

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable J. Mark Hayes, Circuit Court Judge

DWAYNE LEE RUDD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000091

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CIRCUIT COURT

2013-GS-02-01638-39, 42-43, 45, 79-81

STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

DWAYNE LEE RUDD,
Defendant.

HEARD ON MONDAY, DECEMBER 9, 2013
TUESDAY, DECEMBER 10, 2013
WEDNESDAY, DECEMBER 11, 2013
& THURSDAY, DECEMBER 12, 2013

BEFORE:

THE HONORABLE JAMES R. BARBER, III

AND A JURY

APPEARANCES:

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1 ON MONDAY, DECEMBER 9, 2013 AT 2:25 P.M.:

2 THE COURT: Madam solicitor? All right.

3 This is the pretrial motions in the matter of the
4 State of South Carolina versus Dwayne Lee Rudd. Are you
5 Mr. Rudd?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. I don't have the indictments
8 in front of me, but Mr. Rudd's been indicted, I
9 understand, with five CSCs with a minor second degree and
10 five CSCs minor in the third degree of which the State is
11 going to withdraw several of these indictments.

12 Is that correct, Madam Solicitor?

13 MS. HAMMACK: That's correct, Your Honor. We're going
14 to withdraw Indictments 2013-GS-02-1640.

15 THE COURT: Wait a minute. All right.

16 MS. HAMMACK: And 2013-GS-02-1644.

17 THE COURT: All right.

18 So we're now one, two -- so we have three CSCs with a
19 minor third, and four CSCs with a minor second; right?

20 MS. HAMMACK: No, Your Honor. It should be three CSC
21 with a minor third, and five CSC with a minor second.

22 THE COURT: Okay.

23 You're correct. All right. Thank you.

24 All right. Do we want to -- I know, there was an
25 issue about the dates on the indictment, whether they were

1 consistent ones. Have y'all been able to resolve that?

2 MS. ZMROCZEK: Yes, Your Honor. It's been explained
3 that the grand jury meets -- the term is listed on one
4 side of the date and the actual date they meet is listed
5 on the other, and so that clarifies our confusion.

6 THE COURT: All right. Do we need to address anything
7 else with respect to the indictments?

8 MS. ZMROCZEK: Your Honor, yes. We did file a motion
9 to quash and/or sever the indictments.

10 THE COURT: All right. Do you want to address that at
11 this time?

12 MS. ZMROCZEK: Certainly, Your Honor.

13 In there we address the date defect which obviously
14 has been resolved. But the other issue, Your Honor,
15 involves to the sufficiency of the information. The
16 warrants claim that they received -- that they based these
17 indictments and these warrants on certain allegations that
18 were made in the transcript -- or, in the forensic
19 interview.

20 And, Your Honor, we -- and I don't know if we at some
21 point need to agree on the transcript, but there are two
22 one-hour forensic interviews with each child. Throughout
23 the entire -- throughout both of those, there are internal
24 inconsistencies within those CDs, and then -- within those
25 interviews and then amongst the two.

1 Your Honor, we're simply asking for a clarification on
2 how these dates and these date ranges, not a specific
3 date, we understand that they're not held to a specific
4 date, but that these date ranges and what incidents or
5 what acts they're referring to, that we, we have no
6 clarification on that.

7 THE COURT: I'm not sure exactly what you're saying.
8 Do you understand what she's saying?

9 MS. HAMMACK: Maybe. With regards to the date on the
10 indictments, Your Honor, they're indicted by birthdays for
11 each girl. So, to give a little bit of clarification, if
12 it says from December 12th, 2012, until May 2013, that's
13 after one of the victims turns 14 years old.

14 If it's December 2011 to December 2012, that's when
15 she's 13 years old. So the dates on the indictments are
16 by birth date.

17 Your Honor, there's testimony that we would proffer
18 that the girls are going to testify as to the behavior
19 that occurred during each of those time periods based on
20 how old they were. In the forensic interview they talk
21 about it happening in fifth grade or when I was this old
22 before my surgery.

23 Whether there's inconsistencies in their statements
24 goes to their credibility, and that's a jury issue as far
25 as how much evidence there is.

1 THE COURT: Well, the indictment -- the statements
2 don't have anything to do with the indictments. I mean,
3 the indictments are a notice document to -- and they got
4 to make certain allegations to put the Defendant on notice
5 of the, whatever the offenses are and sufficient factual
6 basis that that, the element is met.

7 MS. HAMMACK: That's correct, Your Honor. And in the,
8 each of the indictments we followed according to
9 established case law the statutory language for each of
10 these charges to put the Defendant on notice.

11 THE COURT: Well, I'm not sure exactly what y'all are
12 saying but apparently depending on the child's birthday
13 was depending on what the factual allegation is to meet
14 whatever that particular offense was, either a third or a
15 second.

16 MS. ZMROCZEK: Yes, sir, Your Honor. I do understand
17 that they listed the statutory requirements -- the
18 statutory elements of the offense.

19 Your Honor, they have five counts of CSC second. And
20 we understand that the elements of each, on each
21 indictment are listed for CSC second. But, Your Honor,
22 what the questions is is from where that information was
23 provided and if they proffer that it was provided from the
24 testimony that they have five different allegations of CSC
25 second then, Your Honor, we will probably leave that, I

1 guess, in front of the jury.

2 THE COURT: Well, I assume that if they don't offer
3 any evidence at any point in time in the course of the
4 trial, even though the allegations are there then you
5 would be justified to have a directed verdict.

6 MS. ZMROCZEK: And I guess, Your Honor, what I hear
7 them saying is that based on the statements that were
8 given in the forensic interview, and I guess which will
9 come from the stand, is where they glean the indictments.
10 That's the problem, Your Honor, on the indictment it just
11 doesn't say where --

12 THE COURT: I don't think they have to say that on the
13 indictments. They just have to allege whatever the
14 offense is and how it occurred. I mean, I don't think
15 they have to put all their evidence up in the indictment.

16 All right. Well, I'm going to find that these
17 indictments are sufficient at this point in time.

18 All right. Let's talk about what you want to do next,
19 Ms. ZMROCZEK. Do you want to do medical records?

20 MS. ZMROCZEK: I believe Your Honor has advised us
21 that, you know, we can go get a medical release and go get
22 the medical records which we'll do today, so. Did I
23 misunderstand?

24 THE COURT: What hospital are y'all worried about that
25 you're trying to --

1 MS. ZMROCZEK: It's all the same hospital. It's the
2 Georgia Medical College.

3 THE COURT: Over in Augusta?

4 MS. ZMROCZEK: Yes, sir.

5 THE COURT: Well, I don't know what -- these children
6 are minors, so they're in the custody of somebody. I
7 don't know how that works in this case, but I would
8 certainly think that your client's signature would
9 authorize him to get medical records as the father of the
10 children.

11 MS. ZMROCZEK: Thank you, Your Honor.

12 THE COURT: The State has indicated in conference, in
13 my office that they didn't have these records. Isn't that
14 correct, Madam Solicitor?

15 MS. HAMMACK: That's correct, Your Honor.

16 THE COURT: All right. Now, what do you want to do
17 next, Ms. Zmroczek?

18 MS. ZMROCZEK: I think we have three or four motions
19 left, Your Honor.

20 THE COURT: You want to suppress photographs,
21 sequester witnesses? Is sequestering witnesses an issue?

22 MS. HAMMACK: No, Judge.

23 THE COURT: I mean, obviously the victims can be
24 here. The Defendant can be here. If there's an
25 investigating officer --

1 MR. BANK: The one problem that we have, we understand
2 that the -- with the sequestration, the victims are
3 allowed to be in the courtroom and the investigator is.
4 However, we believe you have the discretion under Rule 615
5 to actually not allow the two victims to be in the
6 courtroom for each other's testimony or for the mother's
7 testimony.

8 One of the points of our defense is that the mother
9 has in some way tainted these girls' testimony and has
10 been shaping it to be what she wants for allegations to be
11 made. The sisters are also very dependent on each other's
12 testimony. You can hear them in the forensic interviewing
13 go, well, Mom wanted me to tell you this, or, I have a
14 hard time remembering without her being here.

15 Our issue would be not to keep them out of the
16 courtroom, the two child victims for the entire trial, but
17 to keep them outside of the courtroom for each other's
18 testimony and for the mother's testimony, and have them
19 absent just for that part of the trial.

20 MS. HAMMACK: Judge, we don't want these girls to have
21 to be in here anymore than they have to. That's not going
22 to be an issue.

23 THE COURT: So the children are not going to be in
24 here while the other one's testifying?

25 MS. HAMMACK: No, Judge.

1 MR. BANK: Or while the mother is testifying.

2 THE COURT: They've consented to that. Anything
3 else? So that issue is revolved.

4 All right. Now how about the Defendant's motion and
5 memorandum to suppress statement? I assume that's your
6 client's statement?

7 MS. ZMROCZEK: Yes, Your Honor.

8 THE COURT: Do you want to do that?

9 MS. ZMROCZEK: Sure.

10 THE COURT: All right.

11 MS. ZMROCZEK: Your Honor, we filed a motion based on
12 statements that were made when police and DSS workers
13 arrived at the location, at their house. No Miranda was
14 given, Your Honor. The statements are alleged to be taken
15 by a DSS worker.

16 And I think the Court can hear testimony as to why we
17 think that the DSS worker was actually an agent of law
18 enforcement. The way that they work these sex crimes is
19 with the multi-disciplinary team. And, in fact, the
20 investigating officer, before he even met with the
21 complaining witness called DSS and they, the DSS and the
22 investigating officer met together with the complaining
23 witness.

24 And then three more officers came with the DSS worker
25 and the investigating officer and all five of them went to

1 the house, Your Honor, at which time the DSS worker began
2 questioning -- or after the officers patted him down, put
3 him against the car and made him think he was not free to
4 leave, she began questioning him in the presence of these
5 officers.

6 THE COURT: Y'all want to say anything?

7 MS. HAMMACK: Judge, I can hand up case law, if you
8 would like, that says that a DSS worker is not a law
9 enforcement officer. We also have the DSS -- we have the
10 DSS worker here. We can either proffer her testimony or
11 we can call her, Judge, however you'd like.

12 THE COURT: That's my understanding. Do you have a
13 case that says a DSS worker is an agent of the police?

14 MS. ZMROCZEK: No, Your Honor, but what, what the
15 motion is based on is under -- it's under the color of law
16 where a reasonable person would, what a reasonable person
17 would assume. She arrives with the officers and she's
18 questioning him and that information is -- she didn't say
19 I'm not here to --

20 THE COURT: So if a physician from the hospital rode
21 with the officers or came in -- I don't know whether
22 they're in the same car, came in the interview room or
23 wherever with the officers, that makes, puts them in the
24 same boat?

25 MS. ZMROCZEK: If he believed he was being questioned

1 for that purpose, for a criminal purpose, Your Honor.

2 THE COURT: So he would always be the one that would
3 control as to whether --

4 MS. ZMROCZEK: No, not at all. If he was giving these
5 statements to a DSS worker, outside, at the DSS office or
6 if she wasn't there with the police officers, we would
7 agree that there would be no issue. But it was, it was
8 not done that way.

9 THE COURT: Y'all disagree that any statement was made
10 in response to questions from a DSS worker?

11 MS. ZMROCZEK: We do not disagree. That's exactly
12 what happened.

13 THE COURT: Do y'all agree with that?

14 MS. HAMMACK: Yes, Your Honor. He made statements to
15 two different DSS workers on separate occasions. One was
16 at his residence to the initial DSS worker that came out
17 that day. And one was actually to his DSS caseworker that
18 came and visited him in the jail after his arrest. Both
19 statements are substantively the same.

20 MS. ZMROCZEK: The second statement, Your Honor, I
21 believe he had counsel. And so I don't know what the
22 waiver issues are here. We have not been provided --

23 THE COURT: I don't know if she's saying -- well, I
24 don't think a DSS worker is an agent of the state, just
25 because they're a DSS worker and they show up when the

1 police show up. Now if the police are there and he made a
2 statement that you're claiming that the statement was made
3 to the police, then we'll go forward.

4 MS. ZMROCZEK: Beg the Court's indulgence.

5 (Conferring with Mr. Bank.)

6 MS. ZMROCZEK: I mean, Your Honor, here's -- the
7 problem -- the issue that we have is that he was given --
8 he gave a statement to the DSS worker believing that she
9 was there questioning him with law enforcement. The three
10 law enforcement officers were standing right around him
11 because he was at the car. He wasn't free to move. We
12 just don't believe that those statements were given freely
13 and voluntarily.

14 The statement -- and she said that they're
15 substantively the same. The only statement I've seen from
16 the DSS or the social worker in the jail is a one-line, he
17 said he checked his daughters, whereas the statement from
18 the DSS worker varies in her notes. And then in the
19 handwritten statement that she wrote --

20 THE COURT: Do y'all have anybody here, the officer
21 here who was there at the time?

22 MS. HAMMACK: We have the DSS worker who actually
23 spoke to the Defendant, Your Honor.

24 THE COURT: Are y'all making the claim that these
25 statements were made to the police or they were made to --

1 where does it stop? DSS was questioning this person and
2 these responses were made to the DSS questions, or was the
3 police participating in this process as well?

4 MS. ZMROCZEK: We believe that they were
5 participating. Not in asking the questions, but it's part
6 of the multi-disciplinary team, Your Honor.. They're
7 all -- they go out together to do these investigation.
8 It's a way to get the defendants to talk without having to
9 advise them of their rights.

10 THE COURT: Well, you don't have to advise them of
11 their rights under any circumstances unless they're in
12 custody. And, you know, you can go out and ask somebody a
13 question because you're doing an investigation. You
14 certainly are not required to advise them of their rights.

15 MS. ZMROCZEK: Certainly, Your Honor, but -- and I
16 guess that's where I'm not being very clear. When they
17 came to the house, they patted him down. They put him
18 against the car. He was in custody. He -- and he'll
19 testify, Your Honor, that he wasn't free to leave.

20 THE COURT: Well, y'all may need to get a police
21 officer here.

22 MS. HAMMACK: ' He's also here, Judge. We can call both
23 of them.

24 THE COURT: All right. Well, let's go ahead.

25 MS. HAMMACK: Would you like to hear from the DSS

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 worker or the police officer first?

2 THE COURT: I want to hear from who you think I need
3 to hear from.

4 MS. HAMMACK: The State calls Esther Timmerman.

5 ESTHER TIMMERMAN, having been duly sworn, was examined
6 and testified as follows:

7 THE CLERK: Have a seat in the witness box over here.
8 State your full name for the Court and spell your last,
9 please.

10 THE WITNESS: My name is Esther Timmerman,
11 T-I-M-M-E-R-M-A-N.

12 DIRECT EXAMINATION - IN CAMERA

13 BY MS. HAMMACK:

14 Q. And, Ms. Timmerman, where do you work?

15 A. I work for the Department of Social Services.

16 Q. How long have you worked there?

17 A. Twenty-one years.

18 Q. And what do you do at DSS?

19 A. I'm a supervisor.

20 Q. Were you working on May 23rd of this year?

21 A. Yes, I was.

22 Q. Did you have a chance to become involved with the Rudd
23 family on that day?

24 A. I did.

25 Q. Did you have a chance to go out to their residence at

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 [REDACTED]?

2 A. I did.

3 Q. How did you get to [REDACTED]?

4 A. I drove a state car.

5 Q. Anybody ride with you?

6 A. Huh-uh. I was by myself.

7 Q. When you first got to [REDACTED], what did you
8 see?

9 A. Mr. Rudd was outside next to a car.

10 Q. Okay.

11 A. And the children were inside the house.

12 Q. Okay. When you first got out of your car, what did
13 you do?

14 A. I approached Mr. Rudd who was standing by the car.

15 Q. Okay. Now tell me, when you get a report from DSS,
16 what -- I guess, what is the policy that DSS follows when
17 a report comes in?

18 A. Anytime that we receive a report we have to do an
19 investigation. We have a certain amount of time that we
20 have to respond. And we have to talk with everybody in
21 the household.

22 Q. Okay. When you say everybody in the household, who
23 are you talking about?

24 A. The perpetrator, the non-perpetrator, the children.
25 Anybody that lives in the household we have to interview.

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 Q. And on a report involving sexual abuse, what kind of
2 time line are you looking at in your investigation?

3 A. That's a zero to two time line because we have to
4 respond immediately, especially if the perpetrator is in
5 the home because we have to ensure the safety of the
6 child.

7 Q. And when you say zero to two, zero to two what?

8 A. Hours. I'm sorry.

9 Q. So when you went to [REDACTED] on May 23rd, why
10 did you go there?

11 A. Because we received a report of sexual abuse and we
12 have to respond to that, and to make sure that those girls
13 are safe, or the victim-children are safe.

14 Q. Okay. Tell me, is DSS a civil action or a criminal
15 action?

16 A. Civil.

17 Q. So you said you got to [REDACTED] and you saw the
18 Defendant standing by a car outside. What did you do?

19 A. I approached Mr. Rudd and I introduced myself and I
20 told him who I was and where I worked and that we had
21 received the allegations and I read the allegations to
22 him.

23 Q. Okay. Were you wearing that ID badge when you talked
24 to him?

25 A. Yes, I always have to wear my badge.

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 Q. Okay. Does it say who you work for on it?

2 A. Yes, it does.

3 Q. Tell me this, when you got to the house did you talk
4 to anybody else before you talked to the Defendant?

5 A. Yes. I went to Bi-Lo first and I met with Officer
6 Evensen and Ms. Rudd.

7 Q. Okay. When you go out on these reports, is it common
8 for law enforcement also to go out on these reports?

9 A. Anytime that we receive any allegations of sexual
10 abuse or severe physical abuse, that could be possibly a
11 criminal activity. So we always have to call law
12 enforcement to let them know that this is what we're
13 looking at.

14 And also we have to have law enforcement involved with
15 us because when we go we have to secure the safety of a
16 child. And so a lot of times since we don't have the
17 authority to remove a child from a home, we always ask for
18 law enforcement to assist us to see if the parents are
19 going to be cooperative, or at least we can put some
20 protective measures in place, you know. If we have to
21 remove the child from the home, we need law enforcement
22 there to assist us with that.

23 Q. Okay. Do you work for law enforcement?

24 A. No, I do not.

25 Q. Do you get paid by law enforcement?

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 A. No, I do not.

2 Q. Law enforcement tell you what to ask people?

3 A. No, they do not.

4 Q. Do they tell you what to say to people?

5 A. No, they do not.

6 Q. When you talked to Mr. Rudd in this case, you said you
7 told him who you were and who you worked for. Did you
8 have a police badge on you?

9 A. No, I did not.

10 Q. Did you have a gun on your hip?

11 A. No, I did not.

12 Q. Did you have handcuffs?

13 A. No, I did not.

14 Q. Do you ever carry any of those things in your duties
15 as a DSS worker?

16 A. No, I do not.

17 Q. All right. And when you walked up to the Defendant,
18 was he handcuffed?

19 A. No, he was not.

20 Q. Was he sitting inside of a police car?

21 A. Nope, he was not.

22 Q. You said you told him why you were there. Did he seem
23 to understand why you were there?

24 A. Yes, he did.

25 Q. Did he talk to you at that time?

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

- 1 A. Yes, he did.
- 2 Q. Did he have to talk to you?
- 3 A. No, he did not.
- 4 Q. Did you tell him he had to talk to you?
- 5 A. No, I did not.
- 6 Q. If he had walked away, would you have stopped him?
- 7 A. No, I would not have.
- 8 Q. If he had told you he wasn't going to talk to you,
- 9 would you have made him?
- 10 A. No, I would not.
- 11 Q. Did you promise him anything in order to get him to
- 12 talk to you?
- 13 A. No, I did not.
- 14 Q. Did you threaten him if he didn't talk to you?
- 15 A. No.
- 16 Q. When you spoke to the Defendant, did you ask him a
- 17 series of questions or did he speak freely?
- 18 A. He spoke freely because we do not usually ask a lot of
- 19 questions. We read the allegation and then we want to
- 20 hear what they have to say.
- 21 Q. Is that a DSS policy?
- 22 A. Yes, it is.
- 23 Q. At any point when you were talking to him, did he tell
- 24 you that he didn't want to talk to you any more?
- 25 A. No, he did not.

ESTHER TIMMERMAN - DIRECT/IN CAMERA: HAMMACK

1 Q. How long did you talk to him?

2 A. It was approximately 15, 20 minutes.

3 Q. Okay. After you talked to the Defendant, did you talk
4 to the other members of the household?

5 A. Yes, I did.

6 Q. Okay.

7 Judge, do you want me to go into the substance of the
8 statement or just the circumstances?

9 THE COURT: Y'all are acknowledging the statement;
10 correct?

11 MS. ZMROCZEK: Yes, Your Honor.

12 THE COURT: It's just a question of whether it was
13 voluntarily given because he hadn't been Mirandized?

14 MS. ZMROCZEK: Correct.

15 THE COURT: I mean, there isn't any issue -- he didn't
16 give a statement?

17 MS. ZMROCZEK: Correct. There is not -- there is no
18 issue as to what --

19 THE COURT: You're not contesting at this time what he
20 said?

21 MS. ZMROCZEK: Not at this time, Your Honor.

22 THE COURT: All right. So, anything further from this
23 witness?

24 BY MS. HAMMACK:

25 Q. To your knowledge was the Defendant under arrest when

ESTHER TIMMERMAN - CROSS/IN CAMERA: ZMROCZEK

1 you talked to him?

2 A. Not to my knowledge. I didn't. Huh-uh.

3 MS. HAMMACK: Okay. That's all the questions I have
4 for her.

5 THE COURT: Anything?

6 MS. ZMROCZEK: Yes, thank you.

7 CROSS-EXAMINATION - IN CAMERA

8 BY MS. ZMROCZEK:

9 Q. Ms. Timmerman, correct me if I'm wrong, is it your
10 testimony that you received a call about abuse and that
11 you contacted law enforcement?

12 A. No. The agency, the Department of Social Services,
13 received a report. And any time that the agency receives
14 a report, I'm the supervisor that addresses those intakes
15 and I assign them to an investigator.

16 Q. That report you received was from law enforcement?

17 A. No, it was a report that was received from our agency.

18 Q. How did you know to meet law enforcement out at the
19 Bi-Lo with the complaining witness?

20 A. Because we always, when we receive allegations of
21 sexual abuse or of severe physical abuse we have to ask
22 law enforcement to come and assist us for the possibility
23 of a removal of a child.

24 Q. So it's your testimony that you called law enforcement
25 and said, meet us at the Bi-Lo?

ESTHER TIMMERMAN - CROSS/IN CAMERA: ZMROCZEK

1 A. I did not call law enforcement, but our agency does do
2 that whenever we receive --

3 Q. Somebody --

4 A. -- this type of report.

5 Q. I'm sorry. I didn't mean to interrupt you.

6 A. That's okay.

7 Q. Someone in your agency contacted law enforcement and
8 set up the place to speak with the complaining witness?

9 A. To meet with law enforcement, yes!

10 Q. Okay.

11 A. Uh-huh. At Bi-Lo, yes.

12 Q. And then after meeting with the complaining witness,
13 law enforcement, you, and -- you and law enforcement went
14 to the house of Mr. Rudd; correct?

15 A. I went with the State car by myself, yes, to his
16 house. And then law enforcement went there also.

17 Q. Do you recall writing a report for your agency?

18 A. The initial contact information that goes into our CAP
19 system, yes.

20 Q. Do you have that report with you?

21 A. I do not.

22 Q. Would it refresh your memory to look at that report?

23 A. Yes, but I was just going to say, could you get my
24 glasses?

25 Q. Sure.

ESTHER TIMMERMAN - CROSS/IN CAMERA: ZMROCZEK

1 A. Because I can't see.

2 Q. (Glasses retrieved and handed to witness.)

3 A. Yes. This is the statement I wrote.

4 Q. That is the statement you provided to your agency?

5 A. That's correct.

6 Q. Did it -- doesn't it report that law enforcement and
7 yourself went to the scene and that you listed all the law
8 enforcement officers, Evensen, Truesdale and yourself, all
9 to go to the scene to talk to Mr. Rudd; correct?

10 A. I'm sure they were all there, yes.

11 Q. And, in fact, when they -- when you got there he was
12 standing at the police car after he had been patted down;
13 correct?

14 A. No. He was standing behind a car. It was his car, I
15 believe. It was his vehicle he was standing behind. It
16 was not a police officer's vehicle.

17 Q. So the police officers did not speak to him at all; is
18 that what I hear?

19 A. I have no idea if the police officers spoke to him or
20 not because when I arrived, I just walked out of my car
21 like we always have to, and I approached him because he
22 was the father and I needed to speak to him so -- because
23 that's what we have to do because we have to speak to
24 everybody.

25 Q. And it's your testimony that you spoke to the girls as

1 well?

2 A. I went inside the house and I spoke to the girls,
3 uh-huh. I did.

4 Q. And, at no time did you ever see him refuse a Miranda
5 form, refuse to sign rights? It's your testimony that you
6 just went up and started talking to him and the police
7 weren't involved?

8 A. That's correct.

9 MS. ZMROCZEK: I have no further questions.

10 THE COURT: All right. Thank you, ma'am. You may
11 step down.

12 MS. HAMMACK: Judge, do you want to hear from the
13 officer?

14 THE COURT: I don't know why the officers -- she
15 testified that she did, any inquiry she made of the
16 Defendant was made independent of anybody else. She did
17 it on her own.

18 MS. ZMROCZEK: Your Honor, I would proffer that the
19 officer's report is the opposite of that.

20 THE COURT: The what?

21 MS. ZMROCZEK: The officer's report states the
22 opposite of that.

23 THE COURT: The officer's report.

24 MS. ZMROCZEK: What the officer's report indicates is
25 that they provided a Miranda form to Mr. Rudd. He refused

KRISTOPHER EVENSEN - DIRECT/IN CAMERA: HAMMACK

1 to sign it.

2 THE COURT: Well, that may all well be true. But,
3 you're complaining about a statement that was made to this
4 witness.

5 MS. ZMROCZEK: In the presence of law enforcement,
6 Your Honor, which is why I believe if we put the law
7 enforcement officer up he can either confirm or deny that
8 they were there while he made the statement. They were
9 standing there. He was not free to leave.

10 THE COURT: You want to call the officers?

11 MS. HAMMACK: We can, Judge.

12 State calls Kris Evensen.

13 KRISTOPHER EVENSEN, having been duly sworn, was
14 examined and testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for the Court and spell your last.

17 THE WITNESS: First name is Kristopher,
18 K-R-I-S-T-O-P-H-E-R. Last name Evensen, E-V-E-N-S-E-N.

19 DIRECT EXAMINATION - IN CAMERA

20 BY MS. HAMMACK:

21 Q. Investigator Evensen, where do you work?

22 A. Aiken County Sheriff's Office.

23 Q. How long have you worked there?

24 A. Almost 14 years.

25 Q. What do you do for the sheriff's office?

KRISTOPHER EVENSEN - DIRECT/IN CAMERA: HAMMACK

1 A. I'm an investigator.

2 Q. Were you working on May 23rd, 2013?

3 A. Yes, ma'am.

4 Q. On May 23rd, 2013, did you have a chance to get
5 involved with the Rudd family?

6 A. Yes, ma'am.

7 Q. Did you respond to [REDACTED]?

8 A. Yes, ma'am.

9 Q. What did you do when you got to [REDACTED]?

10 A. As I arrived Mr. Rudd was standing in the driveway.
11 The two girls -- when I pulled in, my car is an unmarked
12 car. I had two marked units with me. The girls
13 immediately went in the house. We got out fairly quick
14 and approached Mr. Rudd. I asked --

15 Q. Did you arrest him?

16 A. No, ma'am.

17 Q. Okay.

18 MS. ZMROCZEK: I'm sorry, Your Honor. I can't hear.

19 THE COURT: You need to speak up, if you would,
20 please.

21 BY MS. HAMMACK:

22 Q. If you need to pick up the microphone and speak into
23 it, or just talk louder.

24 Did you arrive at the house with DSS?

25 A. I arrived before DSS.

KRISTOPHER EVENSEN - CROSS/IN CAMERA: ZMROCZEK

1 Q. Okay. Does Esther Timmerman work for you?

2 A. No, ma'am.

3 Q. Do you pay her?

4 A. No, ma'am.

5 Q. Can you tell her what to say?

6 A. No, ma'am.

7 Q. Can you tell her who to talk to?

8 A. No, ma'am.

9 Q. Are you involved in DSS investigations?

10 A. No, ma'am.

11 Q. When you got to the house and met with the Defendant,
12 did you tell him he was not free to leave?

13 A. No, ma'am.

14 Q. Did you tell him that he would be arrested if he tried
15 to walk away?

16 A. No, ma'am.

17 Q. Were you standing there when Esther Timmerman spoke to
18 the Defendant?

19 A. No, ma'am.

20 Q. Did you arrest the Defendant that day?

21 A. No, ma'am.

22 MS. HAMMACK: No further questions.

23 CROSS-EXAMINATION - IN CAMERA

24 BY MS. ZMROCZEK:

25 Q. Mr. Evensen, how did you become involved in this case?

KRISTOPHER EVENSEN - CROSS/IN CAMERA: ZMROCZEK

1 A. I had a message from a fellow investigator to call
2 Mrs. Rudd in reference to an alleged assault.

3 Q. And when you received a message from the investigator
4 to call Mrs. Rudd, what's the next thing you did?

5 A. I called Mrs. Rudd.

6 Q. And you set up a meeting; correct?

7 A. I spoke to her on the phone, got the initial
8 information over the phone of what the allegations were,
9 and then I set up a meeting and a time to go to the house
10 to initiate that part.

11 Q. You didn't set up a meeting to meet her and the DSS
12 worker at Bi-Lo?

13 A. Actually that was our place to rendezvous before going
14 to the house and also obtain a written statement from
15 Mr. Rudd -- or, excuse me, Mrs. Rudd before the DSS worker
16 arrived at Bi-Lo.

17 Q. But you called the DSS worker to meet you at Bi-Lo?

18 A. Right.

19 Q. And you met with the DSS worker and Mrs. Rudd and
20 spoke with both of them at that time; correct?

21 A. I got a statement from Mrs. Rudd at Bi-Lo and spoke
22 with the DSS worker long enough to tell them to wait about
23 five minutes after the law enforcement left before they
24 arrived at the house.

25 Q. Why did you tell her to wait five minutes?

KRISTOPHER EVENSEN - CROSS/IN CAMERA: ZMROCZEK

1 A. Security purposes.

2 Q. And when you arrived at the scene, how many officers
3 were there?

4 A. Myself, Investigator Truesdale, Lieutenant Padgett who
5 was in a marked unit, also uniformed. And if I recall,
6 Sergeant Lancaster who was also in a marked unit and also
7 wears a uniform.

8 Q. And, when you got there you patted Mr. Rudd or
9 someone, one of the three officers patted Mr. Rudd down;
10 correct?

11 A. Correct. Correct.

12 Q. Okay. I'm sorry. Did you tell him he could go at
13 that time?

14 A. At that time I just told him what, very briefly what
15 the allegations were. I didn't tell him he couldn't go,
16 and I didn't tell him he could go.

17 Q. Didn't you tell him that he couldn't -- you couldn't
18 tell him anything else about the allegations until he
19 signed a Miranda waiver; isn't that right?

20 A. I told him I wouldn't go into any further detail until
21 he was advised of his Miranda and signed a waiver stating
22 that he had been advised of Miranda.

23 Q. And he refused?

24 A. He would not sign. He still had tried to elicit
25 information from me but I would not give any information

KRISTOPHER EVENSEN - CROSS/IN CAMERA: ZMROCZEK

1 until he signed saying he had been advised of Miranda.

2 Q. And this all takes place right at the police car where
3 he's told to put his hands on the car?

4 A. I couldn't tell you he was told to put his hands on
5 the car. He was asked to stand by the car.

6 Q. And it's your testimony that the DSS -- after, after
7 he refused to sign the Miranda forms, you just left him
8 be? All the officers left?

9 A. No. All the officers didn't leave because they were
10 there for -- it was indicated to us that he had a gun.
11 And these situations can become volatile very quickly when
12 you're possibly going to remove someone's children.
13 There's also other officers there for security purposes.

14 I went in the house to talk to Mr. Rudd and the
15 children briefly. The other officers were there for
16 strictly security purposes to be sure that everyone
17 remained safe.

18 Q. But you had patted him down so you knew he didn't have
19 a gun; right?

20 A. Correct.

21 Q. And then you went inside?

22 A. Correct.

23 Q. But the two officers stayed there and then the DSS
24 worker comes up and starts questioning him; right?

25 A. The officers were standing in the front yard; yes.

KRISTOPHER EVENSEN - CROSS/IN CAMERA: ZMROCZEK

1 Q. And that's when the statement was given?

2 A. I was inside when that statement was given so --

3 Q. The other two officers were right there?

4 A. They were in the vicinity. I don't think they were
5 actively engaged in that conversation.

6 Q. Being that there were safety concerns, had Mr. Rudd
7 turned and left, what would have happened?

8 A. He would've been allowed to leave. The only place
9 Mr. Rudd was not allowed to go was inside the house where
10 the alleged victims and spouse were at. That was the only
11 place he was told he could not go.

12 Q. And when he was asking you questions about why were
13 you there, and you told him that you wouldn't tell him
14 anything until he waived his --

15 A. I didn't tell him I wouldn't tell him anything. I
16 told him that I was there on allegations that's there's
17 some inappropriate behavior between him and his children.
18 I wouldn't go any further than that without him signing a
19 Miranda stating that he had been advised of his Miranda
20 rights.

21 Q. And then you received that statement from
22 Ms. Timmerman?

23 A. Afterwards, yes.

24 MS. ZMROCZEK: I have no further questions.

25 THE COURT: All right. Anything further?

DWAYNE LEE RUDD - DIRECT/IN CAMERA: ZMROCZEK

1 MS. HAMMACK: No, Judge.

2 THE COURT: All right. Thank you, sir. You may step
3 down.

4 All right. Anything?

5 MS. ZMROCZEK: Your Honor, we would call Dwayne Rudd.

6 DWAYNE LEE RUDD, having been duly sworn, was examined
7 and testified as follows:

8 THE CLERK: Have a seat in the witness box. State
9 your full name for the Court and spell your last.

10 THE DEFENDANT: Full name is Dwayne Lee Rudd. Last is
11 R-U-D-D.

12 DIRECT EXAMINATION - IN CAMERA

13 BY MS. ZMROCZEK:

14 Q. Mr. Rudd, where do you live?

15 A. [REDACTED].

16 Q. Tell the Court what you recall about May 23rd when the
17 police arrived at your house.

18 A. Okay. I had woke up, getting ready for work. My two
19 girls were in the house. They -- while I was getting
20 ready to work, they asked if they could go outside to play
21 or ride the four-wheelers, and I said they could. So they
22 proceeded to go outside and they were riding around on the
23 four-wheelers that we had for, you know, for them to play
24 on and riding around the house.

25 Probably, I don't know, maybe 20 minutes, 30 minutes,

DWAYNE LEE RUDD - DIRECT/IN CAMERA: ZMROCZEK

1 one of my daughters, **Minor 2** , came inside the house, said
2 that the four-wheeler ran out of gas. So I went out. So
3 she asked me if I could go get some gas and I walked
4 outside.

5 As I walked outside with the gas can about to put it
6 in the truck four, I don't know, four, five, I guess four
7 deputy sheriff cars come suddenly rushing up with urgency,
8 you know, and pulled up in my driveway, got out, and I was
9 just in shock.

10 And I believe it was Evensen asked me if I was Dwayne
11 Rudd and I said yes. And he told me to put my hands on
12 the car, on the front of his car and I did so. And he
13 started patting my pockets and asked me if I had a gun.
14 And I said I do, but, you know, it was in the house in a
15 drawer.

16 Q. So you told him where the gun was?

17 A. Yes, ma'am.

18 Q. And then what happened?

19 A. Then I just stood right there where, where he had told
20 me to put my hands on the car. I never left the front of
21 his car.

22 Q. Why didn't you leave the front of his car?

23 A. Because I was terrified. I didn't know what to do. I
24 didn't know what -- I didn't know if I was under arrest or
25 not. I didn't know anything. I just thought that -- I

DWAYNE LEE RUDD - DIRECT/IN CAMERA: ZMROCZEK

1 thought I was under arrest. I mean, he just -- that's why
2 I didn't -- I didn't -- it was him and there were all
3 these other police officers around.

4 Q. Is that why you thought you were under arrest?

5 A. Yes. He patted me down. And --

6 Q. Did they remain next to you?

7 A. Yes. Evensen and the other officers were, I mean,
8 within feet from me.

9 Q. And then do you recall when the DSS worker came?

10 A. She showed up probably not even a minute or two after
11 they pulled up.

12 Q. When the police officers talked to you, did they ask
13 you to sign a Miranda waiver?

14 A. I don't -- what I remember is them asking me to sign a
15 consent form. That's what I remember them asking me.

16 Q. And did you sign any form?

17 A. I didn't sign anything.

18 Q. And then you said about a minute later the DSS worker
19 comes up?

20 A. Comes pulling up.

21 Q. Where were the police officers when she came up?

22 A. Around me.

23 Q. I'm sorry?

24 A. Around me.

25 Q. How far away from you?

DWAYNE LEE RUDD - CROSS/IN CAMERA:HAMMACK

1 A. Maybe, I don't know, three or four feet.

2 Q. Did you feel like you were free to leave?

3 A. No way.

4 Q. What do you think would have happened to you if you
5 would have left?

6 A. I thought they would have taken me down and arrest me.

7 Q. Did you speak with the DSS worker?

8 A. I did.

9 Q. What kind -- what kind of questions was she asking
10 you?

11 A. When she came up she asked me my name, my age, you
12 know, general information. And asked me, I believe she
13 asked me if my daughters were Minor 1 and Minor 2.

14 Q. Did she advise you that she was not with the police
15 officers?

16 A. Did she advise me? No.

17 Q. I'm sorry?

18 A. She did not.

19 Q. Did you think she was with the police officers?

20 A. She came with them. Yeah, I mean, she drove up right
21 when they did. I mean, a minute right after them.

22 Q. When you were speaking with Ms. Timmerman, the DSS
23 worker, were you just speaking freely or were you
24 responding to questions?

25 A. Responding to questions.

1 Q. At any time did you just talk without her asking you
2 questions?

3 A. No.

4 MS. ZMROCZEK: I have no further questions.

5 THE COURT: Anything?

6 CROSS-EXAMINATION - IN CAMERA

7 BY MS. HAMMACK:

8 Q. Mr. Rudd, you weren't arrested until about three weeks
9 after this; isn't that right?

10 A. Seventeen days after it.

11 MS. HAMMACK: I don't have anything else from him,
12 Judge.

13 THE COURT: All right. Thank you, sir. You may step
14 down.

15 MS. HAMMACK: Your Honor, would you like us to address
16 the second statement at this time or do you want to argue
17 on the first statement?

18 THE COURT: There's another statement?

19 MS. HAMMACK: To another DSS worker.

20 THE COURT: Is that an issue?

21 MS. ZMROCZEK: That statement is not an issue.

22 THE COURT: All right. Okay. I've already ruled that
23 DSS is not an agent of the State. So whatever they told
24 her is certainly, Miranda warnings would not be
25 necessary. She doesn't have the ability to put anybody in

1 custody to -- before they make a statement. She has a
2 right to question them.

3 And, you know, she didn't make a statement to the
4 police. Apparently the police officer testified he never
5 heard anything she said. There's nothing from any police
6 officer that I've heard that heard anything he said.

7 But I'm going to find that the evidence in the case to
8 be that he wasn't in custody, that they asked him, they
9 took what steps are certainly permitted and that is to
10 secure the safety of the police officers and everybody
11 else out there.

12 Patting him down, for lack of a better term, is not
13 putting somebody in custody. He didn't want to talk to
14 them. They didn't pursue him. They went inside. The
15 evidence is that at most they were some distance away,
16 four feet away according to the Defendant. Considerable
17 feet away. The DSS witness said she didn't see him there.

18 So, I'm going to, certainly will -- if there is a
19 statement to the police, we'll charge the jury that they
20 ultimately have to make a decision about any statement to
21 the police.

22 All right. What do you want to do next? Qualify an
23 expert Kate Chappell. Is that the one you said you were
24 going to try to work that out?

25 MR. BANK: Yes, Your Honor. I think we'll try to work

1 that out on our own and even if we couldn't, we'll just
2 wait, as long as it's okay with you, until she gets called
3 to the stand and take care of it then.

4 THE COURT: Well, I don't want to slow --

5 MR. BANK: Right.

6 THE COURT: I mean, it doesn't seem to me that you all
7 really have an issue in this instance, but we'll certainly
8 allow you all to have some further conversation and if you
9 can't agree we may take it up before we get to her walking
10 up to the stand.

11 MR. BANK: We'll have a decision made by tomorrow
12 morning, Judge.

13 THE COURT: Now memorandum, suppress certain
14 photographs?

15 MS. ZMROCZEK: Correct, Your Honor. There were --
16 Officer Evensen can testify. They went to the scene May
17 23rd and they -- to secure the scene for safety.

18 At that time several photographs were taken of the
19 house. There were, there was one picture taken of
20 Minor 2 's room, four pictures taken of Minor 1 's room and
21 four pictures taken of the master bedroom, Your Honor.
22 These were provided to us in discovery. They're very
23 blurry. They don't contain a complete picture of the
24 room. It's kind of neither here nor there, it's just that
25 they were provided.

1 But how it's important, Your Honor is on June 13th,
2 the investigator goes back to the house.

3 THE COURT: The what?

4 MS. ZMROCZEK: On June 13th the investigator goes back
5 to the house. And the time line, Your Honor, is rather
6 important. On May 23rd they were there. The police
7 officers are there.

8 THE COURT: That's when the DSS worker was there.

9 MS. ZMROCZEK: And the DSS worker was there as well.

10 THE COURT: And there was an initial contact.

11 MS. ZMROCZEK: And then on May 28, the victims go to
12 the forensic interview for their counseling or for their
13 forensic interview -- the Child Advocacy Center, sorry.
14 And then on May 31st, the complainant, the mother of the
15 two alleged victims files for divorce. On June 3rd she
16 receives an order of protection.

17 On June 3rd, Investigator Evensen asked Mr. Rudd if he
18 would like to give a statement or come take a polygraph.
19 Mr. Rudd responds that he would like to get an attorney.

20 Three days after that, June 6th, warrants are sworn
21 out.

22 On June 10th, Mr. Rudd turns himself in.

23 On June 11th, we get the statement from
24 Ms. Timmerman.

25 And then on June 13th, the complainant, Ms. Rudd,

1 calls the investigator again out to her house and says
2 that there's writing on the wall. And she asks him to
3 take a picture or take several pictures which he does, on
4 June 13th. And, also at that time receives medical
5 records from the complaining witness.

6 Your Honor, these pictures -- at this time on June
7 13th there are 21 pictures of Minor 2 's room, 12 of Minor 1 's
8 room and four of the master bedroom, and three of the
9 exterior of house. That's the -- those are the only
10 evidence that we've been provided except for the forensic
11 interviews in this case.

12 Your Honor, they are trying to -- I just don't see
13 what the relevance of those pictures are to the crimes in
14 which he's charged. There were three actions initiated on
15 May 23rd: A DSS action; a divorce -- well, on May 31st a
16 divorce action; and a criminal action. All of these
17 happened at one time and arising out of the same set of
18 circumstances.

19 Your Honor, they have taken pictures where he wrote a
20 note to his girls on the wall because he was not allowed
21 to have any contact. He had attempted to have contact.
22 The officer in fact came out to his house, told him he
23 could not have any contact with them. He couldn't talk to
24 them. He had been away from his children. He had no idea
25 what was going on, Your Honor. So he left a message for

1 them on their walls.

2 We don't --

3 THE COURT: What pictures are you objecting to
4 being --

5 MS. ZMROCZEK: Well, Your Honor, he just -- the
6 pictures are of what's on the -- of what's written on the
7 walls.

8 THE COURT: All right. Well, you start out with some
9 pictures that you say are blurry, and on May 23rd a
10 picture was taken of Minor2 's room, four pictures of
11 Minor1 's room, four of the master bedroom, quality was poor
12 and they were blurry.

13 Are you objecting to these pictures?

14 MS. ZMROCZEK: Not objecting to those pictures, Your
15 Honor.

16 THE COURT: All right. Then the alleged victims
17 attend the forensic interview.

18 MS. ZMROCZEK: We're objecting to the June 13th
19 pictures, Your Honor.

20 THE COURT: What's the basis for the objection?

21 MS. ZMROCZEK: We don't see what the relevance are
22 (verbatim) to the prime charge. The only reason that
23 they're trying to bring them in is to prejudice the
24 Defendant against his -- because of his emotional state at
25 the time that the pictures were taken.

1 THE COURT: Because he made, he wrote something on the
2 wall and these are pictures of what he wrote?

3 MS. ZMROCZEK: Correct.

4 THE COURT: What do y'all want to say about that?

5 MR. MOLONY: Your Honor, out of those pictures she was
6 referencing --

7 THE COURT: Are y'all going to -- you got 21, 33, 37,
8 40 pictures. Are y'all going to try and introduce 40
9 pictures?

10 MR. MOLONY: No, sir, Your Honor. We're planning on
11 introducing one picture from Minor 2 's room who's the
12 youngest victim in this case.

13 THE COURT: And these pictures were taken when?

14 MR. MOLONY: Well, they were taken --

15 THE COURT: June 13th?

16 MR. MOLONY: June 13th; yes, sir.

17 THE COURT: All right. So you got three pictures on
18 June 13th, taken on June 13th, that you want to admit?

19 MR. MOLONY: That's correct, Your Honor.

20 THE COURT: Have you shown that to defense counsel?

21 MR. MOLONY: They were provided for them.

22 THE COURT: I know, but you provided her with 40
23 pictures. Now we're down to three. Have you shown her?

24 MR. MOLONY: I have not shown her these three
25 specifically.

1 THE COURT: Y'all have been successful in excluding 37
2 so far.

3 Really these, the pictures, do y'all have some
4 objections to these?

5 MS. ZMROCZEK: Your Honor, we do.

6 THE COURT: Let me look at them. (Photographs handed
7 to the Judge.)

8 All right. I can read the writing.

9 What is that?

10 MR. MOLONY: That one had been written on, Your
11 Honor. And the testimony would be that it was painted
12 over. Whatever he did -- he wrote on that wall, he
13 painted over before, you know, they got back to see it.
14 So it is what it looks like.

15 That was in the master bedroom, Your Honor. The other
16 two were in, you know, the Minor 2 , one referencing
17 Minor 2 was in her room. Minor 1's was in Minor 1's room.

18 Ultimately the State would argue that they're all
19 three relevant. When they walk in on June the 10th, they
20 being the Defendant's wife and two daughters, that was all
21 over the walls. There were multiple pictures. I mean,
22 multiple writings on the walls. Those would be the only
23 three we would introduce based on the Defendant
24 apologizing and saying he's sorry to each victim.

25 MS. ZMROCZEK: Your Honor, obviously we would ask that

1 if they're going to just try to put that in, that they
2 have to put everything that was said at that point.

3 By taking one picture of, a close-up picture of I'm
4 sorry, and then trying to say that he's sorry as guilt,
5 it's forcing him --

6 THE COURT: Well, I don't know what they're trying to
7 say that it says. It says what it says. And the jury
8 would have to determine what they believe that to mean.

9 I don't know what's on the other writings.

10 I mean, my inclination at this point is to admit these
11 two writings and to exclude this, because if you're trying
12 to infer something's there that he wrote on the wall and
13 it would be something, this, you might be able to say to
14 the jury, hey, he's in there apologizing for his
15 behavior. I mean, they might be able to say, hey, he's in
16 there apologizing that these poor children are having to
17 go through this process.

18 So that would be an interpretation from the jury. I
19 don't know how the jury could interpret anything here.

20 MR. MOLONY: Yes, sir.

21 THE COURT: Obviously he wrote on the wall. If you
22 have other walls that you're interested in showing, then
23 let's take a look at them. I don't know, but I think
24 these could be relevant. And I'm going to allow them to
25 admit these. I will exclude this because I just think

1 it's too much speculation.

2 MR. MOLONY: Yes, sir.

3 THE COURT: Now, if you've got some other pictures
4 that ...

5 MS. ZMROCZEK: I think, Your Honor, if they're going
6 to admit those then we can admit some to tell the rest of
7 the story and I don't think they're objectionable because
8 they gave them to us but ...

9 THE COURT: All right. Well --

10 MS. ZMROCZEK: Mainly, Your Honor, it was the wall
11 that was painted over we had great concern, but nobody
12 knows what was said on that and for the jury not to
13 speculate that he was, you know, confessing and then
14 covering it up, as opposed to, you know, just saying you
15 know what, I'm not going to apologize since you left me.
16 We just think that there's too much speculation. That's
17 why we're objecting to that.

18 THE COURT: All right. Now, exclude the testimony of
19 the alleged victim. You want to do this in camera. Why
20 do we need to do that?

21 MS. ZMROCZEK: Your Honor, I was provided medical
22 records by the State that questioned that the victim
23 number one's mother sent her for an evaluation and
24 questioned her competency. Your Honor, this was done
25 prior to any statements to a forensic interviewer, prior

1 to any statements about this alleged abuse. We believe
2 that her competency is at issue at this time.

3 THE COURT: Competency on what basis? You seem to
4 indicate that she's not old enough to be able to
5 distinguish between the truth and not the truth. I mean,
6 are you saying now that she's competent because she has
7 some mental health issues or some other reason, or it's
8 because -- I don't know which child this is, is this the
9 youngest or the --

10 MS. ZMROCZEK: This is the older child.

11 THE COURT: All right.

12 MS. ZMROCZEK: This is the older child that we were
13 recently provided information that she has a learning
14 disability. We would just ask that her competency be
15 evaluated before she testifies.

16 THE COURT: So you just want me to make an inquiry of
17 her outside the presence of the jury. Well, I'll be happy
18 to do that.

19 Do y'all have an objection to that?

20 MS. HAMMACK: No, Judge, I think that's pretty
21 standard.

22 THE COURT: Well, this child's an older child. I
23 don't know that 14- or 15-year-old children are normally
24 examined about do they understand what the truth is and
25 what --

1 MS. HAMMACK: Judge, we don't have an objection to
2 that. I mean, under 601 that's the only issue.

3 THE COURT: I'll be happy to do that. All right.
4 Anything else?

5 MS. ZMROCZEK: I believe, Your Honor, that we were
6 going to put on the record, and correct me if I'm wrong,
7 about -- we had inquired about Lyle evidence and they have
8 advised us that they are not putting in any Lyle
9 evidence. And I just wanted to make sure that that was
10 correct and that we put that on the record.

11 THE COURT: I'm not aware of any of that.

12 MS. HAMMACK: That's correct, Your Honor. We're not
13 seeking to introduce any Lyle evidence.

14 THE COURT: All right. Now, I have not had a chance
15 to look at the Defendant's proposed voir dire. I don't
16 know if y'all have any you want me to look at, but I would
17 suggest that y'all exchange that with each other so that
18 if you have any objection to either -- but we don't have
19 to do that. We can take that up before we start.

20 MS. ZMROCZEK: Yeah, I provided that to them as well.

21 THE COURT: You haven't given me a witness list or a
22 proposed voir dire.

23 MS. HAMMACK: Judge, I've got a witness list for you.
24 We don't plan on asking for any specific voir dire, just
25 your standard.

1 (Documents handed to the Judge.)

2 THE COURT: All right. Anything further?

3 MS. HAMMACK: Not from the State, Your Honor.

4 MS. ZMROCZEK: Not from the defense, Your Honor.

5 I believe that the solicitor and I, we were going to
6 try to, in the morning, pre-mark as much things, as many
7 items as we could to make it run smoothly.

8 And so I don't think we have anything else for the
9 Court.

10 THE COURT: All right. Well, my understanding, Madam
11 Clerk, the jury will be ready to be -- well, we got to
12 qualify the jury. What time are we going to qualify the
13 jury?

14 MS. HAMMACK: Judge, my understanding is they're going
15 to come in at 9:30 and they should be ready for you at
16 10.

17 THE CLERK: Uh-huh.

18 THE COURT: All right. We'll do that. And I talked
19 to the defense counsel on the phone Friday to inquire as
20 to, she had called me and asked about whether she needed
21 to be here for the roster meeting. I told her I had no
22 objection. I didn't know what y'all's position was.
23 Apparently y'all didn't have a problem.

24 But I asked her how long she believed the case would
25 take and she thought it would go all week. So we probably

1 ought to be ready to get started as soon as we can get
2 this jury.

3 How many alternates do you think we're going to need;
4 two?

5 MS. HAMMACK: Two.

6 MS. ZMROCZEK: I should think two.

7 THE COURT: All right. Well, y'all have a nice
8 afternoon and we will see you tomorrow morning.

9 MS. HAMMACK: Thank you, Judge.

10 THE COURT: Thank you all.

11 MS. ZMROCZEK: Yes, Your Honor.

12 END OF DAY'S PROCEEDINGS: 3:27 P.M.

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1 ON TUESDAY, DECEMBER 10, 2013 AT 10:57 A.M.:

2 THE COURT: All right. Well then, let's begin.

3 Ladies and gentlemen, the -- Solicitor, ready to call your
4 first case?

5 MS. HAMMACK: Yes, Your Honor.

6 The State calls the State versus Dwayne Lee Rudd.
7 He's charged in Indictment 2013-GS-02-1638 with criminal
8 sexual conduct with a minor third degree.

9 2013-GS-02-1639, with criminal sexual conduct with a
10 minor third degree.

11 2013-GS-02-1642, with criminal sexual conduct with a
12 minor second degree.

13 2013-GS-02-1643, with criminal sexual conduct with a
14 minor second degree.

15 2013-GS-02-1645, with criminal sexual conduct with a
16 minor third degree.

17 2013-GS-02-1679, criminal sexual conduct with a minor
18 second degree.

19 2013-GS-02-1680, with criminal sexual conduct with a
20 minor second degree.

21 And Indictment 2013-GS-02-1681, with criminal sexual
22 conduct with a minor second degree.

23 Those have been true billed.

24 THE COURT: All right. Ladies and gentlemen, this is
25 a case where Mr. Rudd has been indicted for eight

1 offenses. I think five of them for criminal sexual
2 conduct second degree, and three of them for criminal
3 sexual conduct third degree.

4 Mr. Rudd has been alleged in these indictments that he
5 committed a criminal sexual battery upon two minors, one
6 being Minor 2 , and the other being Minor 1 . Now,
7 I'm not going to read the indictments to you at this time
8 but a couple things I want to tell you, ladies and
9 gentlemen.

10 An indictment is a notice document. It is not
11 evidence in the case. It is a document to put the
12 Defendant on notice of the respective charges that the
13 State has brought against him.

14 To these indictments the Defendant has entered a plea
15 of not guilty, to all of them. So now the burden falls
16 upon the State of South Carolina to prove this Defendant
17 guilty beyond a reasonable doubt of any of these charges.
18 The Defendant has no burden at all. The Defendant doesn't
19 have to do anything.

20 You need to remember this principle as well. That is,
21 in every instance a Defendant comes into this courtroom
22 presumed to be innocent. And that presumption of
23 innocence remains with this Defendant throughout the
24 course of the trial and would only change if a jury after
25 hearing the evidence and applying the law determines in

1 fact the Defendant is guilty of one or more of any of
2 these charges.

3 So you need to remember that this Defendant is
4 presumed to be innocent and that the State has the burden
5 of proving the Defendant guilty and proving him guilty
6 beyond a reasonable doubt.

7 Now, ladies and gentlemen, before we begin -- I never
8 did get the witness list from the State. Do y'all have a
9 witness list?

10 MS. HAMMACK: Your Honor, I do have -- I gave you one
11 yesterday, but I can give you --

12 THE COURT: You gave me one?

13 MS. HAMMACK: I did.

14 THE COURT: All right. Here it is. I'm sorry.
15 Pardon me.

16 All right. Ladies and gentlemen, the first thing I
17 want to do is introduce you to some individuals who may be
18 involved in this trial.

19 First let me introduce you to the Defendant in this
20 matter, Mr. Dwayne Lee Rudd. Mr. Rudd, if you would
21 please stand and face the jury.

22 THE DEFENDANT: (Complies.)

23 THE COURT: Ladies and gentlemen, this is Mr. Dwayne
24 Lee Rudd. And I would inquire at this time: Is there any
25 member of this jury panel or any member of the jury

1 panel's immediate family who is related by blood or
2 connected by marriage, or either now or in the past has
3 had a close personal relationship with Mr. Rudd, or either
4 now or in the past has had an employment or a business
5 relationship with Mr. Rudd? If so, please stand.

6 (No response.)

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

8 THE DEFENDANT: (Takes seat.)

9 THE COURT: Ladies and gentlemen, in most cases when
10 the parties come into court, the parties are represented
11 by attorneys. In this instance the State of South
12 Carolina is represented by the Solicitor's Office of the
13 Second Judicial Circuit. The solicitors that are involved
14 in this case are Assistant Solicitor Ashley Hammack. And
15 this is Ms. Hammack, right now. And Solicitor Kevin
16 Molony. And both of these folks, ladies and gentlemen,
17 are members of the South Carolina Bar. They're employed
18 by the Solicitor's Office of the Fifth (verbatim) Judicial
19 Circuit.

20 And I would inquire at this time, is there any member
21 of this jury panel or any member of the jury panel's
22 immediate family who is related by blood or connected by
23 marriage, or either now or in the past has had a close
24 personal relationship with either of these solicitors or
25 any solicitor in the Second Circuit Solicitor's Office, or

1 either now or in the past had an employment or a business
2 relationship with these solicitors or with the solicitors
3 of -- any solicitor in the Fifth -- I mean, the Second
4 Circuit, or with the Solicitor's Office of the Second
5 Circuit? If so, please stand.

6 (No response.)

7 THE COURT: Ladies and gentlemen, representing the
8 Defendant in this matter are Ms. Aimee Zmroczek, and this
9 is Ms. Zmroczek. She is also a member of the South
10 Carolina Bar. Her office is in Columbia, I think.

11 MS. ZMROCZEK: (Nods head.)

12 THE COURT: She practices throughout the State of
13 South Carolina. And Mr. Robert L. Bank, Jr., and this is
14 Mr. Bank. He is associated with Ms. Zmroczek and he too
15 is a member of the South Carolina Bar and he practices out
16 of Columbia as well.

17 I would inquire at this time: Is there any member of
18 this jury panel or any member of the jury panel's
19 immediate family who is related by blood or connected by
20 marriage, or either now or in the past has had a close
21 personal relationship with either of these attorneys, or
22 either now or in the past has had an employment or a
23 business relationship with either of these attorneys or
24 with Ms. Zmroczek's law firm, or either now or in the past
25 has been represented by Zmroczek or Mr. Bank? If so,

1 please stand.

2 (No response.)

3 THE COURT: All right. Ladies and gentlemen, I now
4 want to read you the names of some potential witnesses who
5 may testify in this trial. If any of those witnesses are
6 here, I would ask them to stand so that the jury can see
7 who are you.

8 And, ladies and gentlemen, I have two lists. And if
9 there's any overlap of any of these witnesses, I apologize
10 for that.

11 But, first, Minor 1 . Minor 2 . Jennifer Rudd.

12 Kris Evensen of the Aiken County Sheriff's Office.

13 Nick Gallam of the Aiken County Sheriff's Office.

14 Esther Timmerman of the Aiken County Department of
15 Social Services. Shannon Brown of the Aiken County
16 Department of Social Services.

17 Kate Chappell or Chapel. Is it Chappell or Chapel?

18 MS. HAMMACK: Chappell.

19 THE COURT: Of the University of South Carolina School
20 of Nursing.

21 Dr. Jeffrey Donohoe of the Medical College of
22 Georgia. Dr. Christopher Houk of the Medical College of
23 Georgia.

24 Debra Russell.

25 J. Douglas Parker.

1 John Johnson. Linda Johnson.

2 Michelle Green from Midland Valley Prep. Paula Scott-
3 Murray, Midland Valley Prep. Sara Shealy, Midland Valley
4 Prep.

5 Michael Austin Graham.

6 Brad Owensby.

7 Dr. Robyn Fallaw.

8 Caren Newcomb, N-E-W-C-O-M-B.

9 Now, ladies and gentlemen, I would inquire at this
10 time: Is there any member of this jury panel or any
11 member of the jury panel's immediate family who is related
12 by blood or connected by marriage, or either now or in the
13 past has had a close personal relationship with any of the
14 individuals whose names I just read to you, or either now
15 or in the past has had an employment or a business
16 relationship with any of those individuals, or with
17 respect to medical providers either now or in the past has
18 been a patient of any of those providers? If so, please
19 stand.

20 Yes, sir. Tell me your name.

21 THE JUROR: Matthew Stone.

22 THE COURT: Stone?

23 THE JUROR: Yes.

24 THE COURT: All right. Mr. Stone, what is your
25 situation?

1 THE JUROR: Dr. Donohoe's a doctor at MCG. He covers
2 the VA, and I've worked with him.

3 THE COURT: All right. The fact that you have some
4 business connection to Dr. Donohoe, would that prevent you
5 from listening to the evidence in this case and based upon
6 such evidence render a fair and impartial verdict?

7 THE JUROR: No, sir.

8 THE COURT: Thank you. Yes, ma'am. Your name?

9 THE JUROR: Christine Jackson. My son is a patient of
10 Dr. Christopher Houk.

11 THE COURT: Your son is a patient of one of the
12 witnesses? The fact that you have a child who's a patient
13 of one of the witnesses, Dr. Houk, would that prevent you
14 from listening to the evidence in this case and based upon
15 such evidence render a fair and impartial verdict?

16 THE JUROR: No, sir.

17 THE COURT: All right. Thank you.

18 Yes, ma'am. Your name?

19 THE JUROR: Nathania Butler. My child went to Midland
20 Valley Prep and all the people you --

21 THE COURT: Wait a minute. You have a child that,
22 what?

23 THE JUROR: I have a child who went to Midland Valley
24 Preparatory, and all the people that you just named are
25 his teachers.

1 THE COURT: The fact that you have a child who was a
2 student at Midland Valley Prep --

3 THE JUROR: No, sir.

4 THE COURT: -- would that prevent you from listening
5 to the evidence in this case and based upon such evidence
6 render a fair and impartial verdict?

7 THE JUROR: No, sir.

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

9 All right. Ladies and gentlemen, this next question
10 I'm going to ask if you have a response to this question
11 that you come down here and meet with me one-on-one, so
12 I'll need one of the bailiffs if y'all will, it may not
13 apply.

14 Has any member of the jury panel or any member of the
15 jury panel's immediate family or a close personal friend
16 ever been sexually abused? If so, I need you to come down
17 and meet with me down here.

18 Just one at a time.

19 THE BAILIFF: Are you ready?

20 THE COURT: I'm ready.

21 THE BAILIFF: Come down.

22 THE COURT: Tell me your name.

23 THE JUROR: Brian Mitchell.

24 THE COURT: What's your situation?

25 THE JUROR: Sexually abused several times, had to

1 listen to it for about 10 years. I have four girls.

2 THE COURT: All right. The fact that you have this
3 experience, would that prevent you from listening to the
4 evidence in this case and based upon such evidence render
5 a fair and impartial verdict?

6 THE JUROR: Yes.

7 THE COURT: I'm going to excuse from you service on
8 the jury. If you'll just have a seat back in the jury.
9 You can sit on the back right side.

10 THE BAILIFF: Come on back.

11 THE COURT: Good morning. Tell me your name, please.

12 THE JUROR: Sophia Vereen.

13 THE COURT: What is your situation?

14 THE JUROR: Well, I have four involved ...

15 (Out of range of court reporter's hearing.)

16 THE COURT: Your children?

17 THE JUROR: They're my first borns.

18 THE COURT: The fact that you have that experience,
19 would that prevent you from listening to the evidence in
20 this case and based upon such evidence render a fair and
21 impartial verdict?

22 THE JUROR: I guess I could try.

23 THE COURT: Ma'am, you need to tell me whether you
24 can. If you don't think you can be fair, we don't want to
25 be unfair to either the State or the Defendant.

1 THE JUROR: In this case, I don't see I could be fair.

2 THE COURT: All right. Just have a seat. I didn't
3 get her name. Tell me your name again, please.

4 THE JUROR: Sophia Vereen.

5 THE COURT: Tell me your name.

6 THE JUROR: Brandon Carmouche.

7 THE COURT: Tell me your situation.

8 THE JUROR: My brother had ...

9 (Out of range of court reporter's hearing.)

10 THE COURT: The fact that you had that experience,
11 would that prevent you from listening to the evidence in
12 this case and based on upon such evidence render a fair
13 and impartial verdict?

14 THE JUROR: (Nods head.)

15 THE COURT: All right. I'm going to excuse you. If
16 you have a seat.

17 Ma'am, Ms. Green, if you'll just have a seat right
18 back there next to that gentleman. If you'll have a seat.

19 THE CLERK: What's your jury number?

20 THE JUROR: Twenty-eight.

21 THE COURT: Good morning. Tell me your name.

22 THE JUROR: Tammy Webb.

23 THE COURT: What's your situation?

24 THE JUROR: My step father, he tried to -- he used to
25 come in my room and feel me. He tried to rape me. I beat

1 him. I left home. I had to live with my grandmother.

2 THE COURT: The fact that you had that experience,
3 would that prevent you from listening to the evidence in
4 this case and based upon such evidence render a fair and
5 impartial verdict?

6 THE JUROR: I don't think.

7 THE COURT: Ma'am?

8 THE JUROR: I don't think.

9 THE COURT: You can't take a guess. If you think you
10 can. I'm going to excuse you from service. If you'll
11 have a seat back in the back.

12 THE CLERK: Juror number?

13 THE BAILIFF: What's your number, ma'am?

14 THE JUROR: One eighty-seven.

15 THE COURT: All right.

16 Ladies and gentlemen. Does any member of this jury
17 have -- does any member of this jury panel have a family
18 or a close personal friend that has a child with a
19 learning disability? If so, please stand.

20 All right. Yes, ma'am. Your name?

21 THE JUROR: Kimberly Hebbard.

22 THE COURT: I'm sorry?

23 THE JUROR: Kimberly Hebbard.

24 THE COURT: Ms. Hebbard, what is your situation?

25 THE JUROR: I have a girlfriend whose husband has

1 cerebral palsy.

2 THE COURT: The fact that you have that experience, a
3 friend with a child (verbatim) who has some impairment,
4 would that prevent you from listening to the evidence in
5 this case and based upon such evidence render a fair and
6 impartial verdict?

7 THE JUROR: I can --

8 THE COURT: Can you be fair in listening to the case?

9 THE JUROR: I can try.

10 THE COURT: Ma'am, we can't guess. If you think you
11 can be --

12 THE JUROR: I -- well, you're asking me a question I
13 really can't answer honestly. I don't know until we -- I
14 spend a lot of time with them and help her care for him.
15 You're asking me the questions. I'm trying to answer
16 honestly.

17 THE COURT: Can you be --

18 THE JUROR: Will I try to be fair? Yes, sir.

19 THE COURT: Can you be fair and impartial?

20 THE JUROR: Yes.

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

22 Does anyone in the jury panel believe that hearing a
23 medical term involving female genitalia will distract them
24 from duties as a juror? If so, please stand.

25 (No response.)

1 THE COURT: Has any member of this jury panel or any
2 member of the jury panel's immediate family or close
3 personal friend been associated with a child advocacy or
4 child abuse center or any child victim's rights group? If
5 so, please stand.

6 Yes, sir, your name.

7 THE JUROR: Lee Houston.

8 THE COURT: All right.

9 THE JUROR: My name is Lee Houston. My wife used to
10 work with the DHEC group. They go out and --

11 THE COURT: The fact that your wife had that
12 experience, would that prevent you from listening to the
13 evidence in this case and based upon such evidence render
14 a fair and impartial verdict?

15 THE JUROR: No.

16 THE COURT: Yes, ma'am? Tell me your name.

17 THE JUROR: Christine Phillips.

18 THE COURT: Ms. Phillips, what is your situation?

19 THE JUROR: I work at a psychiatric hospital with
20 children and adolescents, and a lot of them --

21 THE COURT: You do that now?

22 THE JUROR: Yes, sir. I do.

23 THE COURT: The fact that you have that employment
24 experience, would that prevent you from listening to the
25 evidence in this case and based upon such evidence render

1 a fair and impartial verdict?

2 THE JUROR: No, sir. Oh. You're saying will I be
3 fair?

4 THE COURT: Can you be fair and impartial?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 Yes, ma'am. Your name?

8 THE JUROR: My name is Melody Whitt. My sister works
9 at Aurora.

10 THE COURT: Works where?

11 THE JUROR: At Aurora. I'm about to say it wrong.

12 THE COURT: What is that?

13 THE JUROR: Mental hospital.

14 MS. HAMMACK: Aurora is a behavioral health center.

15 THE COURT: The fact that you have a family member
16 that works at a behavioral health center, would that
17 prevent you from listening to the evidence in this case
18 and based upon such evidence render a fair and impartial
19 verdict?

20 THE JUROR: No, sir.

21 THE COURT: Thank you. Yes, ma'am. Your name?

22 THE JUROR: Margaret Williams.

23 THE COURT: Ms. Williams, what is your situation?

24 THE JUROR: I'm employed at the board of education so
25 I work for children --

1 THE COURT: All right. The fact that you have that
2 work experience, would that prevent you from listening to
3 the evidence in this case and based upon such evidence
4 render a fair and impartial verdict?

5 THE JUROR: No, because I don't know them.

6 THE COURT: No, is that the answer?

7 THE JUROR: (Nods head.)

8 THE COURT: Thank you, ma'am.

9 Is there any member of this jury panel who is
10 associated with or has a close personal friend or a family
11 member associated with the South Carolina Department of
12 Social Services? If so, please stand.

13 (No response.)

14 THE COURT: Is there any member of this jury panel or
15 any member of the jury panel's immediate family, a close
16 personal friend who is a rape counselor, a social worker,
17 a psychotherapist, a psychologist, or a psychiatrist? If
18 so, please stand.

19 Yes, sir. Your name?

20 THE JUROR: Donald Reese.

21 THE COURT: All right.

22 THE JUROR: My sister is a psychiatrist and she deals
23 with children and their behavior.

24 THE COURT: The fact that you have a sister who's a
25 psychiatrist, would that prevent you from listening to the

1 evidence in this case and based upon such evidence render
2 a fair and impartial verdict?

3 THE JUROR: Negative.

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

5 All right. Ladies and gentlemen, is there any member
6 of this jury panel who has seen or heard or read any news
7 reports involving this case? If so, please stand.

8 (No response.)

9 THE COURT: Does anyone have a child that attended
10 Midland Valley Preparatory School for the year 2011 to the
11 present? If so, please stand.

12 Yes, sir. Your name?

13 THE JUROR: I have two -- Walter Wade. I have two
14 grandchildren there.

15 THE COURT: The fact that you have two grandchildren
16 that attend that school, would that prevent you from
17 listening to the evidence in this case and based upon such
18 evidence render a fair and impartial verdict?

19 THE JUROR: No, sir.

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

21 Is there any member of this jury panel who is a member
22 of the Breezy Hill Baptist Church? If so, please stand.

23 (No response.)

24 THE COURT: Ladies and gentlemen, in this trial we are
25 going to have two minors testify.

1 Is there any member of this jury panel that believes
2 that a person by virtue of being a minor would be treated
3 differently with respect to your belief that they can tell
4 the truth or not tell the truth? If not, please stand.

5 (No response.)

6 THE COURT: If you believe that because they're a
7 minor they would be less credible or more credible.

8 (No response.)

9 THE COURT: All right. Now, ladies and gentlemen, at
10 the end of this case I'm going to charge you or instruct
11 you as to the law as it applies to these charges. It is
12 your obligation to accept the law as I give it to you and
13 apply it, the law, to the facts that you determine them to
14 be in this case. You're obligated to accept the law as I
15 give it to you.

16 Is there any member of this jury panel who believes
17 that you cannot comply with my instructions or will not
18 comply with my instructions, and that is accept the law as
19 I charge you and apply it to the facts of this case?

20 If you cannot comply with my instructions, please
21 stand at this time.

22 (No response.)

23 THE COURT: Does any member of this jury panel know
24 any bias or prejudice either for or against the State or
25 the Defendant? If you believe you are going to be biased

1 or prejudiced against either of the parties, please stand
2 at this time.

3 (No response.)

4 THE COURT: Is there any member of this jury panel who
5 believes that you cannot be fair and impartial to both the
6 State and the Defendant? If you believe that you cannot
7 be fair and impartial, please stand at this time.

8 (No response.)

9 All right. Any further inquiry from the State?

10 MS. HAMMACK: Not from the State, Your Honor.

11 THE COURT: Any further inquiry from the defense?

12 MS. ZMROCZEK: None from the defense, Your Honor.

13 THE COURT: All right. Are y'all ready to proceed?

14 MS. HAMMACK: Yes, Your Honor.

15 MS. ZMROCZEK: Yes, Your Honor.

16 THE COURT: Do I have a strike sheet? This is the
17 strike sheet?

18 THE CLERK: No, sir.

19 THE COURT: Oh, you're going to have to do one. Okay.

20 THE CLERK: Yeah.

21 THE COURT: Ladies and gentlemen, we have a list of
22 all of you. And now the computer is going to start
23 pulling names and when we do, if you're pulled we're going
24 to ask you to come forward.

25 What are the strikes?

1 MS. HAMMACK: Five and ten.

2 THE CLERK: If I call your name, please come to the
3 front, bring all your belongings with you, come to the
4 front, turn around and face the audience, please.

5 Juror 167, Matthew Stone.

6 (White male comes forward.)

7 THE COURT: We're doing two alternates. Two strikes,
8 one strike.

9 MS. HAMMACK: Please present Mr. Stone.

10 MS. ZMROCZEK: Please seat Mr. Stone.

11 THE CLERK: Please have a seat to your left.

12 THE COURT: What did you say?

13 MS. ZMROCZEK: Please seat.

14 THE CLERK: Number 163, Matthew Snead.

15 (White male comes forward.)

16 THE CLERK: What say you the State?

17 MS. HAMMACK: Please present Mr. Snead.

18 THE CLERK: What say you the defense?

19 THE BAILIFF: Well, you have to wait.

20 THE COURT: Hold on.

21 MS. ZMROCZEK: Please excuse Mr. Snead for the matter
22 of this trial.

23 THE CLERK: Please return to your seat.

24 THE COURT: All right. You can sit on that side, over
25 there somewhere. You folks on the back couple rows are

1 going to have to move up here because we're going to --
2 well, those people, they're being excused so you can leave
3 them back there. Sir, have a seat on the back row.

4 All right. Proceed.

5 THE CLERK: Number 129, Jay Noonkester.

6 (White male comes forward.)

7 THE CLERK: What say you the State?

8 MS. HAMMACK: Please present Mr. Noonkester.

9 THE CLERK: What say you the defense?

10 MS. ZMROCZEK: Please swear Mr. Noonkester.

11 THE CLERK: Please have a seat in the jury box to your
12 right.

13 Number three. Alam Vandana.

14 (Unknown race female comes forward.)

15 THE CLERK: What say you the State?

16 MS. HAMMACK: Please seat Ms. Alam.

17 THE CLERK: What say you for the defense?

18 MS. ZMROCZEK: Please excuse Ms. Alam.

19 THE COURT: Number 24, Nathania Butler.

20 (Black female comes forward.)

21 THE COURT: Ms. Alam, you can go back and have a
22 seat. If y'all are excused, just have a seat back in the
23 back.

24 THE CLERK: What say you the State?

25 MS. HAMMACK: Please present Ms. Butler.

1 THE CLERK: What say you the defense?

2 MS. ZMROCZEK: Please excuse Ms. Butler for this
3 trial.

4 THE CLERK: Please return to your seat.
5 Number 175, James Tyler.

6 (Black male comes forward.)

7 THE CLERK: What say you the State?

8 MS. HAMMACK: Please present Mr. Tyler.

9 THE CLERK: What say you the defense?

10 MS. ZMROCZEK: Please swear Mr. Tyler.

11 THE CLERK: Please have a seat to your left in the
12 jury box.

13 Number 158, Karen Sheppard.

14 (White female comes forward.)

15 THE CLERK: What say you the State?

16 MS. HAMMACK: Please present Ms. Sheppard.

17 THE CLERK: What say you the defense?

18 MS. ZMROCZEK: Please swear Ms. Sheppard.

19 THE CLERK: Please have a seat in the jury box.

20 THE BAILIFF: Ms. Sheppard, I'll get your umbrella for
21 you.

22 THE JUROR: Okay.

23 THE CLERK: Number 186, Jeremy Watson.

24 (White male comes forward.)

25 THE CLERK: What say you the State?

1 MS. HAMMACK: Please excuse Mr. Watson from this case.
2 THE CLERK: Please return to your seat.
3 Number 173, Mark Halsey.
4 THE COURT: I believe it's 73.
5 THE CLERK: Number 73, sorry, 73.
6 (White male comes forward.)
7 THE CLERK: What say you the State?
8 MS. HAMMACK: Please present Mr. Halsey.
9 THE CLERK: What say you the defense?
10 MS. ZMROCZEK: Please seat Mr. Halsey.
11 THE CLERK: Please have a seat to your left.
12 Number 10, Scot Beck.
13 (White male comes forward.)
14 THE CLERK: What say you the State?
15 MS. HAMMACK: Please present Mr. Beck.
16 THE CLERK: What say you the defense?
17 MS. ZMROCZEK: Please swear Mr. Beck.
18 THE CLERK: Please have a seat to your left.
19 Number 149, Raquel Reyes.
20 (Hispanic female comes forward.)
21 THE CLERK: What say you the State?
22 MS. HAMMACK: Please present Ms. Reyes.
23 THE CLERK: What say you the defense?
24 MS. ZMROCZEK: Please seat Ms. Reyes.
25 THE CLERK: Please have a seat to your left.

1 Number 34, Amy Cooper.

2 (White female comes forward.)

3 THE CLERK: What say you the State?

4 MS. HAMMACK: Please present Ms. Cooper.

5 THE CLERK: What say you the defense?

6 MS. ZMROCZEK: Please excuse Ms. Cooper for this
7 trial.

8 THE CLERK: Please return to your seat.

9 The State has exhausted one strike, the defense four.

10 Number 156, Michael Schubert.

11 (White male comes forward.)

12 THE CLERK: What say you the State?

13 MS. HAMMACK: Please present Mr. Schubert.

14 THE CLERK: What say you the defense?

15 MS. ZMROCZEK: Please swear Mr. Schubert.

16 THE CLERK: Please have a seat to your left, sir.

17 Number 81, Robin Herron.

18 (White female comes forward.)

19 THE CLERK: What say you the State?

20 MS. HAMMACK: Please present Ms. Herron.

21 THE CLERK: What say you the defense?

22 MS. ZMROCZEK: Please excuse Ms. Herron for the trial.

23 THE CLERK: Please return to your seat.

24 Number 171, Christy Thompson.

25 (Black female comes forward.)

1 THE CLERK: What say you the State?

2 MS. HAMMACK: Please excuse Mrs. Thompson from this
3 case.

4 THE CLERK: Please return to your seat.

5 Number 64, Robin Golden.

6 (White female comes forward.)

7 THE CLERK: What say you the State?

8 MS. HAMMACK: Please present Ms. Golden.

9 THE CLERK: What say you the defense?

10 MS. ZMROCZEK: Please excuse Ms. Golden for this
11 trial.

12 THE CLERK: Please return to your seat.

13 Number 196, Ricky Williams.

14 (White male comes forward.)

15 THE CLERK: What say you the State?

16 MS. HAMMACK: Please present Mr. Williams.

17 THE CLERK: What say you the defense?

18 MS. ZMROCZEK: Please swear Mr. Williams.

19 THE CLERK: Please have a seat to your left.

20 Number 89, Kim Ingham.

21 (White female comes forward.)

22 THE CLERK: What say you the State?

23 MS. HAMMACK: Please present Ms. Ingham.

24 THE CLERK: What say you the defense?

25 MS. ZMROCZEK: Please swear Ms. Ingham.

1 THE CLERK: Please have a seat to your left.

2 Number 132, Ashley Overstreet.

3 (White female comes forward.)

4 THE CLERK: What say you the State?

5 MS. HAMMACK: Please present Ms. Overstreet.

6 THE CLERK: What say you the defense?

7 MS. ZMROCZEK: Please excuse Ms. Overstreet for this
8 trial.

9 THE CLERK: Number 22, Jack Burckhalter.

10 (White male comes forward.)

11 THE CLERK: What say you the State?

12 MS. HAMMACK: Please present Mr. Burckhalter.

13 THE CLERK: What say you the defense?

14 MS. ZMROCZEK: Please excuse Mr. Burckhalter for this
15 trial.

16 THE CLERK: Number 41, Kristen Deal.

17 (White female comes forward.)

18 THE CLERK: What say you the State?

19 MS. HAMMACK: Please present Mrs. Phillips.

20 THE CLERK: What say you the defense?

21 MS. ZMROCZEK: Please excuse Mrs. Phillips for this
22 trial.

23 THE CLERK: That is two strikes for the State and nine
24 for the defense.

25 Number five, Beverly Axen.

1 (Black female comes forward.)

2 THE CLERK: What say you the State?

3 MS. HAMMACK: Please excuse Ms. Axen from this case.

4 THE CLERK: Please return to your seat.

5 Number 54, Christine Farina.

6 (White female comes forward.)

7 THE CLERK: What say you the State?

8 MS. HAMMACK: Please excuse Ms. Farina from this case.

9 THE CLERK: Number 148, Karen Rehnlund.

10 (White female comes forward.)

11 THE CLERK: What say you the State?

12 MS. HAMMACK: Please present Ms. Rehnlund.

13 THE CLERK: What say you the defense?

14 MS. ZMROCZEK: Please excuse Ms. Rehnlund for this
15 trial.

16 THE CLERK: Number 19, Alan Broome.

17 (White male comes forward.)

18 THE CLERK: What say you the State?

19 MS. HAMMACK: Please present Mr. Broome.

20 THE CLERK: What say you the defense?

21 MS. ZMROCZEK: Please present Mr. Broome.

22 THE CLERK: Please have a seat to your left.

23 Number 86, Lee Houston.

24 (Black male comes forward.)

25 THE CLERK: What say you the State?

1 MS. HAMMACK: Please excuse Mr. Houston from this
2 case.

3 THE CLERK: Strikes have been exhausted.

4 Number 79, Kimberly Hebbard.

5 (White female comes forward.)

6 THE CLERK: What say you the State?

7 MS. HAMMACK: Please present Ms. Hebbard.

8 THE CLERK: What say you the defense?

9 MS. ZMROCZEK: Please swear Ms. Hebbard.

10 THE CLERK: And now alternates.

11 THE COURT: You'll get one strike. You'll get two.

12 You go with the, starting with -- go ahead.

13 THE CLERK: Number 40, Tracye Davis.

14 (Black female comes forward.)

15 THE CLERK: What say you the State?

16 MS. HAMMACK: Please present Ms. Davis.

17 THE CLERK: What say you the defense?

18 MS. ZMROCZEK: Please excuse Ms. Davis from this
19 trial.

20 THE CLERK: Number 13, Bennett Blue.

21 (White male comes forward.)

22 MS. HAMMACK: Please present Mr. Blue.

23 THE CLERK: What say you the defense?

24 MS. ZMROCZEK: Please swear Mr. Blue.

25 THE CLERK: Please have a seat to your left.

1 THE COURT: All right. Second alternate, two and one.

2 THE CLERK: Number 49, Lynwood Duggan.

3 (White male comes forward.)

4 THE CLERK: What say you the State?

5 MS. HAMMACK: Please present Mr. Duggan.

6 THE CLERK: What say you the defense?

7 MS. ZMROCZEK: Please swear this witness.

8 THE CLERK: Please have a seat to your left.

9 THE COURT: Anything from the State with respect to
10 the composition of the jury?

11 MS. HAMMACK: No, Your Honor.

12 THE COURT: Anything from the Defendant?

13 MS. ZMROCZEK: Nothing, Your Honor.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury that did not get selected, I thank all of you very,
16 very much for making yourselves available here this
17 morning. What I think we're going to ask you to do is to
18 call back tonight after six o'clock and you will get
19 further instructions at that time. As of now you are free
20 to leave. Y'all have a nice afternoon and thank you very
21 much, again.

22 (Jury panel excused at 11:38 a.m.)

23 THE COURT: Madam Clerk, will you swear the jury?

24 (Jury impaneled.)

25 THE CLERK: You may be seated.

1 THE COURT: Ladies and gentlemen, before we start I'm
2 going to give some very preliminary instructions and then
3 we're going to take a break and -- since we've been in
4 here for a little while, and then we'll come back and I'll
5 give you some additional instructions and then we'll turn
6 it over to the lawyers to begin the trial.

7 The first thing I want to tell you is we anticipate
8 this case is going to last several days. And in the
9 course of that time you will be in and out of the
10 courthouse, you'll be in the courtroom, back to the jury
11 room. I'm going to ask you to do a couple things for me.

12 First, I'm going to ask that you not discuss this case
13 with each other at any time until you have been given
14 instructions by the Court that you can begin your
15 deliberations. So any time we take a break and you go
16 back to the jury room, do not discuss the case with each
17 other. Any time you leave the courthouse, at lunch, in
18 the evening, whatever it is, and anybody that you come in
19 contact with, do not discuss the case with anybody.

20 And I ask you to do this, ladies and gentlemen, for
21 this reason. We want to give both the State and the
22 Defendant a complete opportunity to put up whatever
23 evidence they wish to offer in the case and to complete
24 their case before you begin to formulate an opinion about
25 the case.

1 I'm afraid if you go back and start talking about the
2 case with each other before the State's finished its case
3 and the Defendant's finished its case, or the parties have
4 made their closing arguments, that you may begin to
5 formulate some opinion about the case and that would not
6 be fair to either the State or the Defendant. I promise
7 you, at the end of the trial you will have as long a time
8 to discuss the case with each other during your
9 deliberations as you would like.

10 When you go home, when you leave the courtroom, if you
11 come in contact with somebody and you tell them what
12 you're doing and start discussing the case, even though
13 that person is not here they will have an opinion and they
14 will express that opinion to you. They will know nothing
15 about the case. They will have not heard any of the
16 evidence, but they will tell you what they think about the
17 case. And that may affect you in some manner.

18 So do not discuss the case with anybody you come in
19 contact with until you are told that you can do so. At
20 the end of the trial when you're finished with your jury
21 duty, you can talk about this case with anybody you wish
22 to talk to, or you don't have to talk to anybody about the
23 case. If you don't want to talk about it and somebody
24 approaches you and they persist, you contact me and I
25 promise you, I will see to it that they don't deal with

1 you in any manner whatsoever. But do not discuss this
2 case with anyone until you have been given instructions
3 that you can talk about it.

4 I'm going to ask that you not do any private
5 investigation in the case. Don't get on Google. Don't
6 get on the Internet. Don't get in the -- if there's
7 something in the newspaper, don't read the newspaper;
8 something on television, don't watch it; something on the
9 radio, don't listen to it.

10 You are to decide this case by the evidence that's
11 presented here in the courtroom, not by what you may read
12 or your own private investigation or your own inquiry on
13 the Internet. So do not do that under any circumstances,
14 ladies and gentlemen.

15 This case is very, very, very important to both the
16 State and to the Defendant. It is very, very serious
17 charges that are pending against the Defendant and we want
18 to make sure that both sides are given a fair opportunity
19 in this case and a fair trial.

20 Now, I'm going to let you go back to the jury room.
21 We'll take a little bit of a break and then I'll come back
22 and give you some instructions. And I'll turn this matter
23 over so that the attorneys can make their opening
24 statements to you, but when you go back to the jury room
25 do not discuss the case with each other.

1 When you come back, nobody has a set seat. So when
2 you come in, walk all the way to the end. The alternates
3 will occupy these two seats right here where you're
4 sitting right now. There's no magic to either one of
5 those seats, whatever one y'all want you can have. If we
6 have to select an alternate for some reason, then we will
7 do that. It doesn't matter by how you were, in what order
8 you were picked so it doesn't matter where you sit.

9 Don't discuss the case when you're back in the jury
10 room. We'll come back in about 10 or 15 minutes, ladies
11 and gentlemen. And y'all are free to step back.

12 (Jury exits courtroom at 11:44 a.m.)

13 THE COURT: All right. We had some brief discussion
14 prior to coming into the courtroom this morning about
15 Mr. Rudd. As you know, once the case is called for trial,
16 Mr. Rudd no longer is on a bond. He's in the custody of
17 the Court. And I've discussed whether y'all had any
18 concerns about Mr. Rudd and his willingness to make sure
19 he is here every day.

20 The State indicated that you do not have a problem
21 with that; is that correct?

22 MS. HAMMACK: That's correct, Your Honor.

23 THE COURT: Mr. Rudd, we're going to allow you to
24 remain free while this case is being tried.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: But I'm going to tell you two things.
2 One, you need to make sure you are here every day when
3 you're told to be here by your lawyer or by the Court.

4 If you are not, we will do several things. One, we
5 will continue this case without your being present, and I
6 promise you, it will not be in your best interests to have
7 this trial go forward without your being here.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Two, we will come find you and you will
10 not avoid whatever is going to happen in this trial. So
11 you need to make sure you are here at all times when your
12 lawyers tell you to be here. If I say we're going to
13 start at 9:30 and they tell you to be here at 8:30, if
14 you're not here then I will revoke your being free and we
15 will see to it that you're here every day.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: So that means drive safely and slowly when
18 you come here so that you're not discussing your case with
19 some police officer due to your driving ability. So leave
20 early so you don't have that problem.

21 THE DEFENDANT: Make sure.

22 THE COURT: All right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that?

25 THE DEFENDANT: Yes, Your Honor. Thank you.

1 THE COURT: We'll take a little bit of a break and
2 then come back and go forward

3 (Break taken at 11:47 a.m. At 11:59 a.m., the trial
4 resumed:)

5 THE COURT: Ready to go?

6 MS. HAMMACK: Yes, Judge.

7 THE COURT: Are y'all ready?

8 MS. ZMROCZEK: Yes, Judge.

9 THE COURT: If you would, bring the jury in.

10 (Jury enters courtroom at 12:00 p.m.)

11 THE COURT: All right. Ladies and gentlemen, again,
12 let me take a few minutes and tell you a little bit about
13 the process. If you haven't served on a jury before or
14 it's been some time since you've served you will need to
15 familiarize yourself a little bit.

16 As I told you, Mr. Rudd has been charged with -- there
17 are eight indictments, five of which allege that he
18 committed criminal sexual conduct with a minor in the
19 second degree, and three allege that he committed criminal
20 sexual conduct with a minor in the third degree.

21 Indictment 2013-GS-02-1681 alleges that Mr. Rudd did
22 in Aiken County at diverse times on or between September
23 24 of 2012 and May 20, 2013, commit the crime of criminal
24 sexual conduct with a minor in the second degree and that
25 the Defendant did commit a sexual battery upon Minor 2

1 , a minor who was 12 years of age at the time of the
2 incident, and that the Defendant was in a position of
3 familial, custodial or official authority to coerce the
4 victim to submit or was the older of the victim. Criminal
5 sexual conduct in the second degree.

6 The Defendant -- I mean, Indictment 2013-GS-02-1680
7 alleges that Mr. Rudd did in Aiken County at diverse times
8 on or before September 24, 2011, and September 23, 2012,
9 commit the crime of criminal sexual conduct with a minor
10 in that the Defendant did commit a sexual battery upon
11 **Minor 2** , a minor who was 11 years age at the time of
12 the incident, and the Defendant was in a position of
13 familial, custodial or official authority to coerce the
14 victim to submit or was the older of the victim.

15 Indictment 2013-GS-02-1679 alleges that Mr. Rudd did
16 in Aiken County at diverse times on or between December
17 12, 2012, and May 19, 2013, commit the crime of criminal
18 sexual conduct with a minor in the second degree and that
19 the Defendant did commit a sexual battery upon **Minor 1** ,
20 a minor who was 14 years of age at the time of the
21 incident, and the Defendant was in a position of familial,
22 custodial or official authority to coerce the victim to
23 submit or was the older of the victim, older than the
24 victim.

25 Indictment 2013-GS-02-1645 alleges that Mr. Rudd being

1 over the age of 14 did in Aiken County at diverse times on
2 or between September 24, 2012, and May 20, 2013, willfully
3 and lewdly commit or attempt to commit a lewd or
4 lascivious act upon or with the body of Minor 2 , a
5 child under the age of 16 years, with the intent of
6 arousing, appealing to or gratifying the lusts, passions
7 and sexual desires of himself or of such child.

8 Indictment 2013-GS-02-1643 alleges that Mr. Rudd did
9 in Aiken County at diverse times on or between December ,
10 12, 2011, and December 11, 2012, commit the crime of
11 criminal sexual conduct with a minor in the second degree
12 and that the Defendant did commit a sexual battery upon
13 Minor 1 , a minor who was 13 years of age at the time of
14 the incident, and the Defendant was in a position of
15 familial, custodial or official authority to coerce the
16 victim to submit or was older than the victim.

17 Indictment 2013-GS-02-1642 alleges that Mr. Rudd did
18 in Aiken County on or about May 20, 2013, commit the crime
19 of criminal sexual conduct with a minor in the second
20 degree, and that the Defendant did commit a sexual battery
21 upon Minor 1 , a minor who was 14 years of age at the
22 time of the incident, and the Defendant was in a position
23 of familial, custodial or official authority to coerce the
24 victim to submit or was older than the victim.

25 Indictment 2013-GS-02-1639 alleges that Mr. Rudd being

1 over the age of 14 did in Aiken County at diverse times on
2 or between December 12, 2012, and May 19, 2013, willfully
3 and lewdly commit or attempt to commit a lewd or
4 lascivious act upon or with the body of Minor 1 , a
5 child under the age of 16 years, and did so with the
6 intent of arousing, appealing to or gratifying the lusts,
7 passions or sexual desires of himself or such child.

8 And Indictment 2013-GS-02-1638, criminal sexual
9 conduct with a minor third degree, alleges that Mr. Rudd
10 being over the age of 14 did in Aiken County on or between
11 May 20, 2013, willfully and lewdly commit or attempt to
12 commit a lewd or lascivious act upon or with the body of
13 Minor 1 , a child under the age of 16, and did so with
14 the intent of arousing, appealing to or gratifying the
15 lusts, passions and sexual desires of himself or such
16 child.

17 Ladies and gentlemen, as I told you previously, these
18 indictments are notice documents. They are documents that
19 has put this Defendant on notice of these particular
20 charges. And to these charges this Defendant has entered
21 a plea of not guilty.

22 The burden now falls upon the State of South Carolina
23 to prove this Defendant guilty and prove him guilty beyond
24 a reasonable doubt.

25 The Defendant has no burden in this case. The

1 Defendant comes into this courtroom presumed to be
2 innocent and that presumption will remain with him
3 throughout the course of the trial and would only change
4 if the jury upon hearing the evidence and applying the law
5 determines that the Defendant is guilty.

6 So you need to keep those two basic principles of our
7 criminal justice system in mind. One, in every instance
8 the Defendant is presumed to be not guilty and, two, it is
9 the burden of the State to prove the Defendant guilty
10 beyond a reasonable doubt. The Defendant has no burden
11 whatsoever.

12 Now, as I told you, these are very serious charges.
13 We want to do everything we can to make sure that both
14 sides get a fair and impartial trial. And I've asked you
15 to help me in the way that I did by not discussing the
16 case with each other at any time until you've been given
17 instructions to do so, and not discussing the case with
18 anyone else or doing any independent inquiry or making any
19 independent investigation.

20 Now the way this trial will take place, ladies and
21 gentlemen, the first thing that's going happen is the
22 lawyers are going to get up and have an opportunity to
23 speak to you. The solicitor will make the opening
24 statement first. And the solicitor will go first
25 throughout the course of the trial because, as I told you,

1 the burden falls upon the State to prove this Defendant
2 guilty beyond a reasonable doubt. Because that burden is
3 on the State, the Defendant gets to go first throughout
4 the course of the trial -- I mean, the State gets to go
5 first throughout the course of the trial.

6 The opening statement, ladies and gentlemen, is the
7 chance for these lawyers to introduce themselves to you
8 and to tell you a little bit about this case so you'll
9 have some understanding about the case before the evidence
10 is actually presented to you. It is a chance for these
11 lawyers to inform you or educate you about the case so
12 you'll have some understanding about it.

13 After the State makes its opening statement then the
14 Defendant will be given an opportunity to make a defense
15 opening statement through Defendant's attorney.

16 When both sides have completed their opening
17 statements then the State will begin the presentation of
18 the State's evidence. And I would imagine most of the
19 evidence will come into this case through testimony from
20 witnesses. Witnesses will be put under oath. They'll get
21 in this witness box right here and they will tell what
22 information they've heard about this case or they have
23 about the case; they've seen something, heard something
24 tasted something, felt something, smelled something. They
25 have some knowledge from one of their senses and they will

1 tell you what that information is.

2 Other types of evidence that could come into this case
3 could be things like photographs, documents. That type of
4 evidence is, actually it's an exhibit. It's given an
5 exhibit number. It's introduced into evidence. That
6 evidence will go with you to the jury room. You will have
7 those exhibits to examine during the course of your
8 deliberations.

9 The testimony will go with you in your memory. So it
10 is absolutely essential that you pay close attention to
11 what's being said, that you hear what's being said and
12 that you understand what's being said.

13 If you don't understand it, if you don't -- can't hear
14 it, let me know, raise your hand and we'll make sure the
15 witness or whoever it is, the lawyer, me, anybody, either
16 speaks more clearly or speaks louder, whatever the
17 situation may be.

18 A third type of evidence that could come into a case
19 is what we call stipulations. And that's where the
20 parties stipulate or agree as to some fact or some
21 evidence. If there is a stipulation the lawyers will tell
22 me and I will tell you and you are to accept that as
23 though that fact has been proven here in the court.

24 Now after the State has put up its evidence, ladies
25 and gentlemen, the Defendant is given an opportunity to

1 offer any evidence the defense wishes to offer. And I
2 don't know what the Defendant might do in this instance
3 because, as I told you, there's no burden on the Defendant
4 to do anything in this case.

5 If the defense wishes to offer evidence, I would
6 assume that its evidence would be of a similar nature to
7 the State's evidence. And that is, most of it would be
8 testimony of witnesses who will tell you what information
9 they have about the case.

10 When both sides have completed the presentation of
11 their evidence, ladies and gentlemen, the lawyers are
12 given another opportunity to speak with you. And this is
13 what we call a closing argument. And the closing argument
14 is a little bit different than the opening statement.

15 The closing argument is a chance for the lawyers to
16 recap what they think the evidence was that came in during
17 the course of the trial, to emphasize to you what they
18 think you should discuss and deliberate during the course
19 of your being back in the jury room. It is an opportunity
20 for the attorneys to attempt to convince or persuade you
21 as to why you should ultimately return a verdict or
22 verdicts for their respective client.

23 When both sides have completed their closing
24 arguments, then I will charge you as to the law. You will
25 then retire to the jury room, begin your deliberations.

1 And in the course of your deliberations you will determine
2 the facts in the case, you will apply the law that I give
3 you and you will ultimately render your verdict or
4 verdicts.

5 Now, ladies and gentlemen, you and I have distinct
6 roles in this case. Your role is that of the fact finders
7 in the case. You are the sole fact finders. Only you
8 will determine what you believe to be the facts of this
9 case.

10 My role is different. My role is twofold. One, in
11 every structured event we have rules as to how that event
12 should occur. And in the trial of the case we have rules
13 as well. We have rules of evidence and rules of
14 procedure. And it is my responsibility to see that those
15 rules are complied with.

16 My other responsibility is to charge you or instruct
17 you as to the law so you can apply the law to the facts of
18 the case.

19 I want you to listen very carefully to everything that
20 the lawyers tell you during the course of this trial. But
21 understand one thing. What these lawyers tell you is not
22 evidence. These lawyers are advocates. They represent
23 their respective clients. It's their responsibility to
24 put in front of you what they think is appropriate in
25 order to assist their client in their, in the trial of

1 their case. But what they say in this trial is not
2 evidence and is not to be considered by you as evidence.

3 Evidence comes in the way I told you about earlier:
4 Testimony; exhibits; stipulations. And that is what you
5 are to consider.

6 Now you have met a number or seen a number of people
7 in this case through introductions of the attorneys and
8 witnesses and things of that nature. Let me introduce
9 some other individuals that may be involved in this case.
10 The young lady seated to my right is Caitlyn Preswick who
11 is my law clerk. And she helps me in a number of ways.

12 You heard me talk about in jury qualification that
13 this is a court of record. And it's a court of record
14 because everything that's said in this courtroom is being
15 taken down by a court reporter. And that is the young
16 lady that's seated in front of me to my left, Ms. Cher
17 Young. She is making a record of everything that's being
18 said during the trial of the case.

19 Ladies and gentlemen, the individuals that you're
20 going to have the most contact with in this case are going
21 to be the bailiffs. And you've already had some contact
22 with them. Mr. Bill Whittle is the gentleman seated up
23 here next to the deputy. He's the chief bailiff. Who
24 else we got back there? Mr. Mert Holtzhouser is all the
25 way in the back. Mr. John Crawford is in the back. And

1 we had Ms. Coleman. She may -- I think she's working in
2 the back room right now, but she may be in and out during
3 the course of the trial.

4 These gentlemen will show you, as they've done, how to
5 get to the jury room. They'll show you how to get out of
6 the courthouse. They'll take roll when you come back.
7 They're here to help you in any way they can. If a
8 problem comes up or a question comes up, bring it to their
9 attention. They're experienced. They're gentlemen. And
10 they will do whatever they can to assist you in the
11 matter.

12 Ladies that are seated in front of me with the -- that
13 are with the clerk's office are Ms. Shannon Thompson.

14 THE CLERK: Rosencrantz.

15 THE COURT: Who?

16 THE CLERK: Rosencrantz. Thompson's in the office.

17 THE COURT: Well, Rosencrantz. And if you can spell
18 it by the end of the trial you'll get a star. And Angel
19 Miles. And those, these are the ladies that are seated up
20 here and they will help in a number of ways. As you've
21 seen, they helped with the picking of the jury. They'll
22 help with swearing of witnesses and publishing any
23 verdicts.

24 I think with that said, we're going to now turn it
25 over to the attorneys. And as I said, I think this case

1 is going to take several days. Pay close attention. It's
2 very important to everybody involved.

3 And so with that said, I'll ask Ms. Hammack, are you
4 ready to proceed?

5 MS. HAMMACK: Yes, Your Honor.

6 THE COURT: All right. If you would, please, ma'am.

7 MS. HAMMACK: Thank you, Judge. Ms. Zmroczek.
8 Members of the jury.

9 Parents and their children have a special
10 relationship. Kids are dependent on their parents. The
11 parents clothe them, they bathe them, raise them, they
12 protect them. That's what we expect of parents.

13 Kids are taught to be obedient to their parents. Make
14 sure you mind what Mom and Dad says.

15 This case is about the relationship between a parent
16 and his children. But this case is about a parent who
17 manipulated his children's dependence. He took advantage
18 of his children's trust, and his children's obedience.

19 This case is about a father, that father. The
20 Defendant. This case is about that father picking the two
21 easiest targets, his daughters, and using them for his own
22 sexual desires.

23 Now you're going to meet those two girls today; Minor 1
24 and Minor 2 . Minor 1 is 14 Minor 2 is 13, and although
25 they're sisters they are completely different. Minor 1's a

1 tomboy. She loves being outside. She loves riding her
2 four wheeler. Minor 2 is your typical girly-girl. Right
3 now all she cares about is nail polish and skin care.

4 But although these two girls are very different, they
5 have one thing in common. They were their daddy's
6 targets.

7 And as you'll hear from those girls today, from the
8 end of 2011 until 2013, that man groped them and
9 penetrated their vaginas with his finger. This isn't
10 going to be fun, guys. This isn't going to be
11 comfortable. We're talking about stuff that grownups
12 don't talk about in private.

13 But, members of the jury, those two little girls,
14 they're going to have to come in here and that's exactly
15 what they're going to have to talk to you about. Those
16 girls are going to come in here and they're going to talk
17 to you about for two years about what their daddy would do
18 when he would take them into his room, behind closed
19 doors, in secret.

20 Now you're going to hear not just from the girls but
21 you're going to hear from the other people surrounding
22 this case. You're going to hear from their mama. You're
23 going to hear from the DSS people that were involved.
24 You're going to hear the words of the Defendant himself.

25 Now, as we go into this, I'm going to ask you to focus

1 on what you hear. The Judge has talked to you a lot about
2 that. I'm going to ask you to use your common sense. You
3 all got it. You've had it. So as you listen, pay
4 attention to what makes sense, what people have to say, if
5 they've had a reason to lie, if they have any motives in
6 here talking to you today.

7 Now, I told you a little bit about what you're going
8 to hear. Let me tell you what you're not going to hear.
9 You're not going to hear about fingerprints. You're not
10 going to hear about DNA. This ain't CSI. We don't have
11 fancy glow-in-the-dark machines. You're not going to know
12 who the bad guy is before the commercial break. And this
13 case didn't get solved in 30 minutes.

14 But you've got those eyewitnesses. You've got those
15 little girls.

16 Now I imagine you're going to hear a whole lot of,
17 stuff that don't have anything to do with **Minor 1** and
18 **Minor 2** . And that's why I ask you to focus and bring in
19 your common sense.

20 The Judge talked to you about reasonable doubt and
21 you're going to hear a whole lot more about that today.
22 But reasonable doubt is pretty much what it sounds like.
23 It's a doubt that would leave you not convinced. But as
24 the Judge is going to tell you, we don't have to convince
25 you beyond any doubt or all doubt. Just what's

1 reasonable.

2 We don't have to disprove every ridiculous theory, the
3 theory is ridiculous, it's not reasonable. It's just, use
4 your common sense as you hear the evidence in this case.

5 Now, he read you those indictments and that's a lot of
6 legal words. It's a lot of words that were probably kind
7 of jumbled together and the Judge is going to explain it
8 to you more later. But the point of this is, we've got
9 two charges, criminal sexual conduct with a minor second,
10 criminal sexual conduct with minor third degree.

11 And the reason we have more than one indictment for
12 each one of those is time periods. We're dealing with
13 kids. They're not going to be able to tell you on
14 Tuesday, August 23rd at 2012, this is what happened. Kids
15 remember things over larger spans. They remember things
16 like birthdays, and that's where the indictments come in.
17 The indictments span from each kid's birthday. So they
18 know of each year of their life. That's what we're
19 talking about.

20 But we're talking about just two charges. And as the
21 Judge read, he's going to tell you, that really means you
22 just have two questions to answer. Y'all are the jury.
23 Y'all decide what happened. And so I want you to focus on
24 two questions as we go through this trial. Don't get
25 distracted from those questions.

1 Did that father of Minor 1 and Minor 2 touch his girls
2 for his own sexual desires? And did that father penetrate
3 his daughter's vaginas with his finger?

4 The evidence is going to tell each of y'all that the
5 answer to those questions is yes, and that that man is
6 guilty.

7 Thank you.

8 MR. BANK: May it please the Court.

9 THE COURT: Yes, sir, Mr. Bank.

10 MR. BANK: State V Rudd. It's amazing when you change
11 one word in a case how it can really explain what's going
12 on. What's actually going on here? This is a case about
13 a father in a gender-reversal role, a stay-at-home dad,
14 taking care of a daughter with an unbelievably rare
15 medical condition, and a mother with a motive.

16 Ladies and gentlemen, this case is not State V Rudd.
17 It should be Rudd V Rudd. And for those of you who don't
18 know what that means, when you have two names, Rudd V
19 Rudd, Smith V Smith, Jones V Jones, that means that it's a
20 divorce case. It's a divorce case where people sling mud
21 and fight to get what they want. This case should not be
22 upstairs. It should be downstairs in family court.

23 But that's a bit of a hyperbole because we aren't
24 downstairs. We're upstairs in a court of general
25 sessions, in criminal court.

1 There's been a judge that's read the indictments to
2 you. There's a solicitor who's made allegations that they
3 have to prove beyond a reasonable doubt, a jury who's been
4 picked and asked whether they can be impartial.

5 And then there's us. My name is Bobby Bank along with
6 co-counsel, Aimee Zmroczek, and this is Dwayne Rudd, the
7 person accused in this case.

8 And as you've just heard, he has been accused of one
9 of the most awful things you can be accused of. He's been
10 accused of sexually assaulting his own daughters. But
11 this isn't a case about sexual assault. This is a case
12 about a dad caring for his daughter and a mother with a
13 motive.

14 Now before I go any further for the purposes of this
15 closing -- or this opening and the rest of this trial, I
16 want to add onto what the solicitor has said about this
17 being a very uncomfortable trial.

18 You've heard just from the nature of what the
19 allegations are that this is going to be an uncomfortable
20 trial. But it's going to be made even more uncomfortable
21 because of a medical condition that the oldest daughter,
22 Minor 1, has.

23 And I brought my notes with me so I don't misstate it.
24 Minor 1 has a medical condition, congenital adrenal
25 hyperplasia which you might hear us say is CAH for short.

1 I'm going to tell you more about that condition in a
2 minute or two, but very quickly it's a condition she's had
3 her entire life, will have for the rest of her life.

4 And it's going to deal with a lot of doctor
5 testimony. And it's going to require us to say a lot of
6 terms that might otherwise make you uncomfortable if
7 you're not prepared for it. The condition is going to
8 make us have to use terms like vagina, like clitoris, like
9 hymen, like vaginal reconstructive surgery. And I'm sure
10 the solicitors will second me when I say, please just be
11 prepared for that and don't let it distract you from the
12 testimony.

13 Now an opening statement, as the Judge has said, is
14 not an argument and it's not evidence. What it is is a
15 chance for both sides to get up and tell you what they
16 want you to pay attention to.

17 What do we want you to pay attention to? I've already
18 told you the two things. The first is a father in a
19 gender-reversal role taking care of his daughters. There
20 will be testimony that Mr. Dwayne Rudd was the stay-at-
21 home dad in this case. He did renovate houses and work,
22 but he didn't work a standard nine-to-five job. There
23 will be testimony he was always in the house with the
24 girls from the time they were young until the time that
25 they were teenagers. He put diapers on the girls. He

1 took the girls to the doctors. He home schooled and when
2 the girls went to public school, he was the point of
3 contact for the school.

4 He was also the parent that was the primary caretaker
5 for Minor1 and her medical condition, CAH. You'll hear
6 testimony that this condition is something that has
7 afflicted her since she was born. And it will afflict her
8 for the rest of her life. It required vaginal
9 reconstructive surgery less than a year before these
10 allegations were made. You will hear testimony regarding
11 the effects of this condition, the treatment that it
12 requires, both at home and in the hospital. You'll hear
13 testimony that Mrs. Rudd knew of all the care and
14 treatment that was required.

15 And what you'll also hear is out of all the police
16 officers and all the DSS workers involved when these
17 allegations were made, not one of them called one of
18 Minor1's doctors. Not one of them.

19 Now I want to be clear. That the law -- and I want to
20 be careful, but the law states that Mr. Dwayne Rudd cannot
21 be convicted if he was caring for the medical treatment or
22 diagnosis of his daughter, of his kids or anybody else.

23 Now, while Mr. Rudd's role in the family and taking
24 care of this condition may be odd, the fact that he was
25 the father and not the mother doing it might be odd, but

1 while the condition itself might be weird, none of that
2 makes it criminal.

3 Now the second thing we want you to focus on is the
4 motives of the mother. There will be testimony that this
5 mother wanted a divorce. There will be testimony about
6 what she's done since she's filed for divorce, the people
7 that she's associated with, the people that she's stayed
8 with. There will be testimony that she was supposedly
9 told about these allegations, one, two or maybe three days
10 before she called the police. There will be testimony
11 that she was the only person with the children, depending
12 on how you count it, five, six, seven days before they
13 were interviewed by a forensic interviewer. She's the
14 only person that is with these children who have an
15 opportunity to shape their words and change their words
16 and to manipulate their words into changing what care for
17 her daughter is into sexual assault. There will be
18 testimony that since she called in these allegations she's
19 the only person that's benefited.

20 Now in this case is testimony slightly reminiscent of
21 the Winston-Salem witch trials. That was a set of cases
22 back in the late 1600s where many people were hanged or
23 executed for crimes that they couldn't have committed.
24 There were convicted on the basis of false child testimony
25 and the hysteria related with the nature of the crime

1 itself. And I ask you to keep that in mind as this trial
2 continues.

3 The last thing I want to speak to you about is the
4 burden of proof. As the Judge and the solicitor have told
5 you, the State holds the burden of proof. That burden of
6 proof is guilty beyond a reasonable doubt.

7 Now I will tell you that we are going to put up a
8 defense. We are going to put up witnesses, and we are
9 going to put in evidence. What I want to remind you is
10 that in no way shifts or changes that burden of proof. It
11 stays with the State regardless of the case we present.
12 And we believe that after everything has been presented
13 you will find at the end of the day that Mr. Dwayne Rudd
14 is not who Mrs. Rudd says he is and in fact not guilty.

15 Thank you.

16 THE COURT: All right. Ladies and gentlemen, I think
17 what we'll do is go ahead and break for lunch and come
18 back and start the presentation of the evidence when we
19 get back.

20 So I'm going to ask that you not discuss this case
21 with each other or with anyone else which, I'm going to
22 ask that you be back here at quarter till two. That will
23 give you an hour and 15 minutes for lunch.

24 Please be prompt. Be on time. Have a nice lunch.
25 And, Mr. Whittle, if you'll show them out of the

1 courtroom.

2 (Jury exits courtroom at 12:32 p.m.)

3 THE COURT: All right. The motion to sequester that I
4 had granted, who's here on behalf the State?

5 MS. HAMMACK: Just the officer, Your Honor. The girls
6 are downstairs.

7 THE COURT: Is the mother in the court?

8 MS. HAMMACK: No. Everybody's downstairs except the
9 officer.

10 THE COURT: All right. And just your client?

11 MS. ZMROCZEK: Correct, Your Honor.

12 THE COURT: All right? Anything we can take up?

13 MS. HAMMACK: Not from the State, Judge.

14 MS. ZMROCZEK: (Shakes head.)

15 THE COURT: Okay. Well, we'll come back at and start
16 at 2:15. Y'all have a nice lunch and we'll see you then.

17 MS. ZMROCZEK: What time? 1:45?

18 THE COURT: Yes.

19 MS. ZMROCZEK: I didn't hear you.

20 MR. BANK: We didn't know whether you said 1:45 or
21 2:15. All right.

22 THE COURT: I'm sorry. I meant quarter till two.

23 MS. ZMROCZEK: Thank you, Judge.

24 (Lunch break taken at 12:39 until 1:53 p.m, when the
25 trial resumed:)

1 THE COURT: I understand we have some issue with
2 respect to the first witness. Is that correct?

3 MS. HAMMACK: That's correct, Judge.

4 THE COURT: All right. What -- tell me exactly what
5 the issue is, counsel.

6 MS. ZMROCZEK: Judge, this witness, Minor 1, is
7 obviously the one with the medical condition. And she
8 also has a severe or, a severe learning disability so much
9 that they sent me some paperwork that -- in November of
10 2012, so in the midst of these allegations, the mom took
11 her to the doctor and had her IQ tested. Mom said she was
12 real concerned about her not listening, her not having a
13 good memory.

14 All of these things started to raise competency
15 questions for us. And since she was older when they did
16 the CAC interview, they didn't go through the truth and
17 lying steps, Your Honor. We just ask out of an abundance
18 of caution that --

19 THE COURT: Well, I'm not sure what the truth and
20 lying steps are that they go --

21 MS. ZMROCZEK: Just does she know the difference,
22 those kind of things, Your Honor. We would just ask that
23 she be -- her competency be examined prior to her
24 testimony.

25 THE COURT: I don't know that I'm capable of

Minor 1 - EXAMINATION: THE COURT

1 determining somebody's competency but -- just based on my
2 asking her some questions, but do you all have any
3 objection to my inquiring, asking her if she understands
4 what telling the truth means?

5 MS. HAMMACK: Judge, we don't have a problem with
6 that. We're going to ask her the same thing. She's got a
7 specific learning disability. She doesn't read too good,
8 doesn't have much of an impact here but that's what we're
9 looking at.

10 THE COURT: Well, is she here?

11 MS. HAMMACK: She is, Judge.

12 THE COURT: Where is she?

13 MS. HAMMACK: She's outside waiting to be called.

14 THE COURT: All right. Ask her to come in here.

15 MS. HAMMACK: Minor 1 .

16 THE COURT: The last time I was here we tried a case
17 and it took 10 minutes to get the witnesses from wherever
18 they were sequestered to here. Where do you all keep
19 these witnesses?

20 MS. HAMMACK: We have tried to address that, Judge.
21 We brought the first witness upstairs. And normally
22 they're down in the basement to avoid meeting with people.

23 Minor 1 , having been duly sworn, was examined and
24 testified as follows:

25 THE CLERK: Please have a seat on the witness box and

Minor 1 - EXAMINATION: THE COURT

1 state your full name for the Court. Spell your last.

2 EXAMINATION

3 BY THE COURT:

4 Q. Can you look at me?

5 My name is Judge Barber and I'm the trial judge in
6 this case. Okay? And I'm -- I need you to answer me
7 because this young lady here takes down what you say. And
8 if you shake your head like this (indicating), she can't
9 take it down because that machine only takes words down.
10 Okay?

11 A. Yeah.

12 Q. And tell me your name.

13 A. Minor 1 .

14 Q. Minor 1. And how old are you, Minor 1?

15 A. Fourteen.

16 Q. What's your date of birth?

17 A. [REDACTED], 1998.

18 Q. You only got two more days. You're going to be 15 in
19 two more days?

20 A. (Nods head.) Yes, sir.

21 Q. Do you mind if I call you Minor 1?

22 A. Yeah.

23 Q. You do mind?

24 A. No.

25 Q. All right. Well, I'm not trying to confuse you or get

Minor 1 - EXAMINATION: THE COURT

1 you in trouble or anything like that. I just want to ask
2 you a couple questions. Okay?

3 A. (Nods head.)

4 Q. Again, I need you to answer me.

5 A. Yes.

6 Q. All right. Now, you say you're 14 almost 15, will be
7 15 in two days. The solicitor here, this young lady here
8 says she's going to call you as a witness in the case. Do
9 you understand that?

10 A. Yes, sir.

11 Q. And you're going to be put under oath just like you
12 were a minute ago. And you're going to be asked some
13 questions. Do you understand?

14 A. Yes, sir.

15 Q. And do you know what you're supposed to do?

16 A. Answer them.

17 Q. And when you do that, what are you supposed to do?

18 A. Tell the truth.

19 Q. Do you know what it means to tell the truth?

20 A. Yes, sir.

21 Q. Do you know what it means to lie?

22 A. Yes, sir.

23 Q. And do you know what happens to you if you lie?

24 A. Yes.

25 Q. What?

Minor 1 - EXAMINATION: THE COURT

1 A. You get in trouble.

2 Q. You can get in trouble if you don't tell the truth.

3 You're going to promise to tell the truth; is that

4 correct?

5 A. Yes, sir.

6 Q. And so you know what it is, that your answers are that

7 you want to give when they ask a question; right?

8 A. Yes, sir.

9 Q. Of course, if you don't understand a question you

10 just, either with this young lady or who's going to --

11 MS. ZMROCZEK: I am, Your Honor.

12 BY THE COURT:

13 Q. -- cross? Or this young lady, if you don't understand

14 the question ask them to repeat it or explain it so that

15 you make sure you understand the question. Okay?

16 A. Yes, sir.

17 Q. But you don't have any problems telling the truth in

18 this matter; is that right?

19 A. What?

20 Q. You're going to tell the truth for us; is that right?

21 A. Yes.

22 THE COURT: Anything y'all want to --

23 MS. ZMROCZEK: No. And, Your Honor, so I'm not

24 distracting, I can already tell that she speaks quietly.

25 Is there a way that -- is there a way that I could be more

Minor 1 - EXAMINATION: THE COURT

1 closely located so that I'm not asking her to speak up or
2 without being distracting to the jury?

3 THE COURT: I don't know.

4 MS. HAMMACK: And also, this is a microphone. So if
5 you're talking quiet you can actually hold that close to
6 your mouth so it will be louder. Okay?

7 THE WITNESS: (Nods head.)

8 MS. ZMROCZEK: The problem is, I know she was talking
9 to you --

10 THE COURT: Well, if you can't hear her just let me
11 know. I don't know where the solicitor's planning on
12 standing, but we'll make sure you hear.

13 MS. ZMROCZEK: Okay. Thank you.

14 BY THE COURT:

15 Q. Now you need to talk loud enough. We're going to have
16 a bunch people over there and they need to hear you.
17 Okay?

18 A. Yes, sir.

19 Q. And the solicitor needs to hear you and the defense
20 counsel needs to hear you. Do you understand?

21 A. Yes.

22 Q. And I'm old which means it's hard for me to hear so
23 you're going to have to talk up and I'll ask you to do
24 that. All right?

25 A. Yes.

1 THE COURT: All right. I'm going to let you step back
2 down from the jury box (verbatim) and we'll call you back
3 in when we're ready. Okay?

4 I think she's indicated that she understands what the
5 truth is and what happens if you don't tell the truth.

6 Y'all don't go far.

7 MS. ZMROCZEK: Thank you, Your Honor.

8 THE COURT: All right. The jury, I'm going to charge
9 the jury on competency of a minor -- I mean, of a child-
10 witness. And she is. And I'll tell them they have to
11 make the decision as to her as they will with all
12 witnesses.

13 MS. ZMROCZEK: Okay. And, Your Honor, I have some
14 photos that I'm going to ask her to identify and show
15 her.

16 So what I was trying to do before court is pre-mark it
17 because there are several.

18 MS. HAMMACK: And, we'll have objections at the
19 appropriate time, Judge.

20 THE COURT: I don't know what kind they are. What
21 kind of objections are they?

22 MS. HAMMACK: Relevancy.

23 THE COURT: What are they?

24 MS. HAMMACK: That's a good question. Pictures of a
25 fish, picture of a car, picture of a girl sliding in a

1 pool.

2 MS. ZMROCZEK: Your Honor, one of the things that
3 obviously we talked about in opening was that he was a
4 stay-at-home dad and that he was very involved in their
5 life.

6 This is a late disclosure or a delayed-disclosure
7 case. I think that it's absolutely relevant to be able to
8 have her identify pictures that were turned over to the
9 solicitor's office, have her identify what she was doing
10 in them, to give the jury a full understanding of what
11 they did day to day. They worked on cars. They helped
12 him work on the house. They did outdoor activities.

13 THE COURT: How many do you have?

14 MS. ZMROCZEK: There are 14, but I can certainly pare
15 them down.

16 THE COURT: I don't think we need 14. She can testify
17 as to what kind of activities she and her dad participated
18 in.

19 If you want a couple pictures to be illustrated -- is
20 that an issue, as to whether he participated in activities
21 with his daughter?

22 MS. HAMMACK: No, Judge, we're not arguing that, but,
23 I mean, to be relevant it's got to be make something more
24 or less probable in this case. And I don't think a
25 picture of one of the girls holding a fish is going to

Minor 1 - DIRECT: HAMMACK

1 make anything more or less probable.

2 THE COURT: It may add something, I don't know.

3 MS. ZMROCZEK: Based on the testimony --

4 THE COURT: Pick out a couple of pictures and we'll
5 let you go into that.

6 MS. ZMROCZEK: Okay.

7 MS. HAMMACK: Judge, we can't pare it down to less
8 than six?

9 THE COURT: I said three.

10 MS. ZMROCZEK: I'm sorry, Judge

11 (Jury enters courtroom 2:03 p.m.)

12 THE COURT: Ladies and gentlemen, you recall when we
13 broke for lunch, both the State and the defense counsel
14 had given their opening statements and we're now at the
15 phase where they're going to call, put up some evidence.
16 Are you ready to call your first witness, Madam
17 Solicitor?

18 MS. HAMMACK: Yes, Your Honor.

19 THE COURT: If you would, ma'am.

20 MS. HAMMACK: State calls Minor 1 .

21 Minor 1 , having been duly sworn, was examined and
22 testified as follows:

23 THE CLERK: Please have a seat in the witness box and
24 state your full name for the Court, spelling your last.

25 THE WITNESS: Minor 1 , Minor 1 .

Minor 1 - DIRECT: HAMMACK

DIRECT EXAMINATION

BY MS. HAMMACK:

Q. Thank you, Minor 1. I'm going to ask you to speak really loud so to everybody can hear. Okay? And if you need to, pick up that microphone and speak into it. Make sure you're loud for me. Okay?

How old are you, Minor 1?

A. Fourteen.

Q. When's your birthday?

A. [REDACTED], 1998.

Q. You're about to have birthday?

A. Yes.

Q. Do you know the difference between the truth and a lie, Minor 1? Can you tell me what the truth is?

A. A real statement.

Q. What's a lie?

A. A false statement.

Q. Okay. What can happen if you tell a lie?

A. You can get in trouble.

Q. Are you in school? Are you okay? If we need to go slow, we'll go slow. Okay?

Can you tell me if you're in school, Minor 1?

A. Yeah.

Q. Where are you in school?

A. Connections Academy.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. Is Connections Academy in a building?

2 A. No.

3 Q. Where do you go to school at?

4 A. It's at home.

5 Q. Okay. So you're home schooled?

6 A. Yes.

7 Q. What you grade are you in?

8 A. Eighth.

9 Q. Okay. And can you tell me what road you live on,

10 Minor 1?

11 A. [REDACTED].

12 Q. Is that in Aiken?

13 A. No, North Augusta.

14 Q. Who lives with you at [REDACTED]?

15 A. My mom and my sister and me.

16 Q. Do you have any pets?

17 A. Yes.

18 Q. Do you have a favorite pet?

19 A. My bird.

20 Q. Okay. And you said you've got a sister. What's your
21 sister's name?

22 A. Minor 2 .

23 Q. And who's older between you and Minor 2 ?

24 A. Me.

25 Q. Have you always lived at [REDACTED]?

Minor 1 - DIRECT: HAMMACK

1 A. No.

2 Q. Where did you live before [REDACTED]?

3 A. [REDACTED].

4 Q. And who lived with you at [REDACTED] -- I'm sorry. Before
5 we do that, let's do this. Hold on just a second. Okay?

6 (Pause.)

7 MS. HAMMACK: Your Honor, may I approach?

8 Q. I'm showing you what's been marked as State's Exhibit
9 Number One. Do you know what that is?

10 A. My house.

11 Q. And that's your house, where at?

12 A. [REDACTED].

13 Q. Okay. Is that what your house at [REDACTED] looked
14 like?

15 A. Yes.

16 Q. Did it make any change to what your house looked like
17 at [REDACTED]?

18 A. No.

19 MS. HAMMACK: Your Honor, at this time we would move
20 State's Exhibit One into evidence.

21 MS. ZMROCZEK: No objection

22 THE COURT: So admitted.

23 (State's Exhibit No. 1, photograph, received into
24 evidence.)

25 BY MS. HAMMACK:

Minor 1 - DIRECT: HAMMACK

1 Q. Now Minor1, let's talk for a second. You said you're
2 at Connections Academy which is a home school. Have you
3 always been home schooled?

4 A. No.

5 Q. Were you home schooled last year in seventh grade?

6 A. Yes.

7 Q. Were you home schooled the year before that in sixth
8 grade?

9 A. No.

10 Q. Where did you go to school in sixth grade?

11 A. Midland Valley Prep.

12 Q. You said you're 14 now and you're in eighth grade. So
13 how old were you last year in seventh grade?

14 A. Thirteen.

15 Q. Okay. And then the year before you were 13, when you
16 were in sixth grade, how old were you?

17 A. Twelve.

18 Q. Let's talk a bit about when you were 12. Who lived
19 with you when you were 12?

20 A. My dad, me, and my sister and my mom.

21 Q. Okay. Now, Minor1, is there any place on your body
22 that's not okay to touch?

23 A. Yes.

24 Q. Can you tell me where on your body's not okay to
25 touch?

Minor 1 - DIRECT: HAMMACK

1 A. My private and my boobs.

2 Q. Okay. And I know everybody's got different words for
3 that. So I'm going to show you this big old thing. Can
4 you point on this poster what you're talking about when
5 you're talking about your private?

6 A. (Pointing.)

7 Q. Okay. Can you point on here what you're talking about
8 when you're talking about your boobs?

9 A. (Pointing.)

10 Q. Okay. Now, Minor 1, you said that those are the places
11 on your body that are not okay to touch. Minor 1, when you
12 were 12, did anybody touch you on your body in a place
13 that was not okay to touch?

14 A. Yes.

15 Q. Can you tell me who touched you?

16 A. My dad.

17 Q. Okay. Where did it happen?

18 A. In his room.

19 Q. Okay. In his room at which house?

20 A. On [REDACTED].

21 Q. Okay. Give me just a second again. Okay?

22 Now, Minor 1, I'm showing you what's been marked as
23 State's Exhibit Number Two. Do you know what that's a
24 picture of?

25 A. Yes.

Minor 1 - DIRECT: HAMMACK

1 Q. What's that's a picture of?

2 A. My mom's room.

3 Q. Okay. Which house is that a picture at?

4 A. [REDACTED].

5 Q. Okay. And when you say it's your mama's room, was it
6 just your mama's room?

7 A. And my dad's.

8 Q. Okay.

9 MS. HAMMACK: Your Honor, at this time we would enter
10 State's Exhibit Number Two into evidence.

11 MS. ZMROCZEK: Without objection, Your Honor.

12 THE COURT: So admitted.

13 (State's Exhibit No. 2, photograph, received into
14 evidence.)

15 BY MS. HAMMACK:

16 Q. Now, Minor 1, keep talking really loud for me. Okay?

17 A. Okay.

18 Q. You said that your dad touched you in a place that was
19 not okay in his room. Can you tell me how you would get
20 into his room?

21 A. He would say get away and he would say, come here.
22 And that meant to go to his room.

23 Q. Okay. And when you would go to his room, who would be
24 in his room?

25 A. Me and him.

Minor 1 - DIRECT: HAMMACK

- 1 Q. Nobody else would be in his room?
- 2 A. No.
- 3 Q. Where would your sister be?
- 4 A. In her room.
- 5 Q. Okay. Where would your mom be?
- 6 A. At work.
- 7 Q. Okay. When you would go in your dad's room, what
- 8 would the door be like?
- 9 A. Shut and locked.
- 10 Q. Who would shut the door?
- 11 A. My dad.
- 12 Q. And who would lock the door?
- 13 A. My dad.
- 14 Q. Okay. Would he say anything to you about why you were
- 15 in his room?
- 16 A. Just that he was checking me.
- 17 Q. Okay. And when he would touch you, where in his room
- 18 would you be?
- 19 A. On his bed.
- 20 Q. Okay. How would you be on his bed?
- 21 A. Laying down.
- 22 Q. Okay. You'd be laying down?
- 23 A. (Nods head.)
- 24 Q. Would you have clothes on?
- 25 A. My pants and my underwear would be off.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. And how would they get off?

2 A. By me taking them off, or him.

3 Q. Okay. Did he tell you to take them off?

4 A. Yes.

5 Q. Okay. And you said you would be laying on the bed.

6 Where would he be?

7 A. In front of me.

8 Q. Okay. Would he be on the bed?

9 A. No.

10 Q. Would he be sitting? Standing? Laying down?

11 A. Standing.

12 Q. He would be standing?

13 A. Yeah.

14 Q. Okay. And what about his clothes?

15 A. They would be on.

16 Q. Okay. Now tell me, Minor 1, when you would be laying on
17 the bed in your dad's room, where on your body would he
18 touch?

19 A. His finger would be in my hole.

20 Q. Okay. And I'm going to bring this up there one more
21 time. When you say that his finger would be your hole,
22 can you show me where you're talking about?

23 A. (Pointing.)

24 Q. Okay. When he would do this, would you say anything
25 to him?

Minor 1 - DIRECT: HAMMACK

1 A. That hurts.

2 Q. Okay. And what would he do when you told him it hurt?

3 A. One more time, he would say that.

4 Q. He would say, one more time?

5 A. (Nods head.)

6 Q. Okay. And when he said one more time, would he touch
7 it one more time?

8 A. He would keep doing it.

9 Q. Okay. Tell me, Minor 1, when he did this, would he put
10 anything on you?

11 A. A blanket or a pillow.

12 Q. And where would he put a blanket or a pillow?

13 A. On my head.

14 Q. Would he say why he was putting a blanket or a pillow
15 on your head?

16 A. So he wouldn't -- so I wouldn't be looking at him.

17 Q. Okay.

18 MS. ZMROCZEK: I'm sorry, Judge. I can't hear.

19 BY MS. HAMMACK:

20 Q. Can you say that answer one more time? But talk
21 louder for me.

22 Why would he put a blanket or a pillow on your head?

23 A. So I wouldn't be staring at him.

24 Q. Okay. And keep talking loud for me. Okay?

25 When he would do this, did you ever try to get away?

Minor 1 - DIRECT: HAMMACK

1 A. No.

2 Q. How come you never tried to get away?

3 A. Because he would say not to.

4 Q. Okay. Tell me, where would your legs be when he was
5 doing this?

6 A. On the bed.

7 Q. Okay. Would he ever touch your legs?

8 A. No.

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

11 A. No.

12 Q. Okay. Did he ever touch your private with any other
13 part of his body?

14 A. I think one time.

15 Q. You think one time? Why do you think one time?

16 A. Because I felt his hands on the bed.

17 Q. Okay. And what do you think that he touched you with
18 that time?

19 A. His thing.

20 Q. Okay. And, Minor 1, when say his thing, can you point
21 on this boy what you mean when you say his thing?

22 A. (Pointing.)

23 Q. Okay.

24 THE COURT: For the record, can you identify where she
25 pointed?

Minor 1 - DIRECT: HAMMACK

1 MS. HAMMACK: Your Honor, for the record, she pointed
2 to the male penis on the picture.

3 THE COURT: All right.

4 BY MS. HAMMACK:

5 Q. Now, Minor 1, did your dad ever touch you any place
6 other than your private?

7 A. My boobs.

8 Q. Okay. When would he touch your boobs?

9 A. Like, at the same time.

10 Q. Okay. Would he touch your boobs over your clothes or
11 under your clothes?

12 A. Like, he would move my clothes up.

13 Q. Okay. What clothes are we talking about?

14 A. Like, my bra and my shirt.

15 Q. Would his skin be on your skin? Like, would his hand
16 be directly touching your skin?

17 A. Yeah.

18 Q. Okay. How would he touch your boobs?

19 A. Like, squeezing them.

20 Q. Okay. Did he say why he was touching your boobs?

21 A. No.

22 Q. Okay. This is going to be kind of a hard question,
23 but do you know how long he touched your private and your
24 boobs?

25 A. No.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. How would you know he was finished?

2 A. He would say, *hurry up and get your pants on and*
3 *underwear on.*

4 Q. Okay. Did he say anything else to you after he would
5 be done?

6 A. *I'm sorry for hurting you.*

7 Q. Okay. And you said that this happened when you were
8 12. Did this happen once or more than once when you were
9 12?

10 A. More than once.

11 Q. Okay. Did it always happen in the same place in your
12 house?

13 A. Sometimes in my room.

14 Q. Okay. Did it ever happen anywhere else in your house?

15 A. Sometimes in the bathroom.

16 Q. Okay. When it would happen in your room, how would
17 that happen? Would it be the same or would it be
18 different?

19 A. Same.

20 Q. Okay. What would the door be like when it was in your
21 room?

22 A. Shut and locked.

23 Q. Okay. And where would you be in your room when he
24 would touch you?

25 A. On the bed.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. And what about your clothes?

2 A. They would be the same.

3 Q. Okay. Would he touch you the same way when it would
4 happen in your room?

5 A. Yes.

6 Q. Okay. Now in the bathroom, where would you be in the
7 bathroom when it would happen?

8 A. Like, just getting out of the shower.

9 Q. Would you have any clothes on then?

10 A. No.

11 Q. And where would he touch you when you were in the
12 bathroom?

13 A. The same places.

14 Q. Okay. Your private and your boobs?

15 A. Yes.

16 Q. Now, let's move forward to when you were 13 when you
17 were in seventh grade. Were you home schooled in seventh
18 grade?

19 A. Yes.

20 Q. Okay. Let's talk about home school for a minute.
21 Okay?

22 A. (Nods head.)

23 Q. Can you tell me, who does your home schooling?

24 A. My mom.

25 Q. Does she stand up in the room and be a teacher or how

Minor 1 - DIRECT: HAMMACK

1 does class time work?

2 A. She sits down with me.

3 Q. Okay. Does anybody else ever do your home schooling?

4 A. No.

5 Q. When would your mom do your home schooling?

6 A. At night.

7 Q. Why would she do it at night?

8 A. Because she was working in the daytime.

9 Q. Okay. Do you know where your mom works?

10 A. Yes.

11 Q. Where does she work?

12 A. MCG.

13 Q. Okay. And so your mom would work and then she'd come
14 home and do your home schooling. Who cooked at your
15 house?

16 A. My mom.

17 Q. Okay. Who cleaned at your house?

18 A. Me, me and my sister and sometimes my mom.

19 Q. Okay. Now, when you were in seventh grade -- oh. Let
20 me ask you this. You said your mom was working during the
21 day and you did your home schooling during the night.

22 Where were you at during the day?

23 A. At home.

24 Q. Who were you at home with?

25 A. My dad and my sister.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. Did anybody touch you in a place that's not
2 okay when you were in seventh grade?

3 A. Yes.

4 Q. Okay. And who touched you then?

5 A. My dad.

6 Q. Okay. Can you tell me where he touched you?

7 A. In the same places.

8 Q. In your private and your boobs?

9 A. Yes.

10 Q. And how did he touch your private when you were in
11 seventh grade?

12 A. The same way.

13 Q. Okay. Would he touch on the outside, or the inside,
14 or both?

15 A. He would stick his finger in my hole.

16 Q. Okay. And when you were in seventh grade, did he do
17 that once or more than once?

18 A. More than once.

19 Q. Okay. And you said he also touched your boobs when
20 you were in seventh grade. Did he do that once or more
21 than once?

22 A. More than once.

23 Q. Okay. And when he would touch your boobs in seventh
24 grade, how would your clothes be?

25 A. Like, he would move them up.

Minor 1 - DIRECT: HAMMACK

1 Q. Okay. The same as in sixth grade?

2 A. Yes.

3 Q. Okay. Would it happen in the same place in your house
4 in seventh grade?

5 A. Yes.

6 Q. Okay. Would the door be the same?

7 A. Yes.

8 Q. What about your clothes?

9 A. They would be the same.

10 Q. Okay. Did he say anything about why he was doing it
11 in seventh grade?

12 A. Just that he was checking me.

13 Q. Okay. Now when you were in seventh grade, did you
14 have to have surgery?

15 A. Yes.

16 Q. What did you have to have surgery on?

17 A. My private.

18 Q. Okay. Did you have to go to the hospital?

19 A. Yes.

20 Q. Did you have to stay in the hospital?

21 A. Yes.

22 Q. Who stayed in the hospital with you?

23 A. My mom.

24 Q. Okay. And -- oh. Do you remember what part of the
25 year you had surgery?

Minor 1 - DIRECT: HAMMACK

1 A. October.

2 Q. Okay. When you came home from the hospital, did you
3 have medicine that you had to put on?

4 A. Yes.

5 Q. Do you know who gave you that medicine?

6 A. My mom and sometimes me.

7 Q. Okay. When you -- first of all. Do you know where
8 your mom and you got the medicine from?

9 A. The doctor.

10 Q. Okay. What kind of medicine was it?

11 A. I don't know.

12 Q. Was it like, like a pill that you swallow or, like, a
13 liquid?

14 A. Like, you had to put it on.

15 Q. Okay. And where did you have to put it on?

16 A. The private, my private.

17 Q. And who put that on you?

18 A. Me and sometimes my mom.

19 Q. Okay. Would your mom be there when you did it?

20 A. Yes.

21 Q. Okay. Did the doctor give you anything to put the
22 medicine on with?

23 A. Yes.

24 Q. What did he give y'all?

25 A. I don't know.

Minor 1 - DIRECT: HAMMACK

- 1 Q. Okay. What did it look like?
- 2 A. It's clear.
- 3 Q. Okay. Tell me, did your dad ever put medicine on you?
- 4 A. No.
- 5 Q. Okay. Now after your surgery, did your dad touch your
- 6 private after your surgery?
- 7 A. Yes.
- 8 Q. Did he touch your boobs after your surgery?
- 9 A. Yes.
- 10 Q. Okay. Was it the same way then as it was in sixth
- 11 grade and seventh grade?
- 12 A. Yes.
- 13 Q. Okay. Did it happen in the same place?
- 14 A. Yes.
- 15 Q. Did he touch them the same way?
- 16 A. Yes.
- 17 Q. Okay. Do you remember the last time your dad touched
- 18 you in a place that was not okay?
- 19 A. Monday before the police came.
- 20 Q. Okay. And was it the same way that time?
- 21 A. Yes.
- 22 Q. Okay. Did he touch your private on that Monday?
- 23 A. (Nods head.)
- 24 Q. Do you need a second? Do you want some water or a
- 25 tissue?

Minor 1 - DIRECT: HAMMACK

1 A. (Shakes head.)
2 Q. Okay. You tell me when you're ready. Okay?
3 A. (Nods head.)
4 Q. Are you okay?
5 A. (Nods head.)
6 Q. Can you tell me if he touched your private on that
7 Monday?
8 A. Yes.
9 Q. Okay. And did he put his finger in your hole that
10 Monday?
11 A. Yes.
12 Q. Did he touch your boobs that Monday?
13 A. Yeah.
14 Q. Okay. Minor 1, has anybody else ever touched you in
15 those places that it's not okay?
16 A. No.
17 Q. Okay. I've just got a few more questions. So keep
18 speaking loud for me. Okay?
19 A. (Nods head.)
20 Q. Now, Minor 1, when you were 12, did you tell anybody
21 what your dad was doing?
22 A. (No response.)
23 Q. When you were in sixth grade?
24 A. No.
25 Q. How come you didn't tell anybody?

Minor 1 - DIRECT: HAMMACK

1 A. Because he said not to, and my mom wouldn't
2 understand.

3 Q. Okay. Did you tell anybody when you were in seventh
4 grade?

5 A. Yes.

6 Q. Okay. Who did you tell in seventh grade?

7 A. My mom.

8 Q. Okay. Did you tell her before or after that last
9 Monday?

10 A. (No response.)

11 Q. Do you remember?

12 A. No.

13 Q. Okay. Why did you decide to tell your mom?

14 A. Because I was getting tired of him hurting me.

15 Q. Give me just a second, okay, Minor 1? I'll be right
16 back. (Pause.)

17 Now, Minor 1, after you told your mom, did the police
18 come to your house?

19 A. When?

20 Q. After you told your mom what your dad had been doing,
21 did the police come to your house after that?

22 A. Like, a day after, maybe, or whenever.

23 Q. Okay.

24 A. Yeah.

25 Q. Okay. Now, Minor 1, I've got just a couple more

Minor 1 - CROSS: ZMROCZEK

1 questions for you. Okay?

2 A. (Nods head.)

3 Q. You said that your dad was the one that was touching
4 you in a place that's not okay. Do you see your dad in
5 the courtroom today?

6 A. Yes.

7 Q. Can you show me where he is?

8 A. (Pointing.)

9 Q. I need you to do me a favor. Can you tell me what
10 he's wearing?

11 A. A black suit.

12 MS. HAMMACK: Your Honor, let the record reflect she's
13 identified the Defendant.

14 THE COURT: All right. The record so reflects.

15 MS. HAMMACK: Minor 1, I don't have any more questions
16 for you. Just answer any questions that Ms. Zmroczek has
17 for you. Okay?

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Minor 1, my name is Aimee Zmroczek. And we haven't met
21 before, have we?

22 A. No.

23 Q. Is it okay if I call you Minor 1?

24 A. Yes.

25 Q. Okay. Minor 1, I'm the attorney for your dad. And you

Minor 1 - CROSS: ZMROCZEK

1 pointed him out sitting right over there at the table;
2 right?

3 A. Yes.

4 Q. And that's the first time that you've seen him since
5 May 23rd, isn't it?

6 A. Yes.

7 Q. And you haven't been able to talk to him at all;
8 right?

9 A. Right.

10 Q. In fact, didn't your mama tell you that if you talked
11 to him that DSS would come get you?

12 A. Yes.

13 Q. Your mama told you that; right?

14 A. Yes.

15 Q. Minor 1, you were in school in sixth grade. You went to
16 public school?

17 A. Yes.

18 Q. And where did you go to public school?

19 A. Midland Valley Prep.

20 Q. At Midland Valley Prep?

21 A. Yes, ma'am.

22 Q. Did you like it there?

23 A. Yes, ma'am.

24 Q. Were your grades good?

25 A. Yeah.

Minor 1 - CROSS: ZMROCZEK

1 Q. You struggle with school a little bit sometimes?
2 A. Yeah.
3 Q. But you get extra help?
4 A. Yes, ma'am.
5 Q. Do you have a favorite subject?
6 A. Math..
7 Q. Math. Math is your favorite subject?
8 A. (Nods head.)
9 Q. That's similar to what your mom does; isn't it?
10 A. Yeah.
11 Q. What does she do?
12 A. She's an accountant.
13 Q. She's an accountant. So she works with numbers;
14 right?
15 A. Yes.
16 Q. Is there any subject that you don't like?
17 A. Science.
18 Q. You don't like science?
19 A. No.
20 Q. Why don't you like science?
21 A. Because it's my worse subject.
22 Q. It's your worst subject.
23 When you were talking to Ms. Ashley, you were talking
24 about -- well, you said that your dad touched you in a
25 place that he shouldn't. Who told you, who told you that

Minor 1 - CROSS: ZMROCZEK

1 that -- that, that that's a place you shouldn't be
2 touched?

3 A. I already knew that.

4 Q. You knew that?

5 A. Yeah.

6 Q. Minor 1, are you wearing a bracelet today?

7 A. Yes.

8 Q. What's that bracelet say?

9 A. Adrenal insufficiency.

10 Q. Adrenal insufficiency?

11 A. Uh-huh.

12 Q. Would you tell the jury what that means? In your
13 words, why do you have to wear that bracelet?

14 A. Like --

15 Q. You can take your time. If you want to take some
16 water, it's okay.

17 Let me ask it this way. You have to wear that
18 bracelet because sometimes you get sick easier than other
19 kids?

20 A. Yeah.

21 Q. How long have you had to wear that bracelet?

22 A. My whole life.

23 Q. Your whole life. And, Minor 1, when I ask you these
24 questions it's just so that the jury can understand,
25 because they don't live at your house. They didn't live

Minor 1 - CROSS: ZMROCZEK

1 at your house so they don't know how it was.

2 But ever since you were a baby you've had to go to the
3 doctor every four months, at least; right?

4 A. Yes.

5 Q. Sometimes if you get sick you have to go more; right?

6 A. Yes.

7 Q. And sometimes your daddy took you to the doctor;
8 right?

9 A. Yes.

10 Q. And sometimes your mama took you?

11 A. Yes.

12 Q. And when you had that surgery they were both there
13 with you; right? Not spending the night, but they were
14 both there with you for the whole surgery; right?

15 A. Yes.

16 Q. Your dad told me you have a lot of animals at the
17 house.

18 A. Yes.

19 Q. So did he go home to take care of those animals?

20 A. And my sister.

21 Q. And your sister. So he went home to take care of the
22 animals and your sister, and your mom stayed with you?

23 A. Yes.

24 Q. And, Minor 1, I'm not trying to embarrass you when I ask
25 you about your medical condition. But does it make you

Minor 1 - CROSS: ZMROCZEK

1 different than other normal -- than other girls?

2 A. Like, what do you mean?

3 Q. Like, physically. Why did you have to have the
4 surgery?

5 A. Because my hole wasn't big enough.

6 Q. Because your hole wasn't big enough. And the surgery
7 fixed that when you were in seventh grade?

8 A. Yes.

9 Q. And I know it's not things that you like to talk about
10 especially in front of people you don't know and
11 especially me. But I'm just trying to get an
12 understanding.

13 When you went to the doctor's, Minor 1, did they have to
14 look and touch you down there?

15 A. Yes.

16 Q. So, is it safe to say that you're used to people
17 having to do that?

18 A. Yes.

19 Q. And after the surgery, did you have to use, like, a
20 special, anything special to use the bathroom?

21 A. No.

22 Q. Or to take a bath?

23 A. Like, yeah, to take a bath.

24 Q. What did you have to use?

25 A. Something that goes over a toilet.

Minor 1 - CROSS: ZMROCZEK

1 Q. It goes over the toilet and that way --

2 A. You sit on it.

3 Q. And you talked about after when you -- after you had
4 the surgery and you had to put the cream on; right?

5 A. Yeah.

6 Q. And you had to do that at least twice a day; right?

7 A. I think.

8 Q. And your mom went to work every day and so sometimes
9 your dad helped you with that; didn't he?

10 A. No.

11 Q. When you couldn't do it?

12 A. No.

13 Q. He never helped you?

14 A. No.

15 Q. Never?

16 A. (Shakes head.)

17 Q. Where did you have to put that cream? And I'm not
18 trying to embarrass you. We can use Ms. Ashley's chart if
19 it will help. Well, that one won't help because that's a
20 boy.

21 Where did you have to put that cream?

22 A. (Pointing.)

23 Q. You had to put it right there?

24 A. Yeah.

25 Q. Did you have to sometimes put it, like, way up

Minor 1 - CROSS: ZMROCZEK

1 underneath too?

2 A. Yeah.

3 Q. And you did that all by yourself?

4 A. Yeah.

5 Q. Minor 1, as part of your medical condition, do you have
6 a problem with your weight sometimes?

7 A. Yes.

8 Q. Tell the jury what you had to do every day when you
9 got up?

10 A. Eat.

11 Q. And then what? Did you get on the scale every day?

12 A. Yes.

13 Q. Where was that scale?

14 A. In the dining room.

15 Q. The scale was in the dining room. Minor 1, what would
16 happen if -- what would happen if your weight got too low
17 or if you got an infection, what, who would you go to?

18 A. My doctor.

19 Q. Who would take you there?

20 A. My mom.

21 Q. Only your mom?

22 A. Or sometimes my dad.

23 Q. Sometimes your dad?

24 A. (Nods head.)

25 Q. Even though your dad didn't have a job that he went to

Minor 1 - CROSS: ZMROCZEK

1 every morning, he still had a job; didn't he?

2 A. Take care of us.

3 Q. To take care of you. And he did a good job of that;
4 right?

5 A. Yeah.

6 Q. Let's talk about that for just a minute. I'm going to
7 show you -- these pictures have been marked as Defendant's,
8 One, Two and Three.

9 Minor 1, if I show you these pictures, can you recognize
10 those?

11 A. Yeah.

12 Q. Can you recognize what those are?

13 A. Yeah.

14 MS. ZMROCZEK: Your Honor, at this time we'd like to
15 move these into evidence.

16 MS. HAMMACK: Same relevance objection, Judge.

17 THE COURT: All right. So admitted over the
18 objection.

19 (Defendant's Exhibits No 1, 2 and 3, photographs, were
20 received into evidence.)

21 BY MS. ZMROCZEK:

22 Q. Minor 1, I'm going to show you and show it so that the
23 jury can see what we're looking at, too. Okay. What's
24 that show?

25 A. A bow and arrow.

Minor 1 - CROSS: ZMROCZEK

1 Q. Is that you?

2 A. Yeah.

3 Q. And who's that?

4 A. My dad.

5 Q. What kind of stuff did you and your dad do?

6 A. Go fishing and hunting, that kind of thing.

7 Q. Those kind of things?

8 A. (Nods head.)

9 Q. Did he help you with your schoolwork, too sometimes?

10 A. No.

11 Q. Never helped you with your schoolwork?

12 A. (Shakes head.)

13 Q. What were you doing in this picture, Minor 1, in Defense
14 Exhibit Number Two?

15 A. Working.

16 Q. You were working. What are you working on?

17 A. Caulking.

18 Q. How did you learn how to caulk?

19 A. By my dad showing me.

20 Q. Your dad showing you?

21 A. (Nods head.)

22 Q. When you were in school in sixth grade, Kayla, at
23 Midland Valley Prep, who would pick you up after school?

24 A. My dad.

25 Q. And he would pick you and your sister up?

Minor 1 - CROSS: ZMROCZEK

1 A. Yes.

2 Q. And then what would y'all do?

3 A. Go home.

4 Q. Would you sometimes go and work on houses?

5 A. Yes.

6 Q. Because he had a job too; right?

7 A. Yes.

8 Q. He remodeled houses?

9 A. Yes.

10 Q. And that's where you learned how to do caulking;

11 right?

12 A. Yes.

13 Q. He taught that to you; didn't he?

14 A. Yes, ma'am.

15 Q. You don't have to call me ma'am. It makes me feel

16 old.

17 Number three, this picture, what are you doing here?

18 A. Trying to change the oil.

19 Q. Who taught you how to change oil?

20 A. My dad.

21 Q. Did he do that during the day or at night or on the

22 weekends? When did you learn that kind of stuff?

23 A. Like, on the weekends.

24 Q. During the day when you were home schooled -- and when

25 did you start home schooling?

Minor 1 - CROSS: ZMROCZEK

1 A. In seventh grade.

2 Q. In seventh grade. What would you do during the day in
3 seventh grade when you were home schooled?

4 A. Schoolwork.

5 Q. And the incidents that you talked about with
6 Ms. Ashley, you said that those would happen during the
7 day in seventh grade?

8 A. Yeah.

9 Q. What about in sixth grade? Did those happen during
10 the day too?

11 A. Huh?

12 Q. I'm sorry. Is that a yes?

13 A. What?

14 Q. In sixth grade when you talked to Ms. Ashley about
15 that, that would happen during the day too?

16 A. Yeah.

17 Q. Okay. And, **Minor 1**, you said you didn't tell anybody.
18 But with your medical condition, sometimes even, like,
19 when your mom was taking a bath, wouldn't all of y'all be
20 in the bathroom together talking about your day and asking
21 how you felt?

22 A. When I was? No.

23 Q. Never?

24 A. (Shakes head.)

25 Q. When you went to see Dr. Houk every three to four

Minor 1 - CROSS: ZMROCZEK

1 months --

2 A. Uh-huh.

3 Q. -- did he ask your dad and your mom how you were
4 doing?

5 A. Yeah.

6 Q. And did he ever ask them if you were developing okay,
7 if you had any infections?

8 A. Yeah.

9 Q. And they would be able to tell him that; right?

10 A. Yeah.

11 Q. Minor 1, sometimes the medicine that you take, do you
12 also take shots sometimes?

13 A. Like, if I get really sick.

14 Q. Who gives you those shots?

15 A. My dad.

16 Q. Your dad would give you those shots? Would your mom
17 ever give them to you?

18 A. I mean, she would be there to, like, in case I, like,
19 kicked or something or moved my leg, she would hold it
20 down.

21 Q. She would hold it down. Minor 1, when you get a needle
22 coming toward you, it kind of scares you; right?

23 A. (Nods head.)

24 Q. What are some things that your mom or that Dr. Houk
25 would have you do so that you wouldn't jerk or move when

Minor 1 - CROSS: ZMROCZEK

1 that needle was coming?

2 A. Nothing.

3 Q. Nothing. They wouldn't tell you to cover your eyes so
4 you wouldn't see?

5 A. Like, they would say look away.

6 Q. They would say, look away. Minor 1, let me -- I only
7 have a few more questions. I promise.

8 Do you remember when you told your mom about this?

9 A. Yeah.

10 Q. When was that?

11 A. Monday before the police came.

12 Q. The Monday before the police came?

13 A. Yeah.

14 Q. And you told her everything that happened?

15 A. Yes.

16 Q. And then the police came on Thursday?

17 A. I think so.

18 Q. It's not a test. But during that whole time, that
19 Monday and Tuesday and Wednesday, where were you during
20 those times?

21 A. At home.

22 Q. At home. Did your mom go to work those days?

23 A. Yes.

24 Q. And, Minor 1, what did she say when you told her?

25 MS. HAMMACK: Objection, Your Honor. That's hearsay.

Minor 1 - CROSS: ZMROCZEK

1 THE COURT: Sustained.

2 BY MS. ZMROCZEK: ✓

3 Q. Sorry. Minor 1, I'll rephrase the question. Did your
4 mom ask you questions after you told her?

5 A. Like, what do you mean?

6 Q. Did she ask you a bunch of questions? Or, did you
7 just tell her and then she didn't ask any questions?

8 A. She didn't really --

9 Q. You don't have to tell me what the questions were.

10 A. She didn't really ask any questions.

11 Q. She didn't ask any questions?

12 A. (Shakes head.)

13 Q. And you went, and you went to talk to somebody and
14 tell them about this, right, after the police came and
15 talked to you?

16 A. Yeah.

17 Q. Minor 1, since May or May 23rd, you talked to a lot of
18 people about this; haven't you?

19 A. Yes.

20 Q. You have to tell the same story over and over and over
21 again; right?

22 A. Yes, ma'am.

23 Q. And, in fact, I know you were nervous. You got to
24 practice in this very courtroom for a bunch of times;
25 didn't you?

Minor 1 - CROSS: ZMROCZEK

1 A. A couple, yeah.

2 Q. A couple. Did you get to sit in the Judge's chair?

3 A. Yeah.

4 Q. Minor 1, after you told your mom and the police came,
5 what did you -- where did you go? Did you go to the
6 beach?

7 A. Yes.

8 Q. And then you didn't go back to the house?

9 A. No.

10 Q. And you moved in with some other -- well, you moved
11 into [REDACTED], I think you said?

12 A. Yeah.

13 Q. Beg the Court's indulgence. (Pause.)

14 Minor 1, I just have one more question for you. You had
15 the surgery in October; right?

16 A. Yes.

17 Q. And you went to the doctor you used to -- for your
18 condition you said you go every four months, but before
19 your surgery and after your surgery you were going every
20 couple of weeks; right?

21 A. I think.

22 Q. And you got to talk to the doctors and the doctor got
23 to look at you; right?

24 A. Yeah.

25 Q. And you got to talk to the doctors by yourself when

Minor 2

- DIRECT: HAMMACK

1 your parents weren't around if you wanted to, when you
2 were having the exams; right?

3 A. I guess.

4 Q. Minor 1. I don't have any more questions. Thank you
5 for talking with me.

6 THE COURT: Anything from the State?

7 MS. HAMMACK: Judge, I don't have any redirect. I
8 just want to let the record reflect that when Minor 1 was
9 pointing to the female diagram when she's talking about
10 private, that she is talking about the female genitalia.

11 MS. ZMROCZEK: I don't have any objection, Your
12 Honor. I would simply ask that the -- let the record
13 reflect the same thing when I was asking her that she was
14 pointing to the genital area.

15 THE COURT: Y'all need to point that out when it's
16 being done.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Okay. Thank you very much. You can step
19 down.

20 MS. HAMMACK: State calls Minor 2 .

21 Minor 2 , having been duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please have a seat in the witness box and
24 state your full name for the Court, spelling your last.

25 THE WITNESS: Minor 2 , Minor 2 .

Minor 2

- DIRECT: HAMMACK

DIRECT EXAMINATION

BY MS. HAMMACK:

Q. Minor 2 , how old are you?

A. Thirteen.

THE COURT: Excuse me. Minor 2 , I need you to speak up because everybody in this courtroom needs to hear you. Okay? Make an effort if you would, please.

THE WITNESS: Thirteen.

THE COURT: Thank you.

BY MS. HAMMACK:

Q. Try to speak loud and speak into that little microphone. Okay?

A. .(Nods head.)

Q. Tell me, you said you're 13. When is your birthday?

A. [REDACTED], 2000.

Q. Minor 2 , do you know what the difference is between the truth and a lie?

A. Yes.

Q. Can you tell me what the truth is?

A. The truth is, like, facts and a lie is, like, nonfiction -- like, fiction.

Q. Okay. What can happen if you tell a lie?

A. You can get in trouble.

Q. Okay. Minor 2 , are you in school anywhere?

A. Yes.

Minor 2

- DIRECT: HAMMACK

1 Q. Where do you go to school?

2 A. I'm home schooled.

3 Q. Okay. What grade are you in?

4 A. Seventh.

5 Q. All right. Have you always been home schooled?

6 A. No.

7 Q. You said you're in seventh grade now. Were you home
8 schooled in sixth grade?

9 A. Yes.

10 Q. Were you home schooled in fifth grade?

11 A. No.

12 Q. Where did you go to school in fifth grade?

13 A. Midland Valley Prep.

14 Q. Okay. Tell me, where do you live right now, Minor 2 ?

15 A. [REDACTED], North Augusta.

16 Q. Have you always lived at [REDACTED] ?

17 A. No.

18 Q. Where did you live before [REDACTED] ?

19 A. [REDACTED], North Augusta.

20 Q. Okay. Do me a favor. Try to talk a little bit slower
21 for me. All right?

22 I'm going to show you what's already been moved into
23 evidence as State's Exhibit One. Do you know what that
24 is?

25 A. (Nods head.)

Minor 2

- DIRECT: HAMMACK

1 Q. You got to answer out loud for me.

2 A. Yes.

3 Q. What is that?

4 A. My old house.

5 Q. Your old house where?

6 A. [REDACTED].

7 Q. Tell me, Minor 2, when you lived at [REDACTED],
8 who lived with you?

9 A. My mom, my sister and my father.

10 Q. Okay. You said you're in seventh grade now and you're
11 13. And you said last year you were in sixth grade, home
12 schooled. The year before that you were in fifth grade at
13 Midland Valley Prep.

14 Let's talk about when you were in fifth grade at
15 Midland Valley Prep. Where were you living then?

16 A. At [REDACTED].

17 Q. With your mom, your dad, your sister?

18 A. Uh-huh; yes, ma'am.

19 Q. Okay. Tell me, Minor 2, are there any places on your
20 body that are not okay to touch?

21 A. Yes.

22 Q. Can you tell me what those places are?

23 A. Your private, your breasts and your bottom.

24 Q. And your, what?

25 A. Bottom.

Minor 2

- DIRECT: HAMMACK

1 Q. Okay. Let me show you this thing. It's kind of big.
2 When you're talking about your private, where are you
3 talking about?

4 A. (Pointing.)

5 MS. HAMMACK: Your Honor, let the record reflect that
6 the witness identified the female genitalia.

7 THE COURT: All right.

8 BY MS. HAMMACK:

9 Q. And when you're talking about your breasts, where are
10 you talking about?

11 A. (Pointing.)

12 Q. Okay. And when you're talking about your bottom,
13 where are you talking about?

14 A. (Pointing.)

15 MS. HAMMACK: Your Honor, let the record reflect when
16 she identified bottom she's talking about the bottom.

17 THE COURT: How about when she identified the
18 breasts?

19 MS. HAMMACK: Thank you, Your Honor. She identified
20 the female breasts.

21 THE COURT: All right.

22 BY MS. HAMMACK:

23 Q. You said those are the places on your body that are
24 not okay to touch. Has anybody touched you on your body
25 in a place that's not okay to touch?

Minor 2

- DIRECT: HAMMACK

1 A. Yes.

2 Q. Who did that?

3 A. My father.

4 Q. Okay. Did he do that when you were in fifth grade?

5 A. Yes.

6 Q. Okay. Can you tell me where it happened?

7 A. At [REDACTED].

8 Q. Okay. And where in [REDACTED] did it happen?

9 A. In his room. In my parents' bedroom.

10 Q. Okay. I'm going to show you what's already in
11 evidence as State's Exhibit Two. Do you know what that
12 is?

13 A. Yes.

14 Q. What's that?

15 A. My parents' bedroom.

16 Q. Okay. Is that the bedroom you're talking about where
17 your dad touched you in a place that's not okay to touch?

18 A. Yes.

19 Q. Okay. When you say he touched you in one of the
20 places that not okay to touch, can you tell me where he
21 touched you?

22 A. My breasts, my private and my bottom.

23 Q. All three?

24 A. Yes, ma'am.

25 Q. Okay. And you said it happened in your parents'

Minor 2

- DIRECT: HAMMACK

1 room. How would you get in your parents' room?
2 A. He would say that he needed to talk to me.
3 Q. Would anybody else be in his room?
4 A. No.
5 Q. Who would be in his room?
6 A. Me and him.
7 Q. Okay. What would the door be like?
8 A. Shut.
9 Q. Who shut it?
10 A. Him.
11 Q. Would the door be locked or unlocked?
12 A. Locked.
13 Q. Who would lock it?
14 A. Him.
15 Q. Did he say why he locked the door?
16 A. No.
17 Q. Okay. When your father touched your private, what
18 part of his body did he touch your private with?
19 A. His finger.
20 Q. Okay. Did he say why he touched your private?
21 A. Because to see if I'm maturing properly or to see if
22 my sister was healing properly.
23 Q. And that's what he told you?
24 A. Yes.
25 Q. Did he touch you on the inside of your private? The

Minor 2

- DIRECT: HAMMACK

1 outside of your private? Both? How did he touch your
2 private?

3 A. Both.

4 Q. Okay. When he would do this, where would you be in
5 his room?

6 A. On the bed.

7 Q. Okay. And how would you be on the bed?

8 A. Sort of laying down.

9 Q. Okay. Would you have your clothes off?

10 A. My shirt was on.

11 Q. Okay. Keep talking loud for me. Okay? Where were
12 the rest of your clothes?

13 A. Not on.

14 Q. Okay. And why would they not be on?

15 A. He took them off.

16 Q. Would you say anything to him when he would touch your
17 private with his fingers?

18 A. No.

19 Q. Would he say anything to you when he was doing it?

20 A. Not that I recall.

21 Q. Okay. Did he put anything on you when he was touching
22 your private?

23 A. That he had put a pillow or a blanket on my head
24 before.

25 Q. Did he tell you why he did that?

Minor 2

- DIRECT: HAMMACK

1 A. So that I, like, wouldn't squirm.

2 Q. Okay. Did you squirm?

3 A. No.

4 Q. Okay. Did you try to get away?

5 A. No.

6 Q. How come?

7 A. Because I didn't know anything was wrong.

8 Q. Okay. Did it hurt?

9 A. Whenever he tried to stick his finger in me.

10 Q. Did you tell him it hurt?

11 A. Yes.

12 Q. Would he say anything when you told him it hurt?

13 A. That he's sorry that he hurt me.

14 Q. Did he ever touch your private with any other part of

15 his body?

16 A. Not that I know of.

17 Q. Okay. And you said he also touched -- and you called

18 them breasts; is that right? Did I get that?

19 A. (Nods head.)

20 Q. Okay. What did he touch your breasts with?

21 A. His hands.

22 Q. When would he do that?

23 A. Like, before.

24 Q. Before what?

25 A. Like, he would touch my private.

Minor 2

- DIRECT: HAMMACK

1 Q. Okay. Would he touch your breasts on top of your
2 clothes or under your clothes?

3 A. On top.

4 Q. How would he touch them?

5 A. Like, squeeze them.

6 Q. Did he say why he touched your breasts?

7 A. To see if I was maturing properly.

8 Q. Okay. And then you said he touched your bottom. What
9 did he touch your bottom with?

10 A. His hands.

11 Q. Where would you be when he touched your bottom?

12 A. On the floor.

13 Q. Okay. In what room?

14 A. His room. Like, in my parents' room.

15 Q. Okay. Did this happen at the same time that he was
16 touching other places?

17 A. Yes.

18 Q. Where would he be if you were on the floor?

19 A. On the floor.

20 Q. Okay. What would you be doing? Would you be
21 sitting? Standing? Laying down?

22 A. Sitting.

23 Q. And where would you be sitting?

24 A. On him.

25 Q. When you say you were sitting on him, how were you

Minor 2

- DIRECT: HAMMACK

1 sitting on him?

2 A. Like, facing him.

3 Q. Okay. And why were you sitting on him?

4 A. He told me to.

5 Q. Okay. When he touched your bottom when you were
6 sitting on him, did you have any clothes on?

7 A. My shirt.

8 Q. Okay. What about your pants?

9 A. No.

10 Q. What about your underwear?

11 A. No.

12 Q. Would he have his clothes on?

13 A. Yes.

14 Q. Did he say why he touched your bottom?

15 A. Because he liked to touch my bottom.

16 Q. Okay. And how would he touch it?

17 A. Like, sort of squeezing.

18 Q. Did he ever say anything to you after he would touch
19 you?

20 A. Like, if it hurt that he was sorry that he hurt me.

21 Q. And after he would touch you, would he ever say
22 anything afterwards about why he did it?

23 A. Because he had thoughts in his head, and if he did it
24 it would go away.

25 Q. Okay. Would he do anything?

Minor 2

- DIRECT: HAMMACK

1 A. Like, he would -- afterwards he told me to go to back
2 and do my schoolwork, and he would, like, pray and cry,
3 like, on his knees by the couch.

4 Q. You said this happened when you were in fifth grade.
5 Did it happen once or more than once when you were in
6 fifth grade?

7 A. More than once.

8 Q. Did it always happen in the same place?

9 A. Yes. It --

10 Q. Well -- I'm sorry! Go ahead.

11 A. A few other times it had happened in the bathroom.

12 Q. Okay. Whose bathroom?

13 A. Mine and Minor 1's.

14 Q. Okay. Where would you be in the bathroom when it
15 would happen?

16 A. In the shower.

17 Q. Okay. Would he tell you to go get in the shower?

18 A. No.

19 Q. Where -- would you be in the shower when he would
20 touch you?

21 A. Yes.

22 Q. Where would he touch you when you were in the shower?

23 A. My private.

24 Q. Okay. And where would he be?

25 A. Outside the shower.

Minor 2

- DIRECT: HAMMACK

1 Q. Okay. Let's talk about your shower for a minute. Is
2 it a tub shower or, like, just a shower?

3 A. Tub shower.

4 Q. Okay. Did you have a door or, like, a curtain?

5 A. Curtain.

6 Q. Okay. Where would the curtain be when he would touch
7 you in the shower?

8 A. Like, halfway open.

9 Q. Who would open the curtain?

10 A. Him.

11 Q. Would he say what he was doing in there?

12 A. Not that I remember.

13 Q. Okay. Each time that he touched you when you were in
14 fifth grade, was it the same way each time?

15 A. Yes.

16 Q. Okay. Now when you were in sixth grade -- you said
17 you were home schooled in sixth grade; right?

18 A. Yes.

19 Q. Okay. Tell me how the home school works.

20 A. Like, it's on the computer.

21 Q. Okay. Where is your teacher?

22 A. Like, at home.

23 Q. At your home?

24 A. No, it's, like -- I don't know how to explain it.

25 Q. Do you watch class on the computer?

Minor 2

- DIRECT: HAMMACK

1 A. Yeah. Like, a live lesson.

2 Q. Okay. Did anybody help you with your home schooling?

3 A. Not really, unless I asked a question.

4 Q. Okay. When would you do your home schooling?

5 A. During the day.

6 Q. Okay. Who was home with you during the day?

7 A. My sister and my dad.

8 Q. Okay. Do you know where your mom would be?

9 A. At work.

10 Q. Okay. Now when you were in sixth grade when you were
11 home schooled, did anybody touch you in a place that was
12 not okay then?

13 A. Yes.

14 Q. Okay. Who did that?

15 A. My father.

16 Q. Okay. Did he do it in the same room in the house?

17 A. Yes.

18 Q. Okay. And what parts of you would he touch when you
19 were in sixth grade?

20 A. The same.

21 Q. Okay. Your private?

22 A. Yes, ma'am.

23 Q. Your breasts?

24 A. Yes.

25 Q. And your bottom?

Minor 2

- DIRECT: HAMMACK

1 A. Yes.

2 Q. Would he touch them the same way that he did in fifth
3 grade?

4 A. Yes.

5 Q. Okay. When you were in sixth grade, did it happen
6 once or more than once?

7 A. More than once.

8 Q. Okay. How would the door be?

9 A. The same.

10 Q. Shut and locked?

11 A. Yes.

12 Q. And your clothes, would they be the same?

13 A. Yes.

14 Q. Let's see. You turned 13 in September of this year;
15 is that right?

16 A. Yes.

17 Q. Has anybody touched you in a place that's not okay
18 since then?

19 A. No.

20 Q. Okay. Has anybody else ever touched you in a place
21 that's not okay?

22 A. No.

23 Q. Okay. Minor 2 , two years ago when you were in fifth
24 grade, did you tell anybody that your dad was touching
25 you?

Minor 2

- DIRECT: HAMMACK

1 A. No.

2 Q. How come?

3 A. Because he said that I don't need to tell anybody
4 unless they asked.

5 Q. Okay. Did you tell anybody when you were in sixth
6 grade?

7 A. No.

8 Q. Okay. Did you tell anybody when you were in seventh
9 grade?

10 A. I mean sixth grade.

11 Q. You did tell somebody when you were in sixth grade?

12 A. I forgot because of the year that it had happened.

13 Q. Okay. Well, did you end up telling somebody?

14 A. Yes.

15 Q. Who did you tell?

16 A. My mom.

17 Q. Okay. Do you remember when you told her?

18 A. No, not the date.

19 Q. Okay. Do you remember, was it before or after the
20 police -- or, I'm sorry. Let me ask you this: Did the
21 police come to your house?

22 A. Yes.

23 Q. Did you tell your mom before or after the police came
24 to your house?

25 A. Before.

Minor 2

- CROSS: ZMROCZEK

1 Q. Okay. Give me just a second. Okay? Be right back.

2 (Pause.)

3 Minor 2 , I got two more questions for you. Okay? Do
4 you see the person that touched you in the courtroom
5 today?

6 A. Yes.

7 Q. Can you tell me where they are?

8 A. Over there (pointing).

9 MS. HAMMACK: Your Honor, let the record reflect that^u
10 she's identified the Defendant.

11 THE COURT: Sitting at the table over there?

12 THE WITNESS: Yes.

13 THE COURT: All right. The record indicates she's
14 identified the Defendant.

15 MS. HAMMACK: Minor 2 , I don't have any more questions
16 for you. Just answer any questions that Ms. Zmroczek has
17 for you. Okay?

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 Q. Minor 2 , my name is Aimee Zmroczek. Is it okay if I
21 call you Minor 2 ?

22 A. Yes.

23 Q. We haven't had a chance to talk before; have we?

24 A. No.

25 Q. Minor 2 , tell the jury about how your grades in school

Minor 2

- CROSS: ZMROCZEK

1 are.

2 A. They're good, I guess.

3 Q. Really good; aren't they?

4 A. Sort of.

5 Q. You're very smart. You do well in school; right?

6 A. Yeah.

7 Q. When you went to Midland Valley Prep, did you
8 participate in a spelling bee?

9 A. Yeah.

10 Q. How did you do in that?

11 A. Good.

12 Q. Did you get to go to the regional or the bigger
13 spelling bee out of the school?

14 A. Yes.

15 Q. And were your mom and dad there with you?

16 A. Yes.

17 Q. Minor 2 , I know that you pointed to your dad earlier.
18 That's the first time that you've seen him since May 23rd;
19 isn't it?

20 A. Yes.

21 Q. And, Minor 2 , how many people have you talked to about
22 what happened in -- and you're saying it happened in fifth
23 and in sixth grade?

24 A. Yes.

25 Q. How many people have you talked to about that?

Minor 2

- CROSS: ZMROCZEK

1 A. A few.

2 Q. A few, since May?

3 A. (Nods head.)

4 Q. Would you agree with me that between the lady that
5 videotaped you and then the police, and then your mom and
6 you talk about it all the time; right?

7 A. Uh-huh.

8 Q. And then the social worker from DSS?

9 A. Yeah.

10 Q. Talked about it about every week since May; haven't
11 you?

12 A. (Nods head.) I think so.

13 Q. I don't want to keep talking about that. I want to
14 talk about before then. Let's talk about before May.

15 Did you have -- when you were home schooled, did you
16 have an iPad or a Kindle or anything?

17 A. At one point, yes.

18 Q. Could you use that Kindle to text or to call people?

19 A. Yes.

20 Q. So you could call your mom or text your mom during the
21 day at work?

22 A. Not really.

23 Q. Because she was working?

24 A. Yes.

25 Q. But it had the capability?

Minor 2

- CROSS: ZMROCZEK

1 A. Yes.

2 Q. And you could text your dad or talk to him on Facebook
3 from there too; right?

4 A. Yes.

5 Q. Because when y'all got a little older he didn't stay
6 home with you all the time; right?

7 A. Most of the time.

8 Q. Most of the time. But when he wasn't home, was he out
9 doing work?

10 A. He said he was.

11 Q. He said he was?

12 A. Yes.

13 Q. Do you know that he renovated houses?

14 A. Yes.

15 Q. Didn't you go with him to help him sometimes?

16 A. I didn't hear you.

17 Q. I'm sorry. I should never walk away while I'm asking
18 a question.

19 Didn't you go with him to help him sometimes?

20 A. Sometimes.

21 Q. You would go to the houses and help caulk or help sand
22 or sometimes paint or play in the pools?

23 A. Yes.

24 Q. Minor 2, do you remember when you were trying to learn
25 a cartwheel?

Minor 2

- CROSS: ZMROCZEK

1 A. I'm not sure.

2 Q. You don't remember asking your dad for help or
3 pointers on how to learn how to do a cartwheel?

4 A. No.

5 Q. What kind of stuff did your dad help you with?

6 A. Sometimes school.

7 Q. Sometimes he helped with school?

8 A. If I asked a question.

9 Q. If you had a question you would go talk to him, right,
10 because he was there and he would help you; right?

11 A. Yeah, sometimes.

12 Q. If you were hurt, who would you go to?

13 A. Depends on who's home. If my dad's home and the only
14 one, then that's all I'd have.

15 Q. And he took care of you?

16 A. Yeah.

17 Q. Minor 2 , did you like to draw?

18 A. Yeah.

19 Q. Did you ever draw pictures for your dad?

20 A. Sometimes.

21 Q. Minor 2 , do you remember when you got your guitar?

22 A. Yes.

23 Q. Tell the jury about that. Let me ask it this way. Do
24 your parents sometimes fight about money?

25 A. Yeah.

Minor 2

- CROSS: ZMROCZEK

1 Q. Did your dad like to spend money?

2 A. Yeah.

3 Q. He'd take y'all on vacations?

4 A. Well, both of them would.

5 Q. Both of your parents?

6 A. (Nods head.)

7 Q. And who bought you that guitar?

8 A. My dad.

9 Q. Minor 2 , I'm going to show you what's been marked as
10 Defense Exhibit Four. Do you recognize that?

11 A. Yes.

12 Q. What is that?

13 A. My guitar in my room.

14 Q. Your guitar in your room.

15 Your Honor, at this time we'd like to move Defense
16 Exhibit Four into evidence.

17 MS. HAMMACK: Judge, the same relevance objection.
18 It's a picture of a guitar.

19 THE COURT: Okay. I'll admit it.

20 (Defendant's Exhibit No. 4, photograph, received into
21 evidence.)

22 BY MS. ZMROCZEK:

23 Q. Minor 2 , is there anything on that guitar?

24 A. Yes.

25 Q. What is that?

Minor 2

- CROSS: ZMROCZEK

1 A. Like, a note¹.

2 Q. Who wrote that note?

3 A. I think my dad.

4 (Defendant's Exhibit No. 5, photograph, marked for
5 identification.)

6 BY MS. ZMROCZEK:

7 Q. Minor 2 , I'm going to show you what's been marked as
8 Defense Exhibit Five. Do you recognize that?

9 A. Uh-huh, yes.

10 Q. What is that?

11 A. A note.

12 Q. The note on your guitar?

13 A. Yes.

14 MS. ZMROCZEK: Your Honor, at this time we'd like to
15 move Defense Exhibit Five into evidence.

16 MS. HAMMACK: Your Honor, we would object not only to
17 the relevancy but to the hearsay. Within this picture
18 there's two different handwritings in the note and that's
19 obviously hearsay.

20 MS. ZMROCZEK: We're not offering it for the truth of
21 the matter asserted, Your Honor.

22 MS. HAMMACK: Then why are they offering it?

23 MS. ZMROCZEK: Well, I'll -- if I'm allowed three
24 questions, I'll be able to get to the relevance, Your
25 Honor.

Minor 2

- CROSS: ZMROCZEK

1 (Document handed to Judge.)

2 MS. HAMMACK: And, Your Honor --

3 THE COURT: Ladies and gentlemen, let me let you step
4 back to the jury room. Please don't discuss the case when
5 you're back there. I'll bring you back in just a few
6 minutes.

7 (Jury exits courtroom at 3:10 p.m.)

8 THE COURT: Ms. Coleman, we're going to go ahead and
9 take about a 15-minute break, so if you want to give them
10 some refreshments or something to drink while we're gone,
11 you can.

12 THE BAILIFF: Okay.

13 THE COURT: What is it -- if you're not offering it
14 for the truth of matter asserted, what --

15 MS. ZMROCZEK: The next question, Your Honor, was going
16 to be: Did sometimes you and your daddy communicate
17 through notes. If Your Honor recalls that at pretrial I
18 asked to move two statements on the wall into evidence.

19 MS. HAMMACK: And, Your Honor, she can ask if they
20 communicated through notes without submitting the
21 substance of a note that is hearsay.

22 THE COURT: Well, this note is clearly hearsay at this
23 point. Right?

24 You clearly want the jury to understand that there's
25 love and affection between these people. So you're

Minor 2

- CROSS: ZMROCZEK

1 offering it for the truth of the matter asserted.

2 You don't need to -- you can show a note that they
3 wrote in the third grade to show that they wrote notes.

4 MS. ZMROCZEK: Right. Your Honor, I guess the
5 relevance comes back to, that she already has told the
6 jury that sometimes they fought about money. And that's
7 going to be an issue as to the bias and the motive in this
8 case.

9 And, Your Honor, that specifically addresses that --

10 THE COURT: Maybe you'll have to try get it in another
11 way.

12 MS. ZMROCZEK: Okay.

13 THE COURT: Sustain the objection at this point in
14 time.

15 MS. ZMROCZEK: Okay.

16 THE COURT: All right. How much longer are you going
17 to be? I guess we'll have to take a break.

18 MS. ZMROCZEK: Probably, Your Honor, not longer than
19 10 minutes.

20 THE COURT: All right. Well, then -- we'll, Minor 2 ,
21 I'm going to let you step down but I don't want you
22 talking about your testimony with anybody while we're on
23 break. Okay?

24 THE WITNESS: Yes, sir.

25 THE COURT: If you want something to drink or eat, if

Minor 2

- CROSS: ZMROCZEK

1 somebody has that you can have it, but don't talk about
2 your testimony. Okay?

3 THE WITNESS: Okay.

4 THE COURT: With the solicitor, with your advocate or
5 anybody you see. All right?

6 THE WITNESS: Where do I go?

7 THE COURT: Huh?

8 THE WITNESS: Where do I go?

9 THE COURT: Where do you want to go?

10 THE WITNESS: Huh?

11 THE COURT: Do you want something to eat? Drink?

12 THE WITNESS: No.

13 MS. HAMMACK: Your Honor, we've got a small room
14 outside she can sit in until it's time to start back.

15 THE COURT: If she needs to use the restroom, you can
16 show her where the restroom is.

17 All right. We'll stand in recess for a few moments.

18 (Break taken at 3:13 p.m.)

19 THE COURT: All right. Ms. Coleman, let's bring the
20 jury in.

21 THE BAILIFF: Okay.

22 (Jury enters courtroom at 3:31 p.m.)

23 THE COURT: All right. Ms. Zmroczek, if you don't
24 mind.

25 MS. ZMROCZEK: Thank you, Your Honor. If it please

Minor 2

- CROSS: ZMROCZEK

1 the Court.

2 Q. Minor 2 , sometimes you would send your dad text
3 messages and y'all would talk through Facebook; right?

4 A. Yes.

5 Q. And then sometimes you would leave notes for him;
6 right?

7 A. I guess, like, sometimes. Every once in a while.

8 Q. I'm sorry?

9 A. Every once in a while.

10 Q. Every once in a while. Is your dad a good dad?

11 A. Yeah.

12 Q. Minor 2 , do you recall Ms. Brown? Do you know her?
13 She works for DSS.

14 A. I'm not sure. I'm not really good with names.

15 Q. She comes and talks to you at least once a month at
16 your house.

17 A. Yes.

18 Q. I think the last time you let her hold your bunny.

19 A. Yes.

20 Q. Did she ask you about what you think about your dad?

21 A. I think so.

22 Q. Minor 2 , what kind of things do you tell her now that
23 you think about your dad?

24 A. That I'm not happy with him.

25 Q. And you said he was lazy?

Minor 2

- CROSS: ZMROCZEK

1 A. Yes.

2 Q. And you told her that he just sat on the couch and
3 watched TV all day?

4 A. Yes.

5 Q. Minor 2 , before you talked to any of the DSS workers
6 or any of the police or anyone, did you talk to Minor 1
7 about this?

8 A. No.

9 Q. But you did eventually talk to your mom?

10 A. Yes.

11 Q. Tell me about that.

12 A. Like, my sister and my mom were talking and she came,
13 called me in to ask me if anything was going on, the same
14 thing.

15 Q. Your mom asked you --

16 MS. HAMMACK: Your Honor, I'm sorry. If she could
17 just speak up a little bit louder. We're having a little
18 trouble.

19 THE COURT: Okay. We need you to talk as loud as you
20 can, please.

21 BY MS. ZMROCZEK:

22 Q. I know that I'm standing close so that maybe it helps
23 you, and I'm not moving away for any other reason, but
24 maybe if I stand back here it will remind you to talk
25 louder but I don't want you to think I'm shouting at you.

Minor 2

- CROSS: ZMROCZEK

1 So you didn't tell your mom. They came to ask you
2 about it?

3 A. Yes.

4 Q. After Minor 1?

5 A. Yes.

6 Q. And they asked you everything that Minor 1 had said?

7 A. No. Just, like, I can't say what they said. So I
8 really don't know what to -- she, like, asked if -- I
9 don't know how to explain it.

10 Q. Minor 1 -- I mean, sorry, Minor 2 . Do you remember when
11 this first started happening?

12 A. No.

13 Q. Do you remember what grade you were in?

14 A. Yes.

15 Q. What you grade was that?

16 A. Fifth.

17 Q. You were in fifth grade?

18 A. (Nods head.)

19 Q. At Midland Valley Prep?

20 A. Yes, ma'am.

21 Q. And you were speaking a little quietly earlier. So
22 where did you say it happened in fifth grade?

23 A. In my parents' room.

24 Q. In your parents' room. And it was always in your
25 parents' room?

Minor 2

- CROSS: ZMROCZEK

1 A. No.

2 Q. Sometimes it was in the bathroom?

3 A. Yes.

4 Q. I thought that's what you said. I was just -- because
5 -- I was just clarifying that. And it happened during the
6 day?

7 A. Yes.

8 Q. And, how many times in fifth grade did it happen?

9 A. I don't know.

10 Q. Did it happen a lot of times?

11 A. I really don't know. I just know it was more than
12 once.

13 Q. You just know that it was more than once. And then in
14 sixth grade you were home schooled?

15 A. Yes.

16 Q. And it happened the same places you said?

17 A. Yes.

18 Q. And how many times was that?

19 A. I don't know an exact -- I don't know anything exact.

20 Q. You don't know anything exact?

21 A. No.

22 Q. Minor 2, do you remember talking with a nice lady
23 maybe five or six days or seven days after this happened
24 and the police brought you to the Child Advocacy Center?
25 Do you remember that place?

Minor 2

- CROSS: ZMROCZEK

1 A. I think so, yes.

2 Q. And when Ms. Ashley asked you earlier if you ever said
3 anything when this happened, did you say you never said
4 anything?

5 A. If it hurt I would tell him that it hurt.

6 Q. If it hurt. **Minor 2** , did you ever tell -- did you
7 ever scream and kick and cry?

8 A. I would not kick but I had cried like when it hurt. I
9 cried and I would, like, try and push him away to try to
10 make him stop.

11 Q. When you spoke with -- I'm trying to -- I'm just
12 trying to make sure I understand.

13 Did you ever tell anyone that you kicked and screamed
14 and cried?

15 A. Not -- like, I told her that I had cried and pushed.

16 Q. **Minor 2** -- beg the Court's indulgence.

17 (Pause.)

18 **Minor 2** , I want to switch gears. How old are you
19 compared to **Minor 1**?

20 A. Twenty-one months.

21 Q. You're just a little bit younger?

22 A. Yes.

23 Q. Do you know about **Minor 1**'s medical conditions?

24 A. Yes.

25 Q. What do you know about them?

Minor 2

- CROSS: ZMROCZEK

- 1 A. That she has adrenal insufficiency.
- 2 Q. And did you know that she had to go to the doctor a
- 3 lot?
- 4 A. Yes.
- 5 Q. And do you remember when she had surgery?
- 6 A. Yes.
- 7 Q. Did she stay at the hospital?
- 8 A. Yes.
- 9 Q. But did you -- you didn't -- did you stay at the
- 10 hospital?
- 11 A. No.
- 12 Q. Where did you stay?
- 13 A. At my house.
- 14 Q. And who stayed there with you?
- 15 A. My dad.
- 16 Q. But then during the day, would he go to the hospital?
- 17 A. Yes.
- 18 Q. You would go to the hospital during the day too;
- 19 right?
- 20 A. Yes.
- 21 Q. And, Minor 2 , do you remember when she came home from
- 22 the hospital?
- 23 A. Not the exact date but I know she came home.
- 24 Q. Certainly. And that was a poor question on my part.
- 25 If I tell you it was in October of 2012, I'm not trying to

Minor 2

- CROSS: ZMROCZEK

1 trick you, but my more important question is: Do you
2 remember when she came home from the hospital after she
3 had that surgery, regardless of when it was?

4 A. Yes.

5 Q. Did she have -- didn't she have an IV and a catheter
6 and tubes in her to help her go to the bathroom and lots
7 of medical stuff that she had at home?

8 A. I think so.

9 Q. And who would help her with going to the bathroom and
10 taking baths?

11 A. My mom.

12 Q. And wouldn't your dad help during the day when your
13 mom was at work?

14 A. I'm not -- I'm not sure.

15 Q. You're not sure?

16 A. I don't really remember.

17 Q. Okay. Would you help?

18 A. No.

19 Q. And after that surgery she had to have cream put on
20 her private parts; right?

21 A. I don't know.

22 Q. You don't know about that?

23 A. No.

24 Q. You don't have any medical conditions; do you?

25 A. No.

Minor 2

- CROSS: ZMROCZEK

1 Q. Minor 2 , before you were talking about -- with
2 Ms. Ashley you were talking about after it would happen
3 that your dad would pray and cry?

4 A. Yes.

5 Q. And would he do that every time?

6 A. That I recall.

7 Q. Do you recall the first time that you told, that you
8 talked about that? Who did you tell that to the first
9 time?

10 A. Ms. Anne.

11 Q. Ms. Anne. When you were talking to Ms. Anne, did you
12 tell her that your mom told you to remember to tell
13 Ms. Anne certain things?

14 A. Because that I had forgotten to talk about, because I
15 keep forgetting things.

16 Q. You keep forgetting things?

17 A. Like the first time that I told my mom and then I
18 would tell her, talk about it and then I would forget what
19 I had told her and that's to make sure that I told
20 everything. And that's the truth.

21 Q. And she would help remind you what that was?

22 A. What I had said.

23 Q. She would help remind you of that?

24 A. (Nods head.)

25 Q. And you and Minor 1 -- you've had a chance to talk to

Minor 2

- CROSS: ZMROCZEK

1 Minor 1 about it; right?

2 A. No, I haven't talked to her about it.

3 Q. Did you and Minor 1 both go to counseling?

4 A. Yes.

5 Q. Not together; right?

6 A. No.

7 Q. But y'all went on the same days?

8 A. Yes.

9 Q. And, Minor 2 , didn't the counselor tell y'all to talk
10 about it?

11 A. I'm not sure.

12 Q. You're not sure?

13 A. I don't remember.

14 Q. And, Minor 2 , didn't you watch the video again with
15 your counselor just recently?

16 A. Yes.

17 Q. And did you remember new stuff?

18 A. Yes.

19 Q. And that -- what was that new stuff you remembered?

20 A. About the breast part.

21 Q. About the breast part, that was new?

22 A. Yes, I had forgotten.

23 Q. The shower part, that was new?

24 A. Yes.

25 Q. Minor 2 , who stays with you at [REDACTED] where you stay

Minor 2

- CROSS: ZMROCZEK

1 now?

2 A. My granddad. Like, my papa.

3 Q. Your granddad, your papa?

4 A. My mom's dad.

5 Q. Your granddad, your mom and your sister and you?

6 A. No. When she's at work he stays with us during the
7 day and he goes home and then it's my mom and my sister.

8 Q. Minor 2 , are there some times when your mom goes out
9 of town that you stay at your grandparents?

10 A. Yes.

11 Q. In the past few months?

12 A. Yes.

13 Q. And do they live in Georgia?

14 A. Who?

15 Q. Your grandparents or --

16 A. No.

17 Q. -- they live here; right?

18 A. Yes.

19 Q. Okay. Do you have any pets?

20 A. Yes.

21 Q. Did they come with you?

22 A. No.

23 Q. Minor 2 , do you remember the last time you and Minor 1
24 talked about what happened?

25 MS. HAMMACK: Your Honor, I'm going to object. She's

Minor 2

- CROSS: ZMROCZEK

1 already said she hasn't talked to Minor 1 about it.

2 THE COURT: Sustained.

3 MS. ZMROCZEK: Beg the Court's indulgence. (Pause.)

4 Q. Minor 2 , I just have one last question. When you were
5 talking with the counselors you would go -- how often
6 would you go?

7 A. Once a week.

8 Q. Once a week. And did they talk to you about anything
9 else or just about why we're here today?

10 A. Well, we had some, like, just conversations about just
11 random stuff.

12 Q. Would they always ask you about what we're talking
13 about here today?

14 A. Not the first few times.

15 Q. Not the first few times but the last few?

16 A. Yes.

17 Q. And they had you write out what you remembered?

18 A. Yes.

19 Q. Thank you, Minor 2 , for answering my questions.

20 THE COURT: All right. Anything further?

21 MS. HAMMACK: No, Your Honor.

22 THE COURT: All right. Thank you very much, young
23 lady. You may step down.

24 All right. Call your next witness.

25 MR. MOLONY: Thank you, Your Honor. State calls

JENNIFER RUDD - DIRECT: MOLONY

1 Jennifer Rudd.

2 JENNIFER RUDD, having been duly sworn, was examined
3 and testified as follows:

4 THE CLERK: Please have a seat in the witness box,
5 stating your full name for the Court, spelling your last.

6 THE WITNESS: My name is Jennifer Rudd. First name
7 J-E-N-N-I-F-E-R, last name R-U-D-D.

8 DIRECT EXAMINATION

9 BY MR. MOLONY:

10 Q. Jennifer, where do you live currently?

11 A. I live at [REDACTED].

12 Q. And are you working?

13 A. Yes.

14 Q. Explain to the jury where you work.

15 A. I work at a local hospital.

16 Q. What do you do there?

17 A. I'm the director of financial reporting.

18 Q. Now explain how you're related to the Defendant in
19 this case.

20 A. He's my husband.

21 Q. When did you and the Defendant get married?

22 A. August 15th of 1998.

23 Q. Now what's your current marital status as far as the
24 Defendant right now?

25 A. We are separated.

JENNIFER RUDD - DIRECT: MOLONY

1 Q. When did you get separated?

2 A. May 23rd, 2012 -- or '13. I'm sorry.

3 Q. How old's the Defendant?

4 A. He's 40.

5 Q. Do you and the Defendant have any children?

6 A. Yes.

7 Q. What are their names?

8 A. Minor 1 and Minor 2 .

9 Q. Are both of those, Minor 1 and Minor 2 , the Defendant's
10 biological children?

11 A. Yes, they are.

12 Q. Jennifer, I want to take you back a little bit to the
13 year 2011. Where were you working at that time?

14 A. Same place.

15 Q. What about the Defendant, what was he doing?

16 A. He flips houses.

17 Q. Describe your work schedule during that time. Did you
18 work -- how many hours a week?

19 A. Approximately 40 to 50 hours a week.

20 Q. And would you work during the daytime? At night?

21 A. During the day.

22 Q. What about the Defendant, what type of work did he do?

23 A. He was flipping houses.

24 Q. And who was his boss?

25 A. He was his boss.

JENNIFER RUDD - DIRECT: MOLONY

1 Q. What type of hours was he working?

2 A. Whatever hours he chose.

3 Q. Were the girls, Minor 2 and Minor 1, in school during
4 that time?

5 A. Yes, they were.

6 Q. Where were they in school at?

7 A. During 2000-and?

8 Q. '11.

9 A. In '11 they were at Midland Valley Prep.

10 Q. Moving into the year 2012, did they continue going to
11 school at Midland Valley Prep?

12 A. No, we home schooled them.

13 Q. Describe this home school process for the jury.

14 A. Okay. It's a virtual public school called Connections
15 Academy where they actually have real teachers but it's an
16 online school. So they have lessons every day with
17 teachers.

18 Q. And they do that through what?

19 A. Through the computer.

20 Q. When would they attend these classes on the computer?

21 A. During the daytime.

22 Q. Were you still working at the hospital during that
23 time?

24 A. Yes, I was.

25 Q. And was the Defendant still flipping houses during

JENNIFER RUDD - DIRECT: MOLONY

1 that time?

2 A. Yes, he was.

3 Q. What if any help would you provide the children when
4 you would get home from work in the evenings?

5 A. Minor 2 did her lessons by herself for the most part,
6 but Minor 1 I would help in the afternoons when I got home
7 because she has a learning disability.

8 Q. Explain if you can to the jury what Minor 1's learning
9 disability is.

10 A. She has a language-based learning disability where she
11 has trouble with reading, comprehension, writing, that
12 sort of thing.

13 Q. So while you were at work and the children were at
14 home during the school, who was watching over them?

15 A. Their father.

16 Q. And when you say their father, you're referring to the
17 Defendant?

18 A. Yes.

19 Q. Now during that same year of 2012, did Minor 1 have some
20 medical issues that arose?

21 A. Yes.

22 Q. Explain to the jury what Minor 1's medical issues were
23 at that point.

24 A. She was born with her uterus and bladder connected to
25 the same tube, and they had to go in and create a second

JENNIFER RUDD - DIRECT: MOLONY

1 tube and also create a vaginal opening.

2 Q. Do you remember the first time in 2012 that you had to
3 go to the doctor for this medical issue she had?

4 A. Yes. It was in April.

5 Q. In April of 2012?

6 A. Yes.

7 Q. After that exam in April, was a surgery date set?

8 A. Yes.

9 Q. And when was the surgery?

10 A. It was October the 16th of 2012.

11 Q. Prior to **Minor 1**'s surgery, were you required to perform
12 any pre-surgery care on **Minor 1** at the house?

13 A. No.

14 Q. Was the Defendant required to perform any pre-surgery
15 care on **Minor 1** at the house?

16 A. No.

17 Q. Did **Minor 1** have that surgery on October 16th of 2012?

18 A. Yes, she did.

19 Q. How long was she in surgery that day?

20 A. How long was she?

21 Q. How long did the surgery take?

22 A. It took 10 hours.

23 Q. How long did she remain in the hospital?

24 A. She was in the hospital a total of seven nights.

25 Q. Did anybody stay with her during that time?

JENNIFER RUDD - DIRECT: MOLONY

1 A. Yes. I did.

2 Q. Now, after Minor 1 was released from the hospital, were
3 you required to perform any post-procedure care on Minor 1
4 at home?

5 A. Yes.

6 Q. Explain what that was to the jury.

7 A. They gave us a cream that had to be applied to her
8 vagina. It was an external application and I had to do it
9 with a sterile Q-tip.

10 MS. ZMROCZEK: Your Honor, I'm sorry. I can't hear.

11 THE COURT: Can you speak up just a little bit?

12 THE WITNESS: Yes, sir.

13 BY MR. MOLONY:

14 Q. If you could speak up.

15 A. Okay.

16 Q. Could you please explain to the jury again what this
17 procedure was. Not the procedure itself but just what you
18 had to do after she got out of the hospital.

19 A. We had to have -- we had a cream that had to be
20 applied to her vagina on the external. And I used a long
21 sterile Q-tip in order to apply it.

22 Q. How many times a day did this have to be applied?

23 A. Twice.

24 Q. Did the Defendant ever apply this cream?

25 A. No. I would wake her up before I went to work in the

JENNIFER RUDD - DIRECT: MOLONY

1 morning and then I would do it again in the evenings.

2 Q. How long after her surgery was this cream required to
3 be applied?

4 A. From what I remember, it was a couple of weeks. It
5 wasn't very long.

6 Q. Did you do that at the doctor's direction?

7 A. Yes.

8 Q. Were you the only one to perform this?

9 A. Well, sometimes I would let Minor 1 do it herself but I
10 supervised her.

11 Q. So you were there if Minor 1 was doing it?

12 A. Yes.

13 Q. You stated that this was done externally. What does
14 that mean?

15 A. It means that it was just on the outside of her
16 vagina, just where stitches could be seen.

17 Q. To your knowledge, Jennifer, were you authorized or
18 otherwise required to perform any invasive procedures on
19 Minor 1 after this surgery?

20 A. No.

21 Q. Were you authorized or otherwise required to perform
22 any procedures to Minor 2 after Minor 1's surgery?

23 A. No.

24 Q. Were you authorized or required to compare Minor 1 and
25 Minor 2 's private parts after Minor 1's surgery?

JENNIFER RUDD - DIRECT: MOLONY

1 A. No.

2 Q. Now, after Minor 1's surgery on October 16th of 2012,
3 did she ever go back to the doctor for another
4 examination?

5 A. At the end of November.

6 Q. I'm sorry?

7 A. At the end of November.

8 Q. And you stated the first one was in April?

9 A. Yes.

10 Q. During that procedure was -- to your knowledge was
11 Minor 1 awake?

12 A. She was sedated, under anesthesia.

13 Q. And obviously during the October surgery, was she
14 awake?

15 A. Sedated, under anesthesia.

16 Q. And at the end of November when she went back, to your
17 knowledge was Minor 1 under anesthesia during that time?

18 A. She was under anesthesia.

19 Q. Moving into this year, were you still working at the
20 hospital during that time?

21 A. Yes.

22 Q. The same hours?

23 A. Yes.

24 Q. Did the Defendant still have his same job?

25 A. Yes.

JENNIFER RUDD - DIRECT: MOLONY

1 Q. Were the girls still being home schooled --

2 A. Yes.

3 Q. -- the beginning of this year? What about the
4 marriage itself, Jennifer, were you happy during that
5 time?

6 A. Yes, I was.

7 Q. Moving to the middle of this year in May, on May the
8 22nd, did you have a conversation with Minor 1 and Minor 2
9 that caused you concern?

10 A. Yes, I did.

11 Q. And as a result of that conversation, what did you do?

12 A. I called the police.

13 Q. When did you call the police?

14 A. The next morning.

15 Q. The next morning would have been what day?

16 A. May 23rd.

17 Q. After calling the police, did you and the girls leave
18 the residence at that time?

19 A. Yes, we did.

20 Q. And where was that residence located? I'm not sure if
21 I --

22 A. [REDACTED].

23 MR. MOLONY: Your Honor, may I approach?

24 THE COURT: You may.

25 BY MR. MOLONY:

JENNIFER RUDD - DIRECT: MOLONY

1 Q. Jennifer, I'm going to show you what's already been
2 admitted into evidence as State's Exhibit One and ask you
3 if you recognize it.

4 A. Yes. That is our house.

5 Q. So this is the house that y'all were living in
6 throughout, from 2011 until you and the girls left on May
7 23rd of this year?

8 A. Yes.

9 Q. Now, when you left the house on May the 23rd of this
10 year, where did you go?

11 A. We went, we were told to go somewhere safe. So the
12 only place I felt comfortable was to go to the beach
13 because that's where I know my way around and we stayed
14 there until we came back to town and then moved in with my
15 parents.

16 Q. Did you ever go back to that residence on [REDACTED]?

17 A. On June 10th.

18 Q. And on June the 10th when you got back to the
19 residence at [REDACTED], what if anything did you notice
20 at that time that was odd to you?

21 A. There was writing all over the girls' walls.

22 MR. MOLONY: Your Honor, may I approach?

23 THE COURT: You may.

24 BY MR. MOLONY:

25 Q. Jennifer, I'm going to show you what's been marked for

JENNIFER RUDD - DIRECT: MOLONY

1 identification purposes as State's Exhibits Three and Four
2 and ask you if you recognize them.

3 A. Yes.

4 Q. And what are they?

5 A. They are the writings that were on the walls.

6 Q. And are these pictures fair and accurate
7 representations of how the wall in Minor 2 's room looked
8 as to State's Three, and the wall in Minor 1 's room in
9 State's Four looked when you got home on June the 10th
10 that day?

11 A. Yes.

12 Q. And what about the handwriting in both of them, were
13 you able to determine whose handwriting it was?

14 A. Yes.

15 Q. And whose handwriting was that?

16 A. Their father's.

17 MR. MOLONY: Your Honor, at this time the State would
18 move to introduce State's Exhibits Three and Four into
19 evidence.

20 MS. ZMROCZEK: Subject to my previous objection, Your
21 Honor.

22 THE COURT: So admitted.

23 (State's Exhibit Nos. 3 and 4, photographs, received
24 into evidence.)

25 MR. MOLONY: I ask that I can publish them to the

JENNIFER RUDD - DIRECT: MOLONY

1 jury.

2 THE COURT: You may.

3 BY MR. MOLONY:

4 Q. Now, Jennifer, after you saw this on the wall, did you
5 call the police? Did you call law enforcement?

6 A. Yes, I did.

7 Q. Is that residence in State's Exhibit One on [REDACTED]
8 [REDACTED] in Aiken County?

9 A. Yes, it is.

10 MR. MOLONY: Your Honor, may I approach?

11 THE COURT: You may.

12 BY MR. MOLONY:

13 Q. Now, Jennifer, I'm going to show you what's been
14 marked for identification as State's Exhibit Five and ask
15 if you recognize this.

16 A. Yes, I do.

17 Q. And what is this?

18 A. It is a CD of phone calls.

19 Q. Have you listened to these phone calls?

20 A. Yes, I have.

21 Q. After listening to the phone calls, were you able to
22 determine whose voice was on the phone calls?

23 A. Yes.

24 Q. And whose voice was that?

25 A. My husband, Dwayne Rudd.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. Referring to the Defendant?

2 A. Yes.

3 Q. Now, at any time before May the '22nd or 23rd of this
4 year, did you ever plan on divorcing the Defendant?

5 A. No, I did not.

6 Q. At any time before or after that, have you told
7 Minor 2 what to tell law enforcement?

8 A. No, I have not.

9 Q. Did you tell Minor 2 what to say in this courtroom
10 here today?

11 A. No, I did not.

12 Q. Did you tell Minor 1 what to tell law enforcement?

13 A. No, I did not.

14 Q. Did you tell her what to tell the jury here today?

15 A. No, I did not.

16 MR. MOLONY: Thank you, Jennifer. Please answer any
17 questions the defense has.

18 MS. ZMROCZEK: Beg the Court's indulgence.

19 (Pause.)

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q. Ms. Rudd, you testified that the day that you called
23 the police was the day that you learned -- the date, right
24 after you learned what Minor 2 and Minor 1 had told you?

25 A. Yes.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. Did you meet with law enforcement?

2 A. At what point?

3 Q. When you called them.

4 A. When I called them. I just called them, and then they
5 set up a place to meet to take the kids out of the home.

6 Q. That very day?

7 A. Yes.

8 Q. And that was the day after you learned --

9 A. Yes.

10 Q. -- of the disclosure from the girls?

11 A. Of the what?

12 Q. That the girls -- it was the day after the girls told
13 you is when you called the police?

14 A. Yes.

15 Q. And when you met with them to remove the girls from
16 the home, do you recall giving a statement?

17 A. Yes.

18 Q. What did you tell the police the day after you learned
19 this and met with the police? What did you tell them?

20 A. I told them that the night before -- it's a whole
21 statement about what was said and I don't think I'm
22 allowed to say what was said, but it was about them being
23 touched and hurt by their father.

24 Q. In fact, Mrs. Rudd, didn't you tell the police that
25 you learned about this on Monday night?

JENNIFER RUDD - CROSS:ZMROZCEK

1 A. On Monday night one of the children told me they -- he
2 had said he was comparing them. And although I did not
3 agree with it, I told the child I would speak with him
4 about it. I had not spoken with him about it and they
5 came back on Wednesday and told me that they had been
6 hurt. And I said, what do you mean.

7 I did not know there was any touching involved.

8 Q. Okay. So on Monday who told you that they were
9 comparing, that he was comparing them?

10 A. Minor 1.

11 Q. Minor 1 told you that he was comparing what?

12 A. Their vaginas.

13 Q. And, in fact, you told the police that you didn't
14 think much of it?

15 A. No, I didn't. He's their father.

16 Q. No, you didn't think much of it?

17 A. Because she's had surgery, and I thought he was just
18 seeing the difference.

19 Q. Because he's their father; right?

20 A. Right. And I trusted him.

21 Q. And he has cared for Minor 1's medical condition along
22 with you since her birth?

23 A. He's cared for her adrenal condition since her birth.
24 The new condition did not start until April of 2012.

25 Q. Ms. Rudd, is it your testimony that before April of

JENNIFER RUDD - CROSS:ZMROZCEK

1 2012 that there were no physical genitalia problems with
2 Minor 1?

3 A. There were, but there was no treatment required to
4 them. The only treatment she required was due to her
5 adrenal problem.

6 Q. What kind of problems did -- the adrenal problem, what
7 kind of physical problems did that cause Minor 1?

8 A. If she vomits, breaks an arm, has any kind of stress,
9 diarrhea, she has to be given a shot of cortisone. Daily
10 she has to take medicines because she doesn't retain
11 water. She can go into shock and die if she does not take
12 these medicines.

13 Q. Who administers those shots?

14 A. Both of us did, but mainly the Defendant.

15 Q. Your husband?

16 A. Yes.

17 Q. And I'm going to come back to that, Mrs. Rudd, but
18 what I would like to do is I would like to talk about your
19 life. As you described it you worked, did you say, 30 to
20 50 hours a week?

21 A. Forty to 50.

22 Q. I'm sorry. I couldn't hear. Forty to 50 hours a
23 week. And didn't you and Mr. Rudd sit down and discuss
24 that?

25 A. What do you mean?

JENNIFER RUDD - CROSS:ZMROZCEK.

1 Q. Didn't y'all as a married couple sit down and decide
2 that you would go to work and that he would continue to
3 renovate houses and raise the children?

4 A. Yes.

5 Q. And you, and you -- you agreed to that; right?

6 A. Yes.

7 Q. And you encouraged that? It was the best thing for
8 the children; right?

9 A. Yes.

10 Q. But you sometimes resented not being able to do all
11 the fun stuff; right?

12 A. There were times that I wished I could be home more.

13 Q. But still as a family unit, y'all did a lot of things
14 together; correct?

15 A. Yes, we did.

16 Q. Take at least two vacations a year?

17 A. Yes.

18 Q. Owned four-wheelers?

19 A. Yes.

20 Q. And boats?

21 A. Yes.

22 Q. And jet skis?

23 A. Yes.

24 Q. How much do you -- how much income do you bring in a
25 month with your job?

JENNIFER RUDD - CROSS:ZMROZCEK

1 A. Net? Gross?

2 Q. Gross.

3 A. Probably about \$8,000 a month.

4 Q. Around \$8,000 a month and Mr. Rudd was able to bring
5 in money as well with his renovating the houses; correct?

6 A. Correct.

7 Q. But nowhere near as much as you did?

8 A. Correct.

9 Q. And I believe that you stated you were married, when?

10 A. In August of 1998.

11 Q. And when was Minor 1 born?

12 A. She was born in [REDACTED] of 1998.

13 Q. Ms. Rudd, your parents didn't like Dwayne; did they?

14 A. No, they did not.

15 Q. For the last 15 years of your marriage, has there been
16 problems between you and your parents over your husband;
17 correct?

18 A. Correct.

19 Q. And y'all, y'all being you and your husband, would
20 fight occasionally?

21 A. We did early in the marriage. Within the last five,
22 six years, we never fought about that --

23 Q. Never fought about?

24 A. -- at all. About my parents.

25 Q. Did you fight about other things?

JENNIFER RUDD - CROSS:ZMROZCEK

1 A. Every married couple has arguments.

2 Q. But he was never physically violent towards you?

3 A. No.

4 Q. Ms. Rudd, I want to move back to May 20th when you say
5 that Minor 1 came to you and said that Dad was comparing her
6 vagina to Minor 2 's vagina. And I know you said you would
7 talk with him about it, but it wasn't -- that wasn't what
8 alarmed you; right?

9 A. No.

10 Q. But, what was it that made you call the police on
11 Thursday morning?

12 A. The fact that the night before I was told that he was
13 hurting them. I was told a lot of things. I don't know
14 what I'm allowed to tell, but it was an awful --

15 Q. I'll ask the question this way to help you because I
16 understand what you're trying to do. You're trying not to
17 say what they told you. And the Court appreciates that.

18 My question is this: Did the girls come to you
19 together and tell you what they told you or did one of the
20 girls come?

21 A. I was doing school with Minor 1, and she started just
22 talking about it. And I started asking her questions.
23 And then I called the other child into the room and
24 started asking her the same questions.

25 Q. And where was Mr. Rudd when y'all were having this

JENNIFER RUDD - CROSS:ZMROZCEK

1 conversation?

2 A. He was working.

3 Q. He sometimes waited till you got home to go renovate
4 the houses so that the girls would always have a parent
5 with them?

6 A. He was usually gone before I got home.

7 Q. Sometimes he -- because they were older, he would work
8 during the day as well; right?

9 A. Right.

10 Q. But the girls could contact you if they needed you?

11 A. Yes.

12 Q. And they could contact him if they needed him?

13 A. Yes.

14 Q. And did you talk to him that night about it when he
15 got back?

16 A. I don't -- on the 22nd?

17 Q. Correct.

18 A. No, I did not.

19 Q. Did you ever talk to him about it?

20 A. No, I did not.

21 Q. Did you ever ask him --

22 A. No, I did not.

23 Q. -- if what the girls were saying was true? I'm sorry?

24 A. I've never asked him about anything that they told me
25 that night.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. The next morning you called the police and then y'all
2 went to the house after meeting at the Bi-Lo?

3 A. Yes.

4 Q. And at this point did you know -- what did you know
5 about what Mr. Rudd knew about the allegations?

6 A. I had not talked to him at all.

7 Q. So, describe what happened when you went to the
8 house.

9 A. When we pulled up at the house?

10 Q. Yes, ma'am.

11 A. The police were there making sure he didn't have any
12 weapons. I got there with DSS. That's all kind of a blur
13 because it was -- but I went inside. I had to quickly
14 pack a suitcase and get the girls a suitcase packed, and
15 we were escorted off the property.

16 Q. Have you spoken to Mr. Rudd since that day?

17 A. No, I have not.

18 Q. Have you allowed the children to speak to him since
19 that day?

20 A. No, I have not.

21 Q. Didn't you tell **Minor 1** that if she spoke to him that
22 DSS would take her away?

23 A. No, I did not.

24 Q. You left the house and you took the girls to the
25 beach?

JENNIFER RUDD - CROSS:ZMROZCEK

1 A. Yes, I did.

2 Q. I'm sorry?

3 A. Yes, I did.

4 Q. I'm sorry. It's really hard to hear in here. How
5 many days were you at the beach?

6 A. Thursday through, I believe, Monday.

7 Q. Just you and the girls?

8 A. Yes.

9 Q. And you talked to them about what had happened?

10 A. Actually we really didn't talk about it very much
11 because it was so awful but a little bit we did, about
12 what we were going to do and ...

13 Q. Did you help explain the process to them about what
14 would happen from there on out?

15 A. I really didn't know exactly what would happen from
16 there on out.

17 Q. Did you know that they had -- you knew that they had
18 an appointment set up to talk to the professionals; right?

19 A. Yes, I believe that -- I can't remember if that
20 appointment was set up while we were at the beach but it
21 was set up for the Tuesday, I think, when we got back.

22 Q. Who set that appointment up?

23 A. Excuse me?

24 Q. Who set that appointment up?

25 A. I did, at someone's direction.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. Okay. And you told the girls what to tell the
2 interviewer when she asked them; right?

3 A. I told them to tell the truth and to tell everything
4 and not to leave anything out that they had told me.

5 Q. Did they have to have help from you to be reminded of
6 what they had told you the first time?

7 A. No.

8 Q. You didn't have to help remind them?

9 A. No.

10 Q. Do you have concerns with either of your daughters'
11 memories?

12 A. Not with life events.

13 Q. But you do have concerns with Minor 1's memory; right?

14 A. Minor 1 has memory problems with school, with memorizing
15 vocabulary words and that sort of thing, not with
16 remembering if she went to Disneyworld.

17 Q. In fact, you were so concerned about Minor 1's learning
18 and attention problems that you took her to the doctor in
19 November, November 30th of 2012; didn't you?

20 A. Yes, I did, but it was not just her memory. It was
21 also language processing.

22 Q. When you say language processing, tell the jury what
23 you mean.

24 A. Her comprehension, reading, spelling.

25 Q. So she had trouble or difficulties comprehending

JENNIFER RUDD - CROSS:ZMROZCEK

1 things?

2 A. Yes. When she reads she has trouble comprehending.

3 Q. But not when she hears things?

4 A. Sometimes you may have to ask a question in a
5 different way because her vocabulary is not at the level
6 that yours might be.

7 Q. And that may be a side effect from her adrenal
8 disorder?

9 A. No.

10 Q. No? Has she always had trouble learning in school?

11 A. Yes.

12 Q. When she attended public school, did she -- she had
13 special classes; right?

14 A. Yes.

15 Q. How would -- but you were concerned with how she was
16 doing in public school; right?

17 A. Yes.

18 Q. And it was your choice to pull her out and home school
19 her; right?

20 A. Well, I discussed it with my husband but I found the
21 school and introduced it to him.

22 Q. And simply because of the nature of his job not being
23 a traditional job, he facilitated their home-school
24 learning; right?

25 A. No.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. He didn't?

2 A. He did not.

3 Q. He didn't help them at all?

4 A. Maybe. I believe he read five pages to **Minor 1**. But he
5 did not -- I came home every evening and sat down and did
6 school. He may have helped if they had a small question
7 or something during the day, but the mass lessons I did.

8 Q. So during the day, what did he do?

9 A. He was home with them while they were on their live
10 lessons and he went to work, as far as I know. I wasn't
11 in the house.

12 Q. When you talked about April 30th of 2012, is the first
13 time that anyone had discussed or focused on **Minor 1's**
14 genitalia area; correct?

15 A. No.

16 Q. Okay. Tell me a little bit more about that then.

17 A. It was discovered when she was a baby but there was
18 nothing that needed to be done until it was around time
19 for her to start her period.

20 Q. So you never had to -- explain to the jury what,
21 exactly what the physical condition looked like, if you
22 can.

23 A. What her vagina looked like?

24 Q. Yes.

25 A. Her clitoris was a little enlarged and her vaginal

JENNIFER RUDD - CROSS:ZMROZCEK

1 hole was maybe the size of a pen. It was tiny.

2 Q. So her clitoris was a little enlarged and you said the
3 vaginal hole was the size of a pen?

4 A. I would say -- not like tiny, tiny, tiny.

5 Q. Tiny so that nothing could get through it?

6 A. Right.

7 Q. And it was like that all the way up until she had the
8 surgery in October of 2012?

9 A. I would assume. I never looked at it again until
10 she -- well, I didn't look at it until she had the surgery
11 but the urologist looked at it under anesthesia.

12 Q. And who was her urologist?

13 A. Dr. Donohoe.

14 Q. Dr. Donohoe was her urologist?

15 A. Uh-huh.

16 Q. Who did she see for her adrenal deficiency?

17 A. Dr. Houk.

18 Q. Did Dr. Houk ever discuss any of the physical
19 abnormalities regarding her vagina and her clitoris?

20 A. He said as she got older she would need surgery, but
21 he did not look at it -- once she probably turned about
22 nine, he stopped looking down there at all.

23 Q. So when -- she went to see Dr. Houk every three or
24 four months; right?

25 A. Yes.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. It was never discussed?

2 A. Not every time. Occasionally he would just remind us
3 that as she got older she was going to need surgery, or
4 she may need surgery. He didn't even know.

5 Q. But it's your testimony that he never ever told you to
6 check to make sure that there were no abnormalities.

7 A. No. As a baby when she went to Dr. Hoffman, they
8 would check the size of her clitoris because at that time
9 her medicine could affect it, but once she was about four
10 they no longer did that anymore.

11 Q. What about her menstrual cycle? Were they concerned
12 at all about that?

13 A. No. She started her period as normal.

14 Q. She started her period and it was normal?

15 A. Yes.

16 Q. And when did that start?

17 A. I believe it was in 2000-and -- I think she was 12.

18 Q. And you discussed that with her and you were the
19 person that helped her with that, not your husband?

20 A. He was at home but from the story I got, he did not
21 help her. He sent her to my bathroom.

22 Q. He sent her to your bathroom?

23 A. Because I had told her what to do if that were to
24 happen.

25 Q. And it started when she was 12 and you had no problems

JENNIFER RUDD - CROSS:ZMROZCEK

- 1 with it -- she had no problems with it?
- 2 A. Correct.
- 3 Q. Ten-hour surgery and she was released home, correct,
- 4 with a catheter and medicine?
- 5 A. No, she did not come home with a catheter.
- 6 Q. Did she have an IV?
- 7 A. No.
- 8 Q. Did she have to take sitz baths or special baths?
- 9 A. Yes, she did.
- 10 Q. How many times a day did she do that?
- 11 A. I don't remember.
- 12 Q. Didn't your husband help facilitate her healing?
- 13 A. He had to make the tub and put it onto the toilet.
- 14 Q. He had to do that?
- 15 A. Yes.
- 16 Q. And he was instructed by the doctor on how to do that;
- 17 right?
- 18 A. I instructed him on how to do that.
- 19 Q. You did. And it's your testimony that you were told
- 20 by the doctor how to and where to apply the cream?
- 21 A. Yes.
- 22 Q. And you did that twice a day?
- 23 A. Yes.
- 24 Q. And tell me again where -- Dr. Donohoe?
- 25 A. Yes.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. -- exactly where you had to apply that?

2 A. On her vagina. Around her clitoris area and her
3 vagina.

4 Q. Around her clitoris area and her vagina?

5 A. Where the stitches were.

6 Q. Twice a day?

7 A. Yes.

8 Q. And you said that you that when you got up and then
9 when you got home?

10 A. Yes.

11 Q. And your husband never helped?

12 A. He was not supposed to. We had agreed that she was
13 too old for that and I would do it.

14 Q. And when the doctor talked to you about that he just
15 told you or did he tell your husband as well?

16 A. I'm sure my husband was in the room when he was,
17 telling us what her aftercare would be.

18 Q. And you testified that you were concerned for her
19 safety which is why y'all had the police and y'all left?

20 A. Yes.

21 Q. When did you take **Minor 1** back to Dr. Donohoe after you
22 learned about what she told you?

23 A. I didn't.

24 Q. When's the last time she saw Dr. Donohoe?

25 A. I think in November.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. Of this year or the year before?

2 A. 2012.

3 Q. 2012. Since 2012, has any doctor evaluated or
4 reevaluated her vaginal reconstruction?

5 A. No.

6 Q. Ms. Rudd, when did you file for a divorce?

7 A. At the end of May.

8 Q. May 31st?

9 A. I would have to see a calendar.

10 Q. Okay.

11 A. I know it was the end of May.

12 Q. Did you fill out paperwork?

13 A. What do you mean, paperwork?

14 Q. When you were seeking the divorce, you had to fill out
15 paperwork. Did you meet with an attorney?

16 A. I did meet with an attorney, yes.

17 Q. And you told him that you wanted a divorce?

18 A. Yes, I did.

19 Q. And in that divorce complaint you told him and the
20 Court that he was physically abusive to you; correct?

21 A. I told him that he was physically abusive to my
22 children.

23 Q. And you told him that he would punch the wall.

24 A. That is not physical abuse to me.

25 Q. Did you tell the divorce attorney and the Court

JENNIFER RUDD - CROSS:ZMROZCEK

1 that --

2 A. Yes, I did.

3 Q. -- that he would throw a lamp at you?

4 A. He never threw a lamp at me. He threw one on the

5 floor.

6 Q. And that he would yell and put you in physical fear

7 and harm; correct?

8 A. Yes. He would back me into walls.

9 Q. That's what you told them?

10 A. Yes, I did.

11 Q. Before May 31st, 2013, you never told anybody that;

12 did you?

13 A. No, I did not.

14 Q. You never called the police?

15 A. No, I did not.

16 Q. He's never been arrested for criminal domestic

17 violence?

18 A. No, he has not. He's never physically touched me.

19 Q. You described coming back to the house on June 10th of

20 this year; correct?

21 A. Correct.

22 Q. You identified these pictures?

23 A. Correct.

24 Q. This wasn't the only thing on the wall, was it?

25 A. No, it was not.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. He wrote notes to the girls; correct?

2 A. Correct.

3 Q. And you're not saying that Daddy's sorry, please
4 forgive me is some sort of I'm-sorry-for-abusing-you, are
5 you?

6 A. I'm not saying what it meant.

7 Q. Because you don't know what it meant.

8 A. You can read into it how you see.

9 Q. And if it benefits the situation to read into it as a
10 confession, that's how you would like it to be read into;
11 correct?

12 A. It's not up to me.

13 Q. In addition to taking the girls to the -- speak to the
14 counselor, how many other people have they spoken with
15 regarding this incident?

16 A. I know of -- they're very embarrassed. They don't
17 want people to know about it.

18 So the counselor as far as I know are the only ones
19 they confided in about what happened.

20 Q. But the DSS worker comes once a month and meets with
21 you all; correct?

22 A. She does, but she does not ever discuss what happened.

23 Q. Does she talk to you?

24 A. Yes.

25 Q. And haven't you told her consistently since you

JENNIFER RUDD - CROSS:ZMROZCEK

1 started meeting with her that your divorce is not moving
2 fast enough