh the evidence presented using your
6 good judgment and your common sense.

7 Now, I tell you regarding evidence there is generally
8 two types of evidence presented. There is direct evidence
9 and there is circumstantial evidence. Direct evidence is
10 generally testimony of a eyewitness that have actual
11 knowledge of certain facts such as what they saw, what
12 they heard, what they smelled. Now, circumstantial
13 evidence is slightly different, it is proof of a chain of
14 facts and circumstances indicating the existence of
15 another fact. Our law makes no distinction between the
16 weight or value to be given to direct or circumstantial
17 evidence. There is no greater degree of certainty
18 required of circumstantial evidence than that of direct
19 evidence. I instruct you that you should weigh all the
20 evidence. However, to the extent that the State relies
21 its case and its proof on circumstantial evidence, I tell
22 you that all of the circumstances must be consistent with
23 one other and when taken together point conclusively to
24 the guilt of the accused beyond a reasonable doubt.

25 Now, after weighing all the evidence, whether it be

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1 direct evidence or circumstantial evidence or any
2 combination of the two, if you are not convinced of the
3 guilt of the defendant beyond a reasonable doubt you must
4 find him not guilty.

5 Now, I will utilize the term, reasonable doubt.
6 Proof beyond a reasonable doubt several times throughout
7 the beginning of the case, the lawyers have used it. A
8 reasonable doubt is what doubt would cause a reasonable
9 person to hesitate to act. Reasonable doubt may arise
10 from evidence which is in the case or from the lack or
11 absence of evidence in the case. Proof beyond a
12 reasonable doubt is proof that leaves you firmly convinced
13 of the defendant's guilt. It is a doubt to which one can
14 assign a reason, if the assignment can be done reasonably,
15 firmly and convincingly.

16 Now, I charge you that the defendant in this case
17 such as Mr. Dawkins is entitled to every reasonable doubt
18 which may arise in the case. And what that means is, if
19 you have had a doubt about anything during this trial and
20 it is a reasonable doubt you would be required to resolve
21 that doubt in his favor. And I also tell you that the
22 fact that the jury engages in a full and free discussion
23 of guilt or innocence does not automatically create a
24 reasonable doubt. You make the determination of whether
25 or not a reasonable doubt exists as to his guilt or his

1 innocence. If you find that the State has not met its
2 burden then he is entitled to a verdict of not guilty.

3 Now, criminal intent is a necessary element of each
4 crime that is brought before the State, by the State.
5 Criminal intent is a matter which must be determined by
6 you, the jury, from the circumstances surrounding the
7 situation. There is no way to prove intent to a
8 mathematical certainty. Medical science does not allow us
9 to dissect a person's brain to figure out what they had in
10 mind. So our law states that a criminal intent may be
11 inferred from the circumstances shown to have existed
12 before and after the fact. That is how you make the
13 determination of whether or not an intent was present or
14 not. Criminal intent is a state of mind that operates
15 jointly with an act or omission in the commission of a
16 crime. It is a mental state of conscious wrongdoing. It
17 is up for you to determine what the defendant intended to
18 do based upon the circumstances shown to have existed at
19 that time. And this is an element that the State must
20 prove beyond a reasonable doubt.

21 Now, I also tell you that you have heard some
22 testimony regarding the, Mr. Dawkins' conviction of a
23 crime. This conviction was presented regarding and can be
24 considered by you, that if you conclude that his
25 conviction is true it can be used by you in deciding

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1 whether his testimony is believable or not but for no
2 other purpose. You must not consider his prior record as
3 any evidence on the guilt or innocence of the charge for
4 which he is on trial here today.

5 Now, the specifics of the charges. One of the
6 indictments and I believe it is indictment 257 charges Mr.
7 Dawkins with criminal sexual conduct with a minor, second
8 degree. Our State code, the State says a person is guilty
9 of this offense if an actor engages in a sexual battery
10 with a victim who is more than 11 but less than 14 years
11 of age. So the State must prove beyond a reasonable doubt
12 that the Mr. Dawkins engaged in a sexual battery with a
13 victim who is more than 11 but less than 14. A sexual
14 battery is defined as sexual intercourse, oral sex, anal
15 intercourse or any intrusion however slight of any part of
16 a person's body or of any object into the genital or anal
17 openings of another person's body, except when the
18 intrusion is accomplished for medically recognized
19 treatment. The State must prove beyond a reasonable doubt
20 that the victim was more than 11 but less than 14 at the
21 time of the battery. I instruct you further, consent,
22 willingness, indifference or ignorance on the part of the
23 minor as to what was taking place does not in any way
24 affect the charge of criminal sexual conduct with a minor
25 because an unmarried woman under the age of 14 cannot

1 legally consent to sexual intercourse.

2 Now, indictment 256 which is lewd act with a minor.
3 The defendant is also charged with that, and that
4 indictment. So, our code of laws states that a person is
5 guilty of a lewd act with a minor if the actor is over age
6 14 and the actor willfully or lewdly commits or attempts
7 to commit a lewd or lascivious act upon the body or with
8 the body or its parts of a child under age 16 with the
9 intent of arousing, appealing to or gratifying the lust,
10 passions or sexual desires of either the actor or the
11 child. So, in order for the State to sustain a conviction
12 it must prove those elements beyond a reasonable doubt.
13 First, the defendant was over age 14; second, that the
14 victim was a minor under the age of 18; and lastly, the
15 State must prove that the defendant willfully and lewdly
16 committed or attempted to commit a lewd or lascivious act
17 upon the body or parts of the child under age 16 with the
18 intent to arouse or gratify the lust, passions, desires of
19 either the actor or the child. Willfully is defined as
20 voluntarily and intentionally with specific intent to do
21 something the law forbids. Lewd means obscene, lustful,
22 indecent or lecherous. Lascivious is defined as tending
23 to incite lust, lewdness, or indecent or obscene or
24 tending to deprave the morals in respect to sexual
25 relations.

1 Ms. Stokes, members of the jury, as y'all retire to
2 begin deliberations I want you to take into account to be
3 mindful that you are not called very often to serve as
4 jurors in this State. It is a very important duty and I
5 want you to take it seriously. It has been my
6 responsibility in this trial to try to conduct the trial
7 fairly, impartially and within the bounds of the laws in
8 South Carolina as I understand it. It is your
9 responsibility to consider this case and discuss it and
10 consider it and find a verdict which represents truth and
11 justice for everyone involved. It is your job to resolve
12 the questions of fact, it will be improper for me to try
13 to influence you in your duty. But what I am telling you
14 is that I expect you to go in the jury room and confine
15 your deliberations and your findings of guilt or innocence
16 to testimony you have heard, the evidence which has been
17 received, disregarding anything from outside the courtroom
18 but what was considered in the trial, consider my
19 instructions on the law in reaching a unanimous verdict.
20 It can't be 10 to 2, 6 to 6, it is 12 to 0. Now, I have a
21 verdict form which I believe was printed up while we were
22 discussing this. I will show that to you and it
23 basically, count one, criminal sexual conduct with a
24 minor. Guilty or innocent. Count two, lewd act, guilty
25 or innocent or guilty or not guilty, I am not sure which

1 way I typed it. I tell you this, that once you begin your
2 deliberations if you have any questions you can write
3 those down, hand them to Mr. Bolt, he will bring it to me,
4 I will discuss them with the attorneys and we will decide
5 how to resolve those questions. It is not uncommon for
6 jury's to want to see the videos of things that are
7 presented during trials, any kind of trial, let me see
8 that video again, absolutely. Now, understanding that
9 projector and screen was a long way away, y'all see that
10 but my observations, most jurors want to hear what was
11 said, questions asked, answers given. If y'all want to
12 see the video again it would be my intent or suggestion to
13 bring the table closer to the jury box, set the computer
14 there and let you be able to hear it without maybe it
15 being broadcast through the public address in the room and
16 maybe just hearing it right off the computer and perhaps
17 you can hear it better. Any persons who were more
18 difficult to listen to can come forward because you will
19 know parts of the video you want to hear. If you don't
20 want to hear the video again not a problem, you can if you
21 want to. And Ms. Holston and I were talking earlier, she
22 always hates when I say this, but if you want to hear
23 testimony replayed other than the video she has made a
24 recording of it and she can replay too. She has it on a
25 recording and she has to retrieve it off of a digital

1 device. So, she likes to know which witness it is and she
2 can have a little opportunity to retrieve it and it is not
3 sitting there looking for it. And she has got some less
4 than optional speakers in her car and she will have to go
5 and get those and I always try not to comment on those
6 cheap speakers she has. I am trying to get her a new one
7 but she can replay the testimony. I say that tongue and
8 cheek, it works very well. She only brings it in when she
9 needs it because it is not always needed. So, if you have
10 any questions write them down. Now, the questions which
11 are not allowed, why didn't the State call so and so
12 witness, why didn't the defense call so and so witness.
13 That is their decision, we can't go back and rethink that,
14 it was their presentation to make and they did. You have
15 got what you are going to get, you can hear it a second
16 time, you can hear it a third time but you can't say, how
17 about going and getting the drive-thru at the Burger King
18 so we can hear what they ordered for supper. That is not
19 before us and not what you consider so you don't get to do
20 that. I am going to give you a copy of my instructions in
21 the jury room. But if you need them explained write, we
22 don't understand so and so element of the law. I will
23 bring you back in here and try to do that. But I found
24 recently that the jurors seem to like to have the
25 instructions with them so I will provide these to you.

1 You will have all the evidence except for the ability to
2 play the video in the jury room. So you can ask
3 questions, I will try to resolve those, you can hear
4 testimony again, you can see the video again. Aside from
5 that you are on your time once you start deliberations.
6 Now, as soon as I send y'all back to the jury room I will
7 ask the lawyers, were my instructions complete, did I omit
8 something that we discussed. And they say you did fine
9 y'all start your deliberations because you will get the
10 verdict form. If the lawyers say you know, what, you kind
11 of glossed over that one thing and we thought you were
12 going to more in debt, I may call you back in here and
13 say, I forgot one thing. And here it is. Step in the
14 jury room, alternate and all, once I find out that
15 everything is ready to go, we will inventory the evidence,
16 send you the verdict form and the instructions and y'all
17 can begin your deliberations then. Okay. Now, once you
18 start deliberating and someone wants to step outside you
19 stop. One person needs a break everybody gets a break.
20 Okay. Once we start deliberations I will pull the
21 alternate out. So don't start discussing the case until I
22 say it is okay.

23 (Whereupon, the jury was excused from open court at
24 approximately 3:25 p.m.)

25 THE COURT: All right, any exceptions to the

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1 instructions from either side?

2 MR. SHEEK: Not from the State, Your Honor.

3 MR. BROWN: None from the defense.

4 THE COURT: Y'all want to see the verdict form. All
5 right, they can start.

6 (Whereupon, the jury started deliberations at
7 approximately 3:29 p.m.)

8 (Whereupon, the alternate was excused at
9 approximately 3:30 p.m.)

10 (Whereupon, the jury sent a note to watch video and
11 hear [REDACTED] testimony. The video was sent
12 into the jury room for the jury to watch at
13 approximately 3:52 p.m.)

14 THE COURT: Bring the jury in.

15 (Whereupon, the jury came into open court at
16 approximately 4:27 p.m.)

17 THE COURT: She is going to start playing the
18 testimony, if you get to a point where y'all heard what
19 you want to hear, say, we have heard enough. You can hear
20 all of it, a part of it, it makes no difference to me.

21 (Whereupon, the jury came into open court at
22 approximately 4:28 p.m. to listen to [REDACTED]
23 testimony.)

24 THE COURT: All right, every good, if you go back
25 there and say we want to hear more, let me know.

1 (Whereupon, the jury continued deliberations at
2 approximately 4:55 p.m.)

3 (Whereupon, the jury sent a note at approximately
4 5:30 p.m., Would it fall in the law if he told her or
5 gave her instructions on how to use the sex toys.
6 The Court sent a written response back to the jury,
7 Apply the instructions of law to the facts as you
8 unanimously find them.)

9 (Whereupon, the jury sent a note at approximately
10 6:20p.m., What is the legal definition of intrusion.
11 The Court sent a written response back to the jury,
12 There is no legal definition. You may apply its
13 plain and ordinary meaning.)

14 THE COURT: I understand the jury has reached a
15 verdict. Bring them in.

16 (Whereupon, the jury came into open court at
17 approximately 6:40 p.m. with the verdict.)

18 THE COURT: Ms. Stokes, have y'all reached a verdict?

19 FOREPERSON: We have.

20 THE COURT: Is it unanimous?

21 FOREPERSON: Yes.

22 THE COURT: Okay. Ms. Lancaster, you may publish the
23 verdict.

24 CLERK OF COURT: Your Honor, in the case of the State
25 versus Brad Bernard Dawkins, case number 2010-GS-30-256

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1 and 257. As to the charge of criminal sexual conduct with
2 a minor, second degree. We, the jury, find the defendant
3 guilty.

4 As to the charge of lewd act upon a child under the
5 age of 16. We, the jury, find the defendant guilty.

6 Signed by the Foreperson, Tyette Stokes, dated the
7 14th day of October. Ladies and gentlemen, if that be
8 your verdict please indicate by raising your right hand.

9 (Whereupon, all jurors raised their hand.)

10 CLERK OF COURT: Thank you.

11 THE COURT: Any other issues for the jury?

12 MR. SHEEK: No, Your Honor.

13 MR. BROWN: None.

14 THE COURT: All right. Folks, y'all are done. We
15 are going to Greenwood tomorrow. I have got some matters
16 to take care of over in Greenwood and then back here. If
17 y'all want two minutes of my time step back in the jury
18 room and I will speak with you and then send you on your
19 way.

20 (Whereupon, the jury was excused from open court.)

21 THE COURT: All right. Are y'all ready to go with
22 sentencing now or you want to wait to Friday morning?

23 MR. SHEEK: It is up to you, Judge.

24 THE COURT: I am coming back Friday morning. I don't
25 want to move it to Greenwood, I would rather keep him

1 here.

2 MR. SHEEK: Judge, I wasn't thinking, she is getting
3 married this weekend, she is suppose to be gone Friday.

4 THE COURT: I don't really need to hear from them. I
5 know what they are going to say. I am more worried about
6 what they are going to present, I heard and watched this
7 little girl testify.

8 MR. SHEEK: This won't be in mitigation.

9 THE COURT: Okay. That would be my belief it
10 wouldn't be in mitigation. So, that is not the problem.

11 MR. SHEEK: Yes, sir.

12 THE COURT: These are not easy, what would you rather
13 do, Mr. Brown?

14 MR. BROWN: My question clearly, will he have leave
15 of court to handle some affairs and then return on Friday?

16 THE COURT: I can't do that. I can't give you that
17 because that puts me in an awkward position.

18 MR. BROWN: Yes, sir.

19 MR. SHEEK: While he is talking I will print out the
20 sentencing sheets and then he can make a decision.

21 THE COURT: Okay.

22 MR. BROWN: Can I speak?

23 THE COURT: I am going to listen to him fully. If he
24 wants to do it tonight or we can do it Friday. We can do
25 either way.

1 MR. BROWN: Yes, sir. Friday would be better, there
2 are some things I need to get.

3 THE COURT: Okay. That is fine and I want you to be
4 allowed that. I want to hear what everyone has to say.
5 You want to do it Friday morning?

6 MR. BROWN: Yes, sir.

7 THE COURT: Friday morning at 9:30. See y'all then.

8 (Whereupon, sentencing will be on Friday, October 16,
9 2015 at 9:30 a.m.)

10 October 16, 2015.

11 THE COURT: Are you ready, Mr. Brown?

12 MR. BROWN: Yes, sir.

13 THE COURT: We are back on the record regarding the
14 trial on Wednesday evening late, 2010-GS-30-256 and 257.
15 The jury returned a verdict a few minutes to 7:00, guilty
16 of both counts. At that time I asked whether or not it
17 would be appropriate to sentence then or wait until Friday
18 morning. We agreed on Friday morning and everybody is
19 here. I think I put on the record at that time that I
20 would hear mitigating facts this morning regarding
21 sentencing. And, Mr. Sheek, you are here and the victim's
22 mother is here.

23 MR. SHEEK: Correct.

24 THE COURT: All right, Mr. Brown, let me hear from
25 you.

1 MR. BROWN: Thank you, Your Honor, may it please the
2 Court. Your Honor, clearly you have heard the history of
3 Mr. Brad Dawkins during the entirety of the trial in
4 particular as to any past criminal activities. He came
5 and discussed the matter in which he faced his federal
6 drug conviction, served 18 months and did that time,
7 started in 2003. And since that time period of being
8 released in 2005 he has not had any, but for the charges
9 he is facing from 2009, any interactions with the law
10 enforcement. Clearly over a 10 year period he has found
11 himself to be a productive member of the community as he
12 has informed the Court via his testimony, he has worked
13 with the Lions Hill Community Development Center for
14 almost a decade now in supporting the activities that they
15 do within the community of Greenville and the upstate.
16 Your Honor, I know he does have a number of supporting
17 members here from his family and the community. I would
18 ask them to all stand at this point, show the level of
19 support that he has had throughout this time period both
20 in terms of growing up in Greenville and obviously since
21 the time period in which he has faced these charges since
22 2009. You can be seated. Seated in the front row is his
23 ex-wife and the step-daughters that he refers to as his
24 daughters and his actual biological daughter has joined
25 them. His brothers are here. And knowing Brad as he has

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1 expressed, he is over 300 pounds, he has had some very
2 serious health issues. He requires to be on a breathing
3 apparatus every five hours and I think he has had some
4 complications since he has been here, requiring him, based
5 upon the C-Pak due to the sleep apnea, the potential of
6 his heart stopping he requires that type of medical
7 attention. I know he has high blood pressure, clearly he
8 has congenital heart problems. He is experiencing extreme
9 swelling due to gout and the chronic arthritis that he
10 faces. With that being said, Your Honor, I know he would
11 like to relay in his own words to the Court the fact that
12 he is very sorry that he is facing and had to face these
13 charges. But he would want me to tell the Court that he
14 has tried to be a father to everyone that he has found in
15 his household in various times. It is unfortunate, not
16 trying to cash any aspersions to Ms. Patricia's daughter,
17 that at some time, point in her life she did have some
18 negative interactions as it relates to her maturation
19 period with the opposite sex. I know this has been four
20 times in a very short time period that she has actually
21 accused men of engaging in some manner. And I think her
22 father was even accused at some point. We would just
23 remind the Court that Mr. Dawkins maintains that these
24 things didn't happen, it becomes a terrible situation that
25 he finds himself in. Your Honor, we would ask for you to

1 recognize, not only the time period in which the case
2 began but the time period that it took to get to this case
3 and where Mr. Dawkins was in the community and everything
4 he was doing. Hadn't found himself on the wrong side of
5 the law and found himself accused and has maintained his
6 productiveness in this community. Coupled with the fact
7 that he is facing these serious medical issues we truly
8 would hate for this to literally be a death sentence for
9 him. Having had the experience of people that have gone
10 into the Department of Corrections for various time
11 periods, the kind of care that he is getting now will be
12 very difficult for that to be maintained in the Department
13 of Corrections. So we ask that the Court would take that
14 into consideration. Knowing that such a large portion of
15 his family community are here in support there is one
16 individual, his uncle, who would like to directly address
17 the Court, if he could. Reverend Kenneth Harrison.

18 THE COURT: Okay, bring him forward.

19 MR. HARRISON: My name is Kenneth Harrison. I am the
20 uncle of Brad Dawkins. Thank you, Your Honor, for the
21 opportunity to come and speak on behalf of Brad. Family
22 members are here. Brad is one of the third siblings of my
23 sister, Anna Leigh, who we lost with a lupus disease. His
24 father, we lost him when Brad was very young. We all
25 rally around the siblings, the three sons and trying to.

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1 raise him along with his grandfather, my father, who is a
2 native of Laurens, who moved to Greenville. He had a very
3 sterile hand in raising us, he raised 14 children, 10 of
4 us are here now along with our siblings. Brad, the reason
5 why we are here because this is out of character with
6 Brad. Brad has worked with youth every since he had
7 gotten out of school. I have reached out to Brad, we have
8 got three ministers as a part of our family that are here.
9 I have been pastoring 30 years and I am building a youth
10 program. I have reached out to Brad because he has an
11 expertise in the way of youth. And so we are here because
12 it was out of character with Brad and we have come, if we
13 had known that he was going through this trial, I just
14 found out about it yesterday, we would have been here like
15 we are now. We are very close nit family, whenever one
16 goes to the hospital we are like this here, we rally
17 around each other. And so we come with, we realize that
18 the findings have been thoroughly investigated. We know
19 what those findings were but we are speaking for what we
20 know about Brad. And we come here casting our faith upon
21 the mercy of the Court. Brad is a productive individual,
22 his daughter is doing well because of his supervision,
23 that would be taken away from her. I think it would be an
24 affect on her. But we are here by the grace of God and
25 asking that if the Court can show any mercy we would

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1 appreciate that very much. Thank you, Your Honor.

2 THE COURT: Thank you. All right. Anything else?

3 MR. BROWN: Your Honor, we would simply say that due
4 to the Court's discretion, there is an abundance of time
5 that could be placed over his head, a portion that could
6 be probationary. I understand his health problems. Ms.
7 Patricia has done an excellent job with her daughter:
8 There will be no contact, there is no need to have any
9 contact with the family and so we would ask that the
10 Court, if you are inclined, to give him a minimum sentence
11 and give him a period of probation of some sort. I know a
12 portion could potentially happen with home detention but
13 if that is not unlikely, Your Honor, we would ask that the
14 Court would be mindful that if you had to hand a bunch of
15 probation over his head because he will not have any type
16 of interaction with this family, never again.

17 THE COURT: All right. Mr. Sheek, I will hear from
18 you.

19 MR. SHEEK: Thank you, Your Honor, if it please the
20 Court. First, let me correct a little bit on the prior
21 criminal record. Mr. Dawkins' record begins back in '91
22 with a conviction for false information to the police. He
23 has a drug violation in Georgia in 1995. He has, of
24 course, this incident for which he has now been convicted
25 of both of these crimes. He has a 2003 conviction in

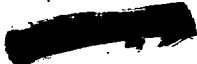
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1 Federal court for conspiracy to distribute and for
2 possession of cocaine, both counts, for which he received
3 a sentence in 2003. And I think it was eluded to that
4 since that time he had had no other trouble with the law.
5 That is not correct. While he didn't receive a conviction
6 he did have an arrest in '06 for criminal sexual conduct
7 in the first degree which resulted in a non-conviction. I
8 understand that. But he has continued with his brushes
9 with the law and of course in '09 received these charges.
10 The delay in this coming to court, of course, is in no way
11 the fault of the victim in this case.

12 THE COURT: It was some medical issues with the
13 investigating officer. I am aware of why the trial was
14 delayed.

15 MR. SHEEK: And it certainly had nothing to do with
16 the State's position on the case. That being said guilt
17 or innocence really isn't the issue at this point. A jury
18 of his peers has heard the evidence. He has been
19 convicted beyond a reasonable doubt. And obviously,
20 Judge, when we come to this point there is not a whole lot
21 I can say. I don't want to waste your time, Judge. When
22 we look at sentencing I know the Court looks at two
23 things. One is the punishment of the offender. You take
24 into consideration, you know, their reaction to what they
25 have done. And then acceptance of responsibility and in

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1 this case I think we have seen one of the most astounding
2 refusals to accept responsibility that I have seen even to
3 the point of coming to a sentencing hearing and continuing
4 to cast aspersions upon the victim. I don't know what
5 they are referring to on these other men that have been
6 accused. She testified as to what happened with Stanley
7 Dawkins, Stanley Dawkins got on the stand and said it
8 happened. He just argued what his intent was. Ms.
9 Whitmire is standing here beside me says she has no idea
10 what they are talking about, father being accused, never
11 heard of it, or any other person for that matter. But
12 instead of standing up before Your Honor and simply taking
13 responsibility the defendant continues to attack this
14 child. We as a society have struggled all throughout our
15 history with one particular group, oppressing another, we
16 have seen that throughout history. When I talk to my
17 children about the models, the role models I want them to
18 look up to it as not a sports figure or this millionaire,
19 it is the people in our history that have stood up for the
20 rights of others. It is the Martin Luther Kings' and the
21 people that have stood up and said, you know, we are going
22 to fight for our rights. As we as a society, if we
23 accomplish nothing else we have got to, as a society, band
24 together and say, we are going to stand up for the weak
25 and for the ones that can't fight for themselves. 

1 has Patricia here as her mother, she has gotten me who she
2 doesn't know to speak on her behalf. Wendy working for
3 her, Ruby working for her and I realize he has got family
4 support and I think that is great. But as society, when
5 we look to punishment, I don't think you correct people
6 who won, don't recognize what they have done, but the
7 second part of the punishment is also is a statement to
8 our society of what we do and do not allow and how
9 seriously we take it when the innocence of a child is
10 taken for the sexual gratification of a man that was
11 charged with being, as he said, her father. That is how
12 he viewed himself. Judge, that being said Ms. Whitmire
13 does have something she wishes to address to the Court. I
14 found it notable throughout the trial that even today
15 people stand up for their family and I know they love him
16 and support him and want to tell you, you know, how great
17 he is and we are getting him to work in our church and we
18 are getting him to keep our kids. But that man sat on the
19 stand and told you himself in an out-of-jury hearing that
20 he was smoking a quarter of bag of marijuana a day. So I
21 don't know if they don't believe him that well or they
22 simply don't care about that. I think the man has led a
23 double life, one of it has been victimizing this child.
24 Now it is time to pay for it. And it is unfortunate
25 because I know it hurts his family too and I hate that for

1 them. But now is the time for justice for society and for
2 this victim. And I would like, if you would be willing,
3 to let Ms. Patricia Whitmire speak to you also.

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

5 MS. PATRICIA WHITMIRE: First and foremost I want to
6 thank God for keeping and protecting my child during this
7 horrible, horrible thing that you did to her.

8 THE COURT: All right, now, you need to talk to me.

9 MS. PATRICIA WHITMIRE: Because I have faith in a God
10 is just and an all knowing God who I would glorify and
11 continue to glorify in all that I do, then justice has
12 been sought out by this judicial system for my child.
13 Brad, I have talked to you many of times about what we
14 consider the CDC's of life. Choices, decisions and
15 consequences. He made a choice, and decided to do
16 something that he didn't consider the consequences of.
17 Our choices that we make in life, we have to speak about
18 the decision and the actions and the consequences of them
19 when we do them. I pray to God that he makes the right
20 CDC's in his life during whatever incarceration or
21 whatever this Judge seeks that he needs to have. I have
22 prayed and I have prayed and I have prayed and I have
23 prayed, not only for Brad, I pray for my child. No one
24 has had to watch her go through all of these counseling
25 sessions and all the medical things she is going through.

1 But most of all, I pray that God has mercy on your soul.

2 MR. SHEEK: Thank you, Your Honor.

3 MR. BROWN: Your Honor.

4 THE COURT: Yes.

5 MR. BROWN: I know I spoke on behalf of the defense's
6 position, I must apologize, I didn't give Mr. Dawkins a
7 chance, if he wanted to say anything.

8 THE COURT: He has every opportunity, I have signed
9 my name, I have not filled it out. I will be glad to hear
10 from you.

11 MR. BRAD DAWKINS: Judge, when these charges were
12 brought on me, I talked to my brothers, I talked to my
13 friends and I told my friends that Laurens County had come
14 to me and asked me for a plea, to plea to some charges
15 that I felt like that, I know that I didn't do. And they
16 said to me, well, you can get less time. And I said,
17 before I plea something like this that I didn't do, I have
18 daughters of my own. And I have raised my daughters, try
19 to raise them right. And show them that right and wrong,
20 if I am wrong, when I got those drug convictions I stood
21 in front of Judges and said I was wrong. I am wrong for
22 what I have done, Judge, and I throw my mercy upon the
23 Court. But when I came here and stood, sat and stood
24 before you, six years later, not knowing, thinking that
25 this charge, if I knew of this charge I would have been

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1 trying to fight to free myself even more because I knew I
2 didn't do none of this. Whatever I needed to upon, I
3 talked to Ms. Patricia like she said she talked to me. We
4 talked to the point to where she's echoed to me that she
5 knew that I didn't do something like this. She know that
6 I didn't do something like this. We were still together
7 hoping that, she was hoping and I was hoping that this
8 could just, her daughter would finally say, this thing
9 didn't happen. Because, Judge, this did not happen, this
10 is not, what, and I know we live in a society, somebody
11 says that, we are guilty, however we want to say it in
12 this court. But we live in a place, if a young child says
13 someone did something, you are guilty, you are guilty no
14 matter what. But I wanted my daughter to know that I
15 didn't do something like this and I am not going to plead
16 guilty to something that I did not do. Now, if I did
17 something, I believe in court hard and if I did something
18 I would sit here and, yes, Judge, I did it. Yes, I did
19 it. But I didn't do this and I have prayed and I have
20 prayed and asked myself, I don't know what else to do,
21 Judge. I don't, I am sick and I stopped breathing last
22 night at the jail. They can't do anything to help me, the
23 nurse is not there to assist me with what is going on with
24 my heart. I don't even see myself making it out of
25 Laurens for something that, I throw my mercy upon you. I

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1 pray and I pray that, Judge, you see, you see mercy in me.

2 THE COURT: You understand what my job is, don't you.
3 My job is not going to decide whether or not you did it or
4 not, the jury made that decision.

5 MR. BRAD DAWKINS: Right.

6 THE COURT: I can't go behind them, twelve people
7 unanimously decided that they believe it happened, that
8 you committed those offenses. My job is to sentence you
9 appropriately considering the prior record and all sorts
10 of things that go into that. So, that is my job. I want
11 you to understand that, I can't undo what a jury has done.
12 That is why there are twelve members of the jury.

13 MEMBER OF THE FAMILY: Can I say something, Your
14 Honor?

15 THE COURT: I have heard enough.

16 All right. The sentence of the Court, on the
17 criminal sexual conduct is 7 years. On the lewd act is 10
18 years suspended upon the probation of 48 months. That 10
19 years will be hanging over his head. That probation will
20 not start until he is released on the 7 year sentence.
21 So, I gave him a little of both. I think that is an
22 appropriate sentence, all being considered. He will pay
23 his debt, he is on supervision when he comes out and the
24 Court is going to require him to register for the balance
25 of his life.

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1 MR. SHEEK: Your Honor, I believe, the statutory, I
2 don't know if you have to note it on the sentencing sheet,
3 of course there is also the mandatory GPS monitoring with
4 the lewd act.

5 THE COURT: It is. All right.

6 MR. SHEEK: Thank you, Judge.

7 (Whereupon, Court's Exhibits 1, 2 and 3 were marked
8 for identification only.)

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

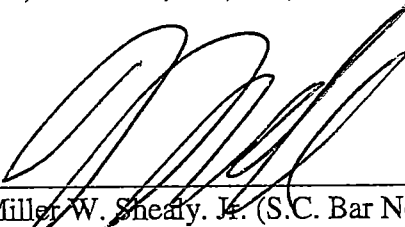
V.

BRAD BERNARD DAWKINS

APPELLANT

Certification of Compliance

I, Miller W. Shealy, Jr., certify that this Record of Appeal complies with all relevant Rules of this Court, especially, but not limited to, Rules 209, 210, 211, and 267 of the Appellate Court Rules.



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July 22, 2016

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAD BERNARD DAWKINS

APPELLANT

Proof of Service

I, Miller W. Shealy, Jr., certify that I have served this Record of Appeal on the Respondent by depositing one copy of the same in the United States mail, prepaid postage, addressed to: V. Henry Gunter, Jr., Assistant Attorney General, Office of the Attorney General, 1000 Assembly Street, Suite 501, Columbia, S.C. 29201.



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July 22, 2016

Attorney for Appellant

Briefs, Petition for
Rehearing, and
Rulings of the
Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2015-002254
General Sessions Case No. 2013-CR-30-0256 & 0257

STATE OF SOUTH CAROLINA

Respondent,

v.

BRAD BERNARD DAWKINS

Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in denying the Appellant's request to charge the lesser offense of ABHAN?

Did the trial court err in denying Appellant's motion for a directed verdict because the state failed to establish the county in which the offense occurred?

Did the prosecutor's comments during closing suggesting that the Appellant's trial counsel did not have duty to be truthful to the jury constitute a violation of due process and deny the Appellant a fair trial?

STATEMENT OF THE CASE

On February 19, 2010, the Laurens County Grand Jury indicted Brad Bernard Dawkins for Criminal Sexual Conduct with a Minor and Lewd Act Upon a Child Under 16.

(R. pp. 3-8)

On October 13, 2016, Dawkins proceeded to trial before the Honorable Eugene C. Griffith, Jr. and a jury. (R. p. 9) Dawkins was represented by Michael D. Brown. The state was represented by Lance Sheek. *Id*

On October 14, 2015, the jury returned with a verdict of guilty on both indictments. (R. p. 238, line 14 - p. 239, line 13) The sentencing was held on October 16, 2013. The court imposed a sentence of 7 years for criminal sexual conduct and 10 years suspended on the service of 48 months probation for lewd act. The lewd act sentence was consecutive to the criminal sexual conduct sentence. (R. p. 253, line 15 – p. 254, line 5) The Notice of Appeal was timely filed.

This appeal follows.

STATEMENT OF FACTS

This case involves an alleged sexual assault and lewd act upon a victim¹ who was age [REDACTED] at the time of the incident and who was [REDACTED] at the time of the trial. (R. p. 54, lines 1 - 24) The victim was the [REDACTED] of Appellant's girlfriend (common law wife), Patricia Whitmire, with whom Appellant lived at the time of this incident. (R. p. 42, line 12 - p. 44, line 16; p. 48, lines 1 - 25; p. 54, line 1 - p. 56, line 10; p. 156, line 24 - p. 157, line 18) The Appellant and Patricia Whitmire had lived together for 10 years. *Id.*

The victim testified that she [REDACTED] and the [REDACTED] at the time of the incident. (R. p. 55, line 2, - p. 56, line 8) She testified that on or about November 30, 2009, she was sexually assaulted by the Appellant. (R. p. 60, line 4 - p. 65, line 25) The alleged incident took place late in the evening after the Appellant drove the victim some distance from her home and attempted to sexually assault her in a vehicle. (*Id.* and video tape of victim) The victim confirmed at trial that the Appellant was never "able to penetrate [her] vagina with anything." (R. p. 65, lines 5-7) She testified further that on occasions the Appellant would give her sex toys and instruct her on how to use them. (R. p. 57, line 20 - p. 58, line 24; p. 66, lines 11-21)

Captain J. D. Morgan of the Camden Police Department assisted Laurens County with this investigation. (R. p. 132, lines 5-24) He had occasion to take a statement from the Appellant concerning the lewd act allegation. Morgan alleged that Appellant related to him

¹ In an abundance of caution, the victim's name will not be used. Although she had attained her majority at the time of trial, she was a juvenile at the time of this offense. See this Court's "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings" (Appellate Case No.: 2013-002681) dated April 15, 2014.

an occasion when Appellant walked in the bedroom and caught the victim masturbating with a vibrator that the Appellant supposedly provided to her. According to Morgan, Appellant said that the victim asked him if she was doing it properly and if Appellant would show her how to do it. (R. p. 133, line 11 – p. 134, line 18) Morgan went on to say that about two weeks after the vibrator incident the Appellant told him he asked the victim if she had learned how to properly use the vibrator and she said she had. *Id.*

The Appellant completely denied that the incidents in question ever occurred. (R. p. 159, line 3 – p. 163, line 25) He denied telling Captain Morgan that he encouraged the victim to use a vibrator. (R. p. 159, line 24 – p. 161, line 4) Appellant testified that he was in charge of disciplining the victim. He spanked her. (R. p. 166, line 15 – p. 168, line 25; p. 102, line 2 – p. 103, line 12) He also testified that he caught the victim masturbating with a vibrator, but that he reprimanded her about it. (R. p. 167, line 2 – p. 168, line 24) According to Appellant, the victim told him she wanted to “be with a young man.” (R. p. 167, line 25) However, Appellant told her that “this is not the time to be with a young man.” (R. p. 168, lines 1-2) Appellant testified that the victim became angry with him about reprimanding her concerning the use of the vibrator. (R. p. 167, line 16 – p. 168, line 25) Appellant also testified that the victim was angry with him because her father was going to get married and would not be reuniting with her mother. (R. p. 164, line 17 – p. 165, line 18)

In addition, the victim seems to have made up a story about the Appellant’s brother, Stanley Dawkins, having touched her inappropriately. She told Appellant it had happened but this does not seem to have borne out. The victim seems to have abandoned this claim. (R. p. 169, line 5 – p. 170, line 18; p. 68, line 23 – p. 72, line 4; p. 93, line 8 – p. 96, line 24; p. 151, line 2 – p. 154, line 25)

ARGUMENT 1

The trial judge erred in refusing to charge the lesser offense of ABHAN

It is incumbent on a trial court to charge a lesser included offense if there is any evidence whatsoever that supports it.

ABHAN is a lesser included offense of first degree CSC. *State v. Primus*, 349 S.C. 576, 581, 564 S.E.2d 103, 106 (2002). The law to be charged is determined by the evidence presented at trial. *State v. Todd*, 290 S.C. 212, 349 S.E.2d 339 (1986). A trial judge must charge a lesser included offense if there is **any evidence** from which the jury could infer the defendant committed the lesser rather than the greater offense. *Brightman v. State*, 336 S.C. 348, 350-351, 520 S.E.2d 614, 615 (1999).

State v. White, 605 S.E.2d 540, 542 (S.C. 2004) (emphasis added). Thus, the “any evidence” standard applies when reviewing evidence to determine if a lesser included offense should be charged. In addition, there is little doubt that ABHAN would be a lesser offense here under prior legal precedent. The appellate courts of this state have not followed a strict elements test to determine lesser offenses. Rather, considerations of legal policy and common law precedent prevail in determining whether a crime is a lesser offense. *State v. Elliott*, 552 S.E.2d 727 (S.C. 2001), *rev’d on other grounds*, *State v. Gentry*, 610 S.E.2d 494 (2005).

There was evidence from which the jury could have found ABHAN. The victim’s credibility as to the incident was challenged in many ways. First, she claimed that she had been molested by Stanley Dawkins, and this does not appear to have occurred. (R. p. 169, line 5 – p. 170, line 18; p. 68, line 23 – p. 72, line 4; p. 93, line 8 – p. 96, line 24; p. 151, line 2 – p. 154, line 25) Second, the Appellant routinely spanked her, and this made her angry with him. (R. p. 166, line 15 – 168, line 25; p. 102, line 3 – 103, line 12) Third, the victim

was angry with Appellant for reprimanding her regarding her masturbation and her disposition toward other boys. (R. p. 167, line 2 - p. 168, line 25; p. 101, line 2 - p. 103, line 12) The jury could have inferred that there was inappropriate physical contact between the victim and the Appellant, but that it did not amount to criminal sexual conduct. Rather, it was ABHAN.

The trial court should have charged ABHAN as there was some evidence that would have supported a jury verdict of this crime. The jury should have been given the choice to infer that the crime was ABHAN, rather than criminal sexual conduct.

ARGUMENT 2

The trial judge erred in refusing to grant the Appellant's motion for directed verdict because the state failed to establish the county in which the offenses occurred.

This Court has long recognized the right of a defendant to be tried in the county alleged in the indictment. *State v. Evans*, 415 S.E2d 816, 818 (S.C. 1992) (A criminal defendant is entitled "to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment."), *rev'd on other grounds*, *State v. Gentry*, *supra*. See also *State v. Williams*, 468 S.E.2d 626, 630 (S.C. 1996) and *State v. Crocker*, 621 S.E.2d 890, 895 (S.C. Ct. App. 2005).

At best, there was substantial confusion about whether the alleged act of criminal sexual conduct occurred in Greenville or Laurens County. (R. p. 45, line 5 – p. 46, line 2; p. 57, line 5 - line 13; p. 59, line 3 – p. 61, line 5; p. 82, line 2 – 83, line 25; p. 87, lines 18 – 24; p. 97, line 9 – p. 99, line 24; p. 139, line 16 – p. 143, line 1) The record in the case reflects that no one, not even law enforcement made any effort to determine where the alleged act of criminal sexual conduct occurred. No one attempted to locate the scene of the sexual assault. They had six years to do so.

The impact of this on the Appellant was enormous, as indicated in the above Statement of Facts the victim's credibility was the paramount issue in the case from the Appellant's perspective. The bald assertions that the crime occurred in Laurens County are just that, mere assertions, guesses.

The trial court's failure to hold the state to its burden in this instance allowed the Appellant to be convicted when he should not have been.

ARGUMENT 3

The prosecutor's comments during closing argument alleging that defense counsel did not have a duty to tell the truth violated due process and denied the Appellant a fair trial.

During closing argument, the prosecutor made the following statement:

I appreciate the fact that Mr. Brown comes in here and puts a vigorous defense up for his client, because that's the way our justice system works. But the only one here that's part of this court system that doesn't have an oath binding him to seek justice is the defense attorney. The Judge has that job. I have an ethical obligation as a prosecutor to seek justice. Mr. Brown has an ethical obligation to seek beneficial for his client and I respect that. I don't have a problem with it. But don't think for a second his job is to simply shine a light on the truth for your benefit, because it's not. Otherwise, he wouldn't have asked questions about what does provide mean when his client says it didn't happen. He wouldn't wave every red flag over here to the left hoping you don't keep your sights on the one issue that matters.

(R. p. 204, lines 10 - 25) This is a violation of due process. The prosecutor basically told the jury that Appellant's defense counsel had no ethical obligation to be truthful. He even went as far as to suggest that defense counsel was deliberately unethical in his conduct of the case. It is hard to imagine a more prejudicial statement in closing.

In *Vasquez v. State*, 698 S.E.2d 561, 567 (S.C. 2010) this Court once again set forth the rule as to the propriety of closing argument:

While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done. The solicitor's closing argument must, of course, be based on this principle. The argument therefore must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice. *State v. Northcutt*, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting *State v. Linder*, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)).

Id. See also *State v. McFadden*, 458 S.E.2d 61, 67 (S.C. Ct. App 1995) ("The supreme court has noted its disapproval of counsel intimating that opposing counsel is trying to conceal something from the jury by objecting to the introduction of evidence." Citing *Cummings v. Tweed*, 10 S.E.2d 322 (S.C. 1940)).

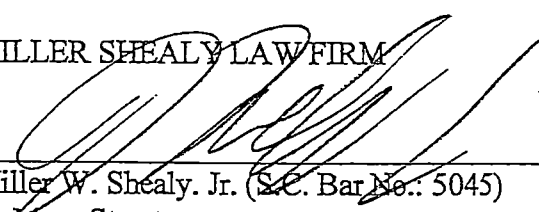
This Court has admonished prosecutors to avoid comments such as these. This type of argument is and was extremely prejudicial.

CONCLUSION

Based on the above, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,

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August 7, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

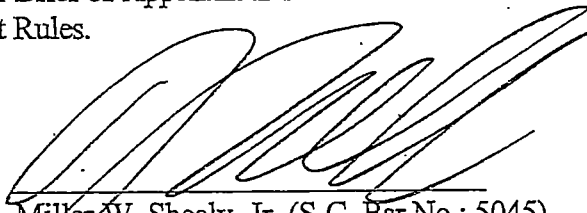
V.

BRAD BERNARD DAWKINS

APPELLANT

CERTIFICATION OF COMPLIANCE

I hereby certify that this Final Brief of Appellant is submitted in accordance with Rule 211 of the South Carolina Appellate Court Rules.



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August 7, 2016

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAD BERNARD DAWKINS

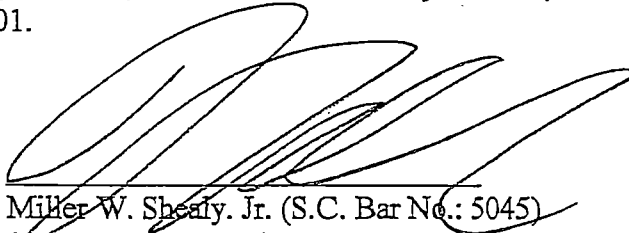
APPELLANT

PROOF OF SERVICE

Undersigned counsel has on this day filed the Final Brief of Appellant in accordance with Rule 211 of the South Carolina Appellate Court Rules.

Fifteen copies (one unbound) have been mailed via U.S. mail, postage prepaid, to the Clerk of Court for the South Carolina Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201.

Additionally, one copy of this brief has been mailed via U.S. mail, postage prepaid, to V. Henry Gunter, Jr., Assistant Attorney General, Office of the Attorney General, 1000 Assembly Street, Suite 501, Columbia, S.C. 29201.



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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2015-002254

THE STATE,

Respondent,

v.

BRAD BERNARD DAWKINS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge properly declined to instruct the jury on assault and battery of a high and aggravated nature where that offense is not a lesser-included offense of criminal sexual conduct with a minor, and, even if it somehow was, was not supported by the facts and evidence presented during trial.

II.

The trial judge properly denied Appellant's motion for directed verdict where the State presented sufficient evidence indicating venue was proper in Laurens County.

III.

Appellant's argument concerning the Solicitor's closing argument is not preserved for appellate review. Even if Appellant's argument was preserved, Appellant was not prejudiced to the point where the Solicitor's comments rendered Appellant's trial fundamentally unfair.

STATEMENT OF THE CASE

During its February 2010 term, the Laurens County Grand Jury indicted Appellant for criminal sexual conduct with a minor in the second degree (2010-GS-30-0257) and lewd act upon a child under the age of sixteen years (2010-GS-30-0256). Appellant proceeded to a jury trial from October 13-14, 2015, in Laurens, South Carolina before the Honorable Eugene C. Griffith, Jr. At the conclusion of trial, the jury found Appellant guilty as indicted. Judge Griffith sentenced Appellant to seven years' imprisonment for criminal sexual conduct in the second degree and ten years' imprisonment suspended upon the service of forty-eight months imprisonment for lewd act on a minor, with the probation to begin at the end of the seven year sentence. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Mother began dating Appellant in late 2005 or early 2006. R. p. 43. Appellant and Mother began cohabiting sometime around August 2007. R. p. 43. Appellant and Mother moved from Simpsonville to a home in Fountain Inn in Laurens County. R. p. 43. While Mother and Appellant were living together, Mother's [REDACTED] Victim, lived in their home. R. p. 44. Appellant and Victim were typically home alone together for an hour or two after school on weekdays before Mother returned home from work. R. p. 44. Victim testified that when they were still living in Simpsonville, Appellant forced her to use sex toys in front of him. R. pp. 57-58. Appellant would direct Victim to touch herself on her vagina with the sex toys. R. p. 58. Victim later clarified that Appellant forced her to penetrate her vagina with one of the sex toys. R. p. 66. Victim testified Appellant continued to force her to use sex toys in front of him once the family moved to Fountain Inn. R. p. 59. When asked when the abuse occurred, Victim stated, "It would just be random. I'd just come home from school and he would tell me to come here or something." R. p. 59.

Victim recalled one specific incident that took place around November 30, 2009, where Appellant touched her himself. R. pp. 59-60. On November 30, 2009, Victim was [REDACTED] [REDACTED]. R. p. 54. Victim testified that on that evening, Appellant took Mother's car and drove Victim into the woods and attempted to pull her pants down. R. p. 60. Victim testified they were still in Laurens County at the time Appellant stopped the car. R. p. 61. Appellant was able to pull Victim's pants and underwear down to Victim's mid-thigh area. R. p. 61. Appellant then touched Victim's breasts. R. p. 62. Victim testified Appellant then exposed his genitals and attempted to have sex with her. R. p. 64. When asked how close Appellant got to having sex with her, Victim

¹ At the time of trial, Victim was [REDACTED] and was enrolled as a student at [REDACTED]. R. p. 54.

stated, "on my vagina." R. p. 64. Victim fought to get Appellant off of her, which eventually caused Appellant to stop. R. p. 65. Appellant told Victim not to tell anyone what happened and that if she told anyone, he would hurt Victim Mother. R. p. 65. Victim eventually disclosed Appellant's abuse to her friends, Jada and Mike-Mike. R. p. 73. Jada then disclosed the abuse to her parents. R. p. 84. Once law enforcement became involved in the case, Victim told Mother about Appellant's abuse. R. pp. 72-73.

Investigator Shannon Childress, a Lieutenant in the investigations division of the Laurens County Sheriff's Office, worked on the investigation of Appellant's case. R. p. 20. Investigator Childress spoke with Appellant on December 3, 2009, and subsequently obtained an arrest warrant on December 4, 2009. R. p. 22. When Childress spoke with Appellant, Appellant made a statement to her and another officer, Captain Russell Morgan. R. p. 40. Captain Morgan is employed with the City of Camden Police Department and had the opportunity to assist Laurens County in Appellant's case. R. p. 132. Captain Morgan testified the agencies assisted each other in investigations from time-to-time. R. p. 132. Captain Morgan made notes during the December 3, 2009 interview of Appellant he conducted with Investigator Childress. R. p. 133. Captain Morgan testified:

Mr. Dawkins in my interview stated that in the past he admitted to seeing the victim, [Victim], in the nude. He stated that in the past he had told the victim to remove all her clothing so that he could whip her. He also stated that at that time that the, [Victim] was approximately 11 years old. He told me also that he had walked in the bedroom one, I guess, evening in the summertime and discovered that she was masturbating. And that during the masturbating incident he stated that she was performing the masturbation with a vibrator that he had provided to her. He also stated to me that [Victim] asked him if she was doing it correctly and if he would show her how to do it. He went on to say that about two weeks later he inquired of [Victim] if she had figured out how to properly use the vibrator and she had responded she had. But at that time, the interview was in conjunction with the allegations that Mr. Dawkins had touched the victim's vaginal area and breasts. And he continued to deny actually doing that.

R. p. 134. At the conclusion of trial, the jury found Appellant guilty of criminal sexual conduct with a minor in the second degree and lewd act with a child under the age of 16.

ARGUMENT

I.

The trial judge properly declined to instruct the jury on assault and battery of a high and aggravated nature where that offense is not a lesser-included offense of criminal sexual conduct with a minor, and, even if it somehow was, was not supported by the facts and evidence presented during trial.

Relevant Facts

At the conclusion of the defense's case, Defense Counsel requested a charge on assault and battery of a high and aggravated nature (ABHAN). R. p. 186. The trial judge found, "I think the age parameter in the element prohibits it from being a lesser included. It eliminates it from being lesser included, and I'm going to stick to my ruling and decline to charge that as a lesser included of either one." R. p. 188. The trial judge later reiterated, "I'll tell you what I'm going to do, decline to charge the lesser included, but your record is complete." R. p. 189.

Discussion

Appellant asserts the trial judge erred in refusing to charge the jury on ABHAN. Specifically, Appellant cites various challenges to Victim's credibility as evidence from which the jury could have found ABHAN. Appellant contends these challenges to Victim's credibility could have led the jury to infer there was inappropriate physical contact between Victim and Appellant that did not amount to criminal sexual conduct. As support for his argument, Appellant avers South Carolina Courts have not followed a strict elements test to determine lesser offenses. Appellant asserts courts instead focus on considerations of legal policy and common law precedent in determining whether a crime is a lesser offense. Contrary to Appellant's contentions, ABHAN is not a lesser-included offense in light of the fact criminal sexual conduct with a minor in the second degree does not include all of the elements of ABHAN. Moreover, ABHAN is not a lesser-included offense of criminal sexual conduct with a minor in the second

degree in light of the fact the legislature elected not to recognize it as such. Therefore, the trial judge properly declined to instruct the jury on ABHAN in Appellant's case. However, even assuming ABHAN was a lesser-included offense of criminal sexual conduct in the second degree, the trial judge still nonetheless properly declined to instruct the jury on ABHAN because the testimony and evidence presented during trial did not support such a charge.

In instructing the jury on the law, "[a] trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). Generally, pursuant to the elements test, an offense is a lesser-included offense of a greater offense if the greater offense includes all of the elements of the lesser-included offense. State v. Primus, 349 S.C. 576, 579-580, 564 S.E.2d 103, 105 (2002), overruled on other grounds by State v. Gentry, 563 S.C. 93, 610 S.E.2d 494 (2005). However, "[i]f the lesser offense includes an element which is not included in the greater offense, then the lesser offense is not included in the greater offense." Id. at 580, 564 S.E.2d at 105 (emphasis added). In determining whether an offense is a lesser-included offense of another, courts in South Carolina typically apply the elements test to make that determination with few exceptions. See id. ("While the Court recognizes the existence of a few anomalies, it generally adheres to the use of the traditional elements test."). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

Importantly though, even if an offense is a lesser-included offense of another offense, the trial judge is only required to instruct the jury on the lesser-included offense when the evidence could support an inference the defendant is guilty of only the lesser-included offense and not the

greater offense. State v. Lambright, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983). "It is well settled that a jury instruction on a lesser included offense is required only when the evidence warrants such an instruction." State v. Coleman, 342 S.C. 172, 175, 536 S.E.2d 387, 389 (Ct. App. 2000). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tend to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006).

In the current case, the trial judge committed no error in declining to instruct the jury on the offense of ABHAN because that crime was not a lesser-included offense of criminal sexual conduct in the second degree. Furthermore, even if ABHAN somehow was a lesser-included offense of criminal sexual conduct with a minor in the second degree, the trial judge still committed no error in declining to instruct the jury on that offense because the evidence presented during trial would not have supported a conclusion Appellant was guilty of only the lesser-included offense and not the greater offense.

Initially, looking to the elements of the offenses, criminal sexual conduct with a minor in the second degree does not include all of the elements of ABHAN. Compare S.C. Code Ann. § 16-3-655(B) (stating a person is guilty of criminal sexual conduct with a minor in the second degree if: 1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or 2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430 (D); with S.C. Code Ann. § 16-3-600 (B)(1) (stating a person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and: a)

great bodily injury to another person results; or b) the act is accomplished by means likely to produce death or great bodily injury). As a result, ABHAN is not a lesser-included offense of criminal sexual conduct with a minor in the second degree under the elements test. See Knox v. State, 340 S.C. 81, 85, 530 S.E.2d 887, 889 (2000) ("A lesser offense is included in the greater only if each of its elements is *always* a necessary element of the greater offense." (italics in original)), overruled on other grounds by State v. Gentry, 563 S.C. 93, 610 S.E.2d 494 (2005).

Recognizing this fact, Appellant attempts to argue that South Carolina courts have not followed the elements test to determine lesser offenses and instead focus on considerations of legal policy and common law precedent in determining whether a crime is a lesser offense. In support of his argument, Appellant notes that prior to its abolition through the passage of the Omnibus Crime Reduction and Sentencing Reform Act of 2010, ABHAN had traditionally been considered to be a lesser-included offense of criminal sexual conduct in the first degree. See Primus, 349 S.C. at 581, 564 S.E.2d at 106 ("[E]mploying the traditional elements test, ABHAN is not a lesser-included offense of first degree CSC. Nevertheless, the Court most recently determined that because it had consistently held ABHAN is a lesser included offense of assault with intent to commit CSC, it would continue this ruling even though the two offenses failed the traditional elements test. In order to have a uniform approach to CSC and ABHAN offenses, we likewise hold ABHAN is a lesser included offense of first degree CSC." (citations omitted)); see also State v. Middleton, 407 S.C. 312, 315, 755 S.E.2d 432, 434 (2014) ("Though the passage of the Act, the legislature abolished all common law assault and battery offenses and all prior statutory assault and battery offenses."). However, in abolishing the common law assault and battery offenses, the legislature in South Carolina specifically identified the different offenses to which the new statutory assault and battery offenses could be considered lesser-included

offenses. See State v. Elliott, 346 S.C. 603, 607, n. 2, 552 S.E.2d 727, 729 (2001) (“[T]he legislature, in enacting the CSC statutes, is presumed to know the common law **and could have provided that ABHAN not be treated as a lesser offense of ACSC, as it was of AIR.**” (emphasis added)), overruled on other grounds by State v. Gentry, 563 S.C. 93, 610 S.E.2d 494 (2005). Tellingly, the legislature elected **not** to recognize ABHAN-or any of the other new statutory assault and battery offenses- as a lesser included offense of criminal sexual conduct with a minor in the second degree. See S.C. Code Ann. § 16-3-600(B)(1)(3) (“Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29). Because the legislature specifically chose to identify ABHAN as a lesser-included offense of a certain specified offense while choosing not to identify it as a lesser-included offense of criminal sexual conduct with a minor, the statutory offense of ABHAN is **not** a lesser-included offense of criminal sexual conduct with a minor in the second degree, and the trial judge properly declined to instruct the jury on ABHAN in Appellant’s case. See Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’ ”); see also State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) (“We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We **cannot under our power of construction supply an omission in the statute.**” (emphasis added)); cf. Nelson v. Ozmint, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (finding the legislature’s inclusion of language allowing for early release in one statute but omitting it in another evidenced the legislature intent for a defendant convicted of the offense delineated in the statute not containing the early release language to be ineligible for early release).

However, even assuming ABHAN is somehow a lesser-included offense of criminal sexual conduct with a minor in the second degree, the trial judge's decision not to charge the jury on ABHAN was proper and justified in Appellant's case because the evidence presented during trial did not support an instruction on that particular offense. There was no evidence presented that established Appellant was guilty of ABHAN instead of criminal sexual conduct with a minor in the second degree. The evidence at trial established Appellant directed Victim to penetrate herself with sex toys in his presence and that on one occasion, Appellant drove Victim into the woods where he proceeded to climb on top of her and attempt to penetrate her. There was no evidence whatsoever that Appellant committed ABHAN, as there was no unlawful injury that either produced great bodily injury or was likely to produce great bodily injury. Instead, all of the evidence presented at trial established Appellant was guilty of criminal sexual conduct with a minor in the second degree. See State v. Gilmore, 396 S.C. 72, 77, 719 S.E.2d 688, 691 (Ct. App. 2011) ("The mere existence of evidence of ABHAN . . . is not sufficient to require the jury charge. Rather, there must be evidence the defendant committed ABHAN *instead of CSC.*" (italics in original)); State v. Forbes, 296 S.C. 344, 345, 372 S.E.2d 591, 592 (1988) ("Here the evidence shows appellant committed a sexual battery as defined by § 16-3-651(h) or no battery at all. He was therefore not entitled to a charge of ABHAN."); State v. Fields, 356 S.C. 517, 523-524, 589 S.E.2d 792, 795 (Ct. App. 2003) ("Field's mere assertion that the jury might have disbelieved the State's evidence that the sex was not consensual and on the remaining evidence found him guilty of ABHAN does not entitle him to have the lesser offense submitted to the jury."). Therefore, the trial judge properly declined to instruct the jury on ABHAN, as there was no evidence presented at trial supporting the charge. Appellant's convictions and sentences should be affirmed.

II.

The trial judge properly denied Appellant's motion for directed verdict where the State presented sufficient evidence indicating venue was proper in Laurens County.

Relevant Facts

At trial, Mother testified the family lived in [REDACTED] in Laurens County. R. p. 43. Defense Counsel later asked Mother how she knew the home was in Laurens County and not Greenville County. R. p. 45. Mother replied the zip code given to her by the postal office indicates the home is in Laurens County. R. p. 45. Victim later testified the family moved to [REDACTED] in Laurens County and the abuse continued in Laurens County. R. p. 59. As to the incident on November 30, 2009, Victim testified that when Appellant drove her into the woods, they were still in Laurens County. R. p. 61. Defense Counsel later asked Victim how she knew she was in Laurens County when Appellant drove her into the woods. R. p. 105. Victim responded she was familiar with the area. R. p. 105.

Defense Counsel later made a motion for directed verdict and motion to quash the indictments, asserting there was insufficient specificity as to where the incidents occurred. R. pp. 139-41. The trial judge found:

I'll deny on the vagueness of the document or insufficiency of the documents, I'm going to deny the directed verdict motion and that's what I understood the motion to be about. The issue of whether or not the incident in the car occurred in Laurens County, there is sufficient evidence and the young lady testified that she believed it to be Laurens County. She went on a short drive in the woods. She believes herself to be in Laurens County. I think that's another factor to sufficiently say it's in Laurens County. Where I have a problem, it just happened and never say where. She said she believed in Laurens County. So on that issue also it's the jurisdiction of where the incident in the car took place to be in Laurens County. I'll deny directed verdict.

R. p. 143.

Discussion

Appellant contends the trial judge erred in refusing to grant the Appellant's motion for directed verdict because the State failed to establish the county in which the offenses occurred. In support of this argument, Appellant argues, "At best there was substantial confusion about whether the alleged act of criminal sexual conduct occurred in Greenville or Laurens County." Br. of App. p. 9. This argument lacks merit, as the State presented adequate evidence that the offense was committed in Laurens County.

"A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment." State v. Williams, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996). "The standard for establishing venue is not a stringent one, for 'venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, although slight, is sufficient.'" State v. Crocker, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) (quoting Williams, 321 S.C. at 334, 468 S.E.2d at 630). Venue in a criminal case need not be affirmatively proved if there is sufficient evidence from which it can be inferred. State v. Brisbon, 323 S.C. 324, 327, 474 S.E.2d 433, 435 (1996). "Where uncertainty exists, the accused may be tried in any county in which evidence indicates the crime might have been committed." 21 Am. Jur. 2d Criminal Law § 459.

In Appellant's case, Victim testified Appellant abused her in the family's [REDACTED] home. Both Mother and Victim testified the home was located in Laurens County. As to the November 30, 2009, incident, Victim testified that she and Appellant were in Laurens County when Appellant drove Mother's car into the woods and inappropriately touched Victim. Victim stated she knew the wooded area was in Laurens County because she was familiar with the area. All of this evidence provides sufficient proof from which it can be inferred the offense occurred

in Laurens County. The trial judge, therefore, properly denied Appellant's directed verdict motion. Appellant's convictions and sentences should be affirmed.

III.

Appellant's argument concerning the Solicitor's closing argument is not preserved for appellate review. Even if Appellant's argument was preserved, Appellant was not prejudiced to the point where the Solicitor's comments rendered Appellant's trial fundamentally unfair.

Relevant Facts

During the State's closing argument, the Solicitor stated:

The police can make arrests, His Honor can convene a court, I can come to the courtroom, but until you, they jury's, make a decision, justice is on hold and that's fine. That's the way our law is. I appreciate the fact that Mr. Brown comes in here and puts a vigorous defense up for his client, because that's the way our justice system works. But the only one here that's part of this court system that doesn't have an oath binding him to seek justice is the defense attorney. The Judge has that job. I have an ethical obligation as a prosecutor to seek justice. Mr. Brown has an ethical obligation to seek beneficial for his client and I respect that. I don't have a problem with it. But don't think for a second his job is to simply shine a light on the truth for your benefit, because it's not. Otherwise, he wouldn't have asked questions about what does provide mean when his client says it didn't happen. He wouldn't wave every red flag over here to the left hoping you don't keep your sights on the one issue that matters.

R. p. 204. Defense Counsel did not offer any objection to the Solicitor's comments.

Discussion

Appellant asserts the Solicitor's comments during closing argument violated due process and denied Appellant a fair trial. As a threshold matter, this argument is not preserved for appellate review. However, even if Appellant's argument was preserved, the argument lacks merit, as any alleged error by the Solicitor did not so infect the trial with unfairness as to make the resulting conviction a denial of due process.

Appellant's argument is not preserved for appellate review, as Defense Counsel did not object to the Solicitor's closing statements at any time. If an error is not presented to and ruled

upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). State v. Varvil, 338 S.C. 335, 339, 526 S.E.2d 248, 251 (Ct. App. 2000) (finding the failure to object to comments made during argument precludes appellate review of the issue; solicitor's interjection of personal beliefs). State v. Wilkins, 310 S.C. 81, 89-90, 425 S.E.2d 68, 73 (Ct. App. 1992) (holding defendant lost right to challenge propriety of prosecutor's opening argument by failing to contemporaneously object). Since Defense Counsel did not object to the Solicitor's statements during closing argument, this error is not preserved for Appellate review.

Even if Appellant's argument were preserved for review, the Solicitor's comments did not reach the level of prejudice necessary to warrant a reversal. The complained-of comments by the Solicitor were mere rhetorical flourishes and did not make respondent's trial so fundamentally unfair as to deny him due process. See State v. Plath, 281 S.C. 1, 17, 313 S.E.2d 619, 628 (1984) ("[A]ppellants complain of rhetorical flourishes engaged in by the Solicitor in his summation An inelegant turn of phrase or momentary lapse of good taste will rarely constitute prejudicial error, nor does robust language necessarily inject an arbitrary factor into a trial such as this one. Finding no prejudice here, we dismiss these claims of error as frivolous."). In the context of the full trial amongst all the evidence presented, the Solicitor's comments were not significant enough to garner the requisite prejudice to warrant a reversal. Appellant's convictions and sentence should be affirmed.

CONCLUSION

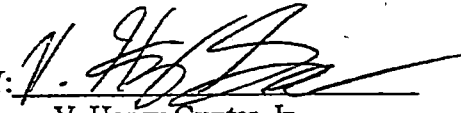
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

August 10, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No: 2015-002254

THE STATE, ...RESPONDENT

v.

BRAD BERNARD DAWKINS, ...APPELLANT.

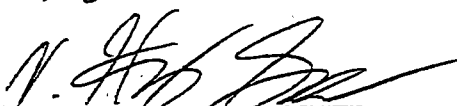
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

V. HENRY GUNTER, JR.
Assistant Attorney General

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

BY: 

V. HENRY GUNTER, JR.
S.C. Bar No. 102259

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ATTORNEYS FOR RESPONDENT

August 10, 2016

STATE OF SOUTH CAROLINA
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APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Court Judge

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THE STATE, ...RESPONDENT

v.

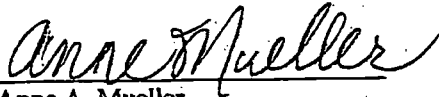
BRAD BERNARD DAWKINS, ...APPELLANT.

CERTIFICATE OF SERVICE

I, Anne Mueller, certify that I have served the Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Miller W. Shealy, Jr., Esquire, 81 Mary Street, Charleston, South Carolina 29403.

I further certify that all parties required by Rule to be served have been served.

This 10th day of August, 2016.



Anne A. Mueller
Administrative Assistant
Office of Attorney General
Post Office Box 11549
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(803) 734-3737

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2015-002254
General Sessions Case No. 2013-CR-30-0256 & 0257

STATE OF SOUTH CAROLINA

Respondent,

v.

BRAD BERNARD DAWKINS

Appellant.

FINAL REPLY BRIEF OF APPELLANT

Miller W. Shealy, Jr. (S.C. Bar No.: 5045)
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Attorney for Appellant

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ARGUMENT 1

The trial judge erred in refusing to charge the lesser offense of ABHAN

The Appellant reasserts and realleges herein all that he has argued in the original Brief of Appellant regarding this issue.

Appellant would first note that the Respondent does not argue that *State v. Primus*, 564 S.E.2d 103, 105 (S.C. 2002), *rev'd on other grounds by*, *State v. Gentry*, 610 S.E.2d 494 (S.C. 2005), should be overruled. Respondent's Brief pp. 7-11. In fact, the rule of *Primus* has been affirmed by recent cases of this Court. *State v. Geiger*, 635 S.E.2d 600, 606 (S.C. Ct. App. 2006) and *State v. Gilmore*, 719 S.E.2d 688, 691 (S.C. 2011).

The mere existence of evidence of ABHAN, however, is not sufficient to require the jury charge. Rather, there must be evidence the defendant committed ABHAN *instead of* CSC. *Dempsey*, 363 S.C. at 371, 610 S.E.2d at 815. Our courts have identified three types of cases in which the evidence can support an inference that the defendant is guilty of ABHAN instead of CSC: (1) there is evidence the defendant committed ABHAN by an unlawful sexual touching in the course of attempting CSC, and there is conflicting evidence as to whether the defendant accomplished sexual battery; *see, e.g., State v. Pressley*, 292 S.C. 9, 9-10, 354 S.E.2d 777, 777 (1987); *State v. Mathis*, 287 S.C. 589, 594, 340 S.E.2d 538, 541 (1986); (2) there is evidence the defendant committed a nonsexual ABHAN, such as in a fight, and in addition to evidence to support CSC, there is evidence the two never had sex; *see, e.g., State v. Lambright*, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983); and (3) there is evidence the defendant committed a nonsexual ABHAN contemporaneous with CSC, but there is evidence that instead of CSC the two had consensual sex; *see, e.g., State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542-43 (2004).

Id. at 691 (emphasis added).

In the present case, there is clearly evidence that justifies charging ABAHAN because the facts of this case fit within the second class of cases referenced by *Gilmore*. *Id.* It is significant that in the present case, unlike *Geiger*, *Gilmore*, and *State v. Fields*, 589 S.E.2d 792 (S.C. Ct. App. 2003), the Appellant testified. The Appellant, by his own testimony, offered concrete and direct evidence of his theory of the case. (R. p. 156, line 20 – p. 184, line 3) There is evidence that the Appellant committed a non-sexual ABHAN. The Appellant testified he spanked or struck the victim routinely as a form of punishment. (R. p. 159, line 17 – 23; p. 166, line 9 – p. 168, line 25; p. 176, lines 7 – 23; p. 184, line 8 – 17) In addition, the victim expressly testified that she was groped by the Appellant during the alleged incident. *Id.* There is evidence of a CSC or attempted CSC per the victim's direct testimony. (R. p. 60, line 6 – p. 65, line 25) However, as is clear from this testimony, the two never actually had sex. (R. p. 65, lines 5 – 7) It should also be noted that the facts of this case come extremely close to the first class of cases referenced by *Gilmore*, 719 S.E.2d at 691.

The Appellant was clearly entitled to an ABHAN charge under the facts of this case. It was patently unjust not to give the jury the opportunity to properly consider ABHAN. Again, the facts of this case closely fit the second class of cases referenced in *Gilmore* and nearly fit the first class of cases referenced therein.

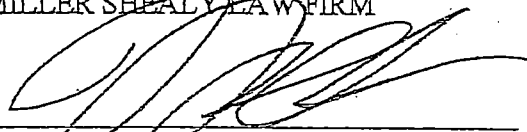
For these reasons, the Appellant submits that his conviction and sentence should be vacated and the case remanded for a new trial.

CONCLUSION

Based on the above, the convictions and sentences should be reversed and the case remanded for a new trial.

Respectfully submitted,

MILLER SHEALY LAW FIRM



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Attorney for Appellant

August 7, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

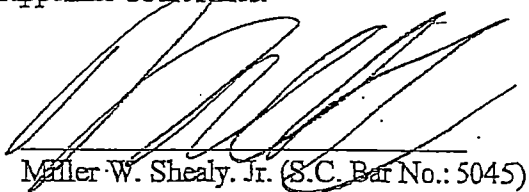
V.

BRAD BERNARD DAWKINS

APPELLANT

CERTIFICATION OF COMPLIANCE

I hereby certify that this Final Reply Brief of Appellant is submitted in accordance with Rule 211 of the South Carolina Appellate Court Rules.



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August 7, 2016

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Eugene C. Giffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRAD BERNARD DAWKINS

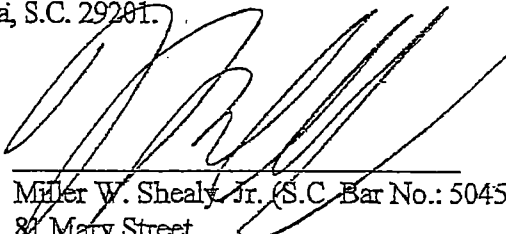
APPELLANT

PROOF OF SERVICE

Undersigned counsel has on this day filed the Final Reply Brief of Appellant in accordance with Rule 211 of the South Carolina Appellate Court Rules.

Fifteen copies (one unbound) have been mailed via U.S. mail, postage prepaid, to the Clerk of Court for the South Carolina Court of Appeals, 1220 Senate Street, Columbia, S.C. 29201.

Additionally, one copy of this brief has been mailed via U.S. mail, postage prepaid, to V. Henry Gunter, Jr., Assistant Attorney General, Office of the Attorney General, 1000 Assembly Street, Suite 501, Columbia, S.C. 29201.



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August 8, 2016

Attorney for Appellant



ALAN WILSON
ATTORNEY GENERAL

September 8, 2017

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: State v. Brad Bernard Dawkins – Appellate Case No. 2015-002254

Dear Ms. Kitchings:

The above-referenced criminal appeal is set for oral argument on September 13, 2017, at 12:00 p.m. in Courtroom II during the upcoming term of Court. In preparing for oral argument, I noticed the arguments contained in Issue I of the Final Brief of Respondent concerning the applicability of the Omnibus Crime Reduction and Sentencing Reform Act are simply incorrect due to an error I made concerning the timeline of the events in this case. I wanted to inform the Court and opposing counsel immediately in order to minimize the effect of my error. The State instead intends to rely on the alternative grounds beginning on page eleven of the Final Brief of Respondent, as the State feels these arguments remain dispositive of the issue. I apologize for any inconvenience or confusion this may have caused.

Sincerely,

V. Henry Gunter, Jr.
Assistant Attorney General
Bar No. 102259

VHG/am

cc: Miller Shealy, Esquire
Victim Advocacy Division

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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November 29, 2017

Mr. Miller W. Shealy, Jr., Esquire
81 Mary Street
Charleston SC 29403

Mr. Vann Henry Gunter, Jr., Esquire
PO Box 11549
Columbia SC 29211

Re: The State v. Brad Bernard Dawkins
Appellate Case No. 2015-002254

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jenny A. Kitchings (JA)
CLERK

cc: David Matthew Stumbo, Esquire
Alan McCrory Wilson, Esquire
The Honorable Eugene C. Griffith, Jr.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Brad Bernard Dawkins, Appellant.

Appellate Case No. 2015-002254

Appeal From Laurens County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-442
Heard September 20, 2017 – Filed November 29, 2017

AFFIRMED

Miller W. Shealy, Jr., of Miller Shealy Law Firm, of
Charleston, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Vann Henry Gunter, Jr., both of
Columbia, and Solicitor David Matthew Stumbo, of
Greenwood, all for Respondent.

PER CURIAM: Appellant Brad Bernard Dawkins appeals his convictions for
lewd act upon a minor (lewd act) and second-degree criminal sexual conduct with
a minor (CSC with a minor), arguing the trial court erred by (1) refusing to charge

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the jury on the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), (2) denying his motion for a directed verdict, and (3) allowing the State to make improper comments during its closing argument. We affirm.

1. We find the trial court did not abuse its discretion by refusing to charge the jury on the lesser included charge of ABHAN. First, we agree with Dawkins that ABHAN is a lesser included offense of CSC with a minor because our courts have traditionally made such a finding. *See State v. Geiger*, 370 S.C. 600, 606, 635 S.E.2d 669, 672 (Ct. App. 2006) (explaining a crime may be a lesser included offense if it "has traditionally been considered a lesser included offense of the greater"); *State v. Gilmore*, 396 S.C. 72, 76, 719 S.E.2d 688, 690 (Ct. App. 2011) ("ABHAN is a lesser[]included offense of first[-]degree CSC."); *Moultrie v. State*, 354 S.C. 646, 648, 583 S.E.2d 436, 437 (2003) (allowing ABHAN as a lesser included offense of CSC with a minor); *State v. Forbes*, 296 S.C. 344, 345, 372 S.E.2d 591, 592 (1988) ("ABHAN may be a lesser included offense of first[-]degree CSC with a minor when there is evidence the defendant committed only the lesser rather than the greater offense.").

Next, although ABHAN may be a lesser included offense of CSC with a minor, we find the trial court did not abuse its discretion by refusing to charge the jury on ABHAN. *See State v. Stanko*, 402 S.C. 252, 264, 741 S.E.2d 708, 714 (2013) ("[An appellate court] will not reverse a trial court's decision regarding a jury instruction absent an abuse of discretion."); *State v. Lemire*, 406 S.C. 558, 565, 753 S.E.2d 247, 251 (Ct. App. 2013) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." (quoting *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000))). After thoroughly considering the evidence presented during Dawkins's trial, we find the evidence did not support a finding that he committed ABHAN rather than CSC with a minor. *See State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004) ("If there is any evidence to support a jury charge, the trial [court] should grant the request."); *State v. Crosby*, 355 S.C. 47, 51, 584 S.E.2d 110, 112 (2003) ("A trial court should refuse to charge a lesser[]included offense only whe[n] there is no evidence the defendant committed the lesser *rather than* the greater offense." (emphasis added)).

To the extent Dawkins claims he was entitled to a charge on ABHAN because the jury could have believed and disbelieved parts of the victim's testimony, we disagree. The victim's testimony regarding events prior to November 30, 2009, if believed by the jury, amounted to sexual battery and CSC with a minor. In his

defense, Dawkins testified the victim's allegations were untrue. Based on this evidence, with regard to the victim's allegations of their encounters prior to November 30, 2009, Dawkins either committed sexual battery and CSC with a minor or no battery at all. Thus, he was not entitled to a jury charge on the lesser included offense of ABHAN. *See Moultrie*, 354 S.C. at 648, 583 S.E.2d at 437 (finding the defendant was not entitled to a jury charge on the lesser included offense of ABHAN because the evidence supported a finding that either the defendant was guilty of sexual battery and CSC or no battery at all); *Forbes*, 296 S.C. at 345, 372 S.E.2d at 592 (concluding the defendant was not entitled to a jury charge on ABHAN because the evidence showed either he committed sexual battery and was guilty of CSC or he committed no battery at all).

Additionally, to the extent Dawkins argues the victim's testimony regarding their specific interaction on November 30, 2009, could have amounted to ABHAN, rather than CSC with a minor, because the victim admitted there was no penetration during that encounter, we find he was not entitled to a jury charge on ABHAN as a lesser included offense. *See Gilmore*, 396 S.C. at 78-79, 719 S.E.2d at 691 (explaining a defendant is not entitled to a jury charge on ABHAN as a lesser included offense when the evidence supports a conclusion the ABHAN occurred in addition to the CSC). In *Dempsey v. State*, the defendant claimed he was entitled to a jury charge on ABHAN because there was evidence he physically abused the victim in a nonsexual way. 363 S.C. 365, 371, 610 S.E.2d 812, 815 (2005). However, our supreme court disagreed because the evidence of nonsexual, physical abuse was in addition to the evidence of several independent, noncontemporaneous instances of alleged CSC. *Id.* Thus, the court concluded that although there was "evidence of conduct that could be construed as ABHAN, none of these incidents was alleged to have occurred instead of the" instances of CSC. *Id.* In this case, although the evidence surrounding the encounter on November 30, 2009, may have supported a finding of ABHAN, it merely supported a finding that ABHAN occurred in addition to the prior instances of alleged CSC with a minor. Under such circumstances, Dawkins was not entitled to a jury charge on ABHAN as a lesser included offense of CSC with a minor because there was no evidence supporting an inference that ABHAN occurred rather than CSC with a minor. Accordingly, we affirm on this issue.

2. We find the trial court did not err by denying Dawkins's motion for a directed verdict because the State presented sufficient evidence to show the alleged incidents occurred in Laurens County. *See State v. Bennett*, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016) ("On appeal from the denial of a directed verdict, this [c]ourt reviews the evidence and all reasonable inferences in the light most

favorable to the State." (quoting *State v. Butler*, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)); *State v. Cain*, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017) ("We review the denial of a directed verdict motion in a criminal case under the any evidence standard of review."); *State v. Williams*, 321 S.C. 327, 333, 468 S.E.2d 626, 630 (1996) ("A criminal defendant is entitled to a directed verdict when the State fails to present evidence that the offense was committed in the county alleged in the indictment."); *State v. Taylor*, 399 S.C. 51, 62, 731 S.E.2d 596, 602 (Ct. App. 2012) ("However, this is a low evidentiary threshold."); *State v. Crocker*, 366 S.C. 394, 404, 621 S.E.2d 890, 895 (Ct. App. 2005) ("The standard for establishing venue is not a stringent one, for venue, like jurisdiction, in a criminal case need not be affirmatively proved, and circumstantial evidence of venue, though slight, is sufficient." (quoting *Williams*, 321 S.C. at 334, 468 S.E.2d at 630)). Based on the victim's testimony that some of the incidents occurred in Laurens County, we find the State met its burden, and the trial court did not err by denying Dawkins's motion for directed verdict.

3. With regard to Dawkins's argument that the trial court erred by allowing the State to make improper comments during its closing argument, we affirm because the argument is unpreserved. Dawkins failed to make any objection when the State made the comments. See *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *State v. Varvil*, 338 S.C. 335, 339, 526 S.E.2d 248, 251 (Ct. App. 2000) ("Failure to object to comments made during argument precludes appellate review of the issue.").

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Eugene C. Griffith, Jr., Circuit Judge

Appellate Case No. 2015-002254
General Sessions Case No. 2013-CR-30-0256 & 0257

STATE OF SOUTH CAROLINA

Respondent,

v.

BRAD BERNARD DAWKINS

Appellant.

PETITION FOR REHEARING

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MILLER SHEALY LAW FIRM
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Attorney for Appellant

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1. The South Carolina Court of Appeals issued its opinion in this matter on November 29, 2017, affirming the conviction and sentence of Appellant. Pursuant to Rules 242, 221, 240, and 267 of the Rules of Appellate Practice, the Appellant respectfully requests this Court to reconsider its decision affirming the Appellant's conviction.

2. The Appellant seeks rehearing only as to issue/argument #1 as raised before this Court. The issue in question as presented to this Court was as follows:

"The trial judge erred in refusing to charge the lesser offense of ABHAN."

The Appellant does not seek rehearing on the other two issues raised during this appeal.

3. The Appellant submits that this Court did not properly consider relevant prior precedent when resolving this issue. First, *State v. Gilmore*, 719 S.E.2d 688, 691 (S.C. Ct. App. 2011) is of particular relevance in this case:

Our courts have identified three types of cases in which the evidence can support an inference that the defendant is guilty of ABHAN instead of CSC: (1) there is evidence the defendant committed ABHAN by an unlawful sexual touching in the course of attempting CSC, and there is conflicting evidence as to whether the defendant accomplished sexual battery; *see, e.g., State v. Pressley*, 292 S.C. 9, 9-10, 354 S.E.2d 777, 777 (1987); *State v. Mathis*, 287 S.C. 589, 594, 340 S.E.2d 538, 541 (1986); (2) there is evidence the defendant committed a nonsexual ABHAN, such as in a fight, and in addition to evidence to support CSC, there is evidence the two never had sex; *see, e.g., State v. Lambright*, 279 S.C. 535, 537, 309 S.E.2d 7, 8 (1983); and (3) there is evidence the defendant committed a nonsexual ABHAN contemporaneous with CSC, but there is evidence that instead of CSC the two had consensual sex; *see, e.g., State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542-43 (2004).

Appellant submits that (1) and (2), referenced above, fit the facts of this case. Second, in light of the trial Judge's charge on witness credibility it is clear that failure to instruct on ABHAN was prejudicial error. The trial Judge properly charged the jury that they were the judges of witness credibility and that they could believe all or some of a witness' testimony.

Now, the same constitution which makes me the instructor of the law and the ruler or the, consideration of the legal issues, makes you the judges of the facts. You must determine the facts in this case based upon the evidence which has been presented, testimony which has been presented. And basically surrounding that is you must judge the credibility or the believability of the witnesses who have testified. And I tell you you can use anything in your life experiences in judging a person's credibility in this case as you have sat and listened and watched and heard the testimony presented by the parties in this case. Now, I suggest to you there is some ways maybe you have thought about them in the past but to judge a person's credibility or believability you can take into account many things. Common sense is one, what was the manner and appearance of the witness who testified, was the witness straightforward or was the witness hesitant in answering. How did the witness come to know the facts. What was his or her ability to know or remember these facts. Is there some reason a witness would want to give testimony which would help or hurt one side or the other. In other words, was the witness biased or prejudiced in any manner. Was the testimony of a witness strengthened or weakened by other testimony or other evidence. You may believe as much of the testimony as one witness' testimony as you deem proper, you can believe the testimony of one witness against that of the others, you can believe the others against a single witness, you can believe part of a witness' testimony and disregard or disbelieve the rest. The fact that testimony is not controverted does not mean you must accept it as true, you still must gauge the credibility of the witness who testified and through that testimony make findings of fact. Now, weighing evidence, and to make a determination as to what happened, that is entirely a mental process. You do not count the number of witnesses one side called versus what the other side called to make a determination of that. You must weigh the evidence presented using your good judgment and your common sense.

(R. p. 226, line 18 – p. 228. line 6). This instruction combined with the fact that the Appellant actually testified gave the jury the ability – in fact, they were expressly told they had the ability and duty – to determine what actually occurred between the alleged victim and the Appellant. The Appellant, by his own testimony, offered concrete and direct evidence of his theory of the case. (R. p. 156, line 20 – p. 184, line 3) There is evidence that the Appellant committed a non-sexual ABHAN. The Appellant testified he spanked or struck the victim routinely as a form of punishment. (R. p. 159, lines 17 – 23; p. 166, line 9 – p. 168, line 25; p. 176, lines 7 – 23; p. 184,

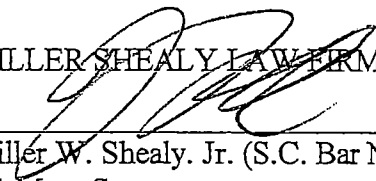
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lines 8 – 17) In addition, the victim expressly testified that she was groped by the Appellant during the alleged incident. *Id.* There is evidence of a CSC or attempted CSC per the victim's direct testimony. (R. p. 60, line 6 – p. 65, line 25) However, as is clear from the testimony, the two never actually had sex. (R. p. 65, lines 5-7) Thus, facts of this case come extremely close to the first class of cases referenced in *Gilmore, supra*. The facts also could arguably fit under the second class of cases mentioned in *Gilmore*. Because the lesser offense of ABHAN was never charged, the jury never had the chance to properly assess the credibility of the testimony in light of ABHAN. The Appellant was entitled to have the jury make this assessment, respectfully, not this Court. Again, the fact that the Appellant actually testified distinguishes this case from a number others where the appellate courts of this state have found failure to charge a lesser offense of ABHAN to be either harmless or not an abuse of discretion. See *Gilmore, supra*; *State v. Fields*, 589 S.E.2d 792 (S.C. Ct. App. 2003); and *State v. Geiger*, 635 S.E.2d 600 (S.C. Ct. App. 2006).

4. The Appellant submits he is entitled to a rehearing, and requests that his conviction and sentence be overturned.

WHEREFORE, Appellant submits his conviction and sentence be reversed, and his case remanded for a new trial.

Respectfully submitted,


MILLER SHEALY LAW FIRM

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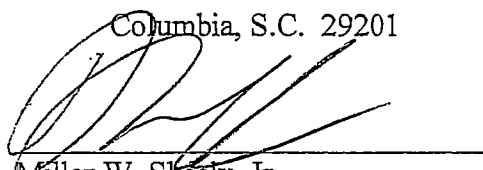
Attorney for Appellant

December 13, 2017

I, Miller W. Shealy, Jr., hereby certify and affirm that on December 13, 2017, this Petition for Rehearing was sent via overnight courier to the South Carolina Court of Appeals and opposing counsel, V. Henry Gunter at the addresses referenced below:

V. Henry Gunter
Assistant Attorney General
Rembert C. Dennis Bldg., 5th Floor
1000 Assembly Street
Columbia, S.C. 29201

Clerk of Court
S.C. Court of Appeals
John C. Calhoun Bldg.
1220 Senate Street
Columbia, S.C. 29201


Miller W. Shealy, Jr.
Attorney for Appellant

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The South Carolina Court of Appeals

The State, Respondent,

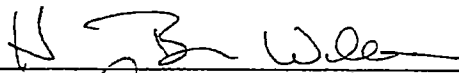
v.

Brad Bernard Dawkins, Appellant.

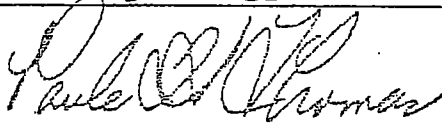
Appellate Case No. 2015-002254

ORDER

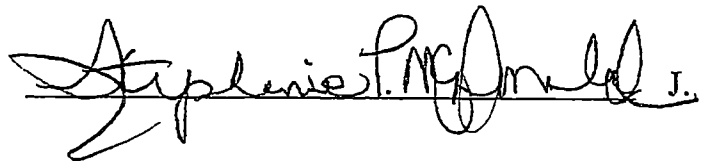
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Miller W. Shealy, Jr., Esquire
David Matthew Stumbo, Esquire
Alan McCrory Wilson, Esquire
Vann Henry Gunter, Jr., Esquire
The Honorable Eugene C. Griffith, Jr.

FILED

Feb. 8, 2018 *27*

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CERTIFICATION OF APPENDIX

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LAURENS COUNTY
Eugene C. Griffith, Jr., Circuit Judge

Unpublished Opinion No. 2017-UP-442 (S.C. Ct. App. filed Nov. 29, 2017)

STATE OF SOUTH CAROLINA

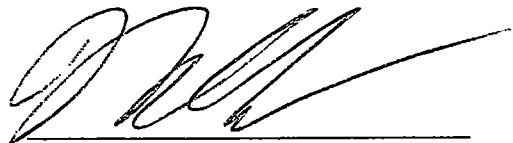
Respondent,

v.

BRAD BERNARD DAWKINS

Petitioner.

I hereby certify, pursuant to Rule 267(b), SCACR, that I have read this document and to the best of my knowledge, information, and belief this document conforms to the SCACR and there are good grounds to support it. Furthermore, it is not interposed for delay.



Miller W. Shealy, Jr.
Attorney for Petitioner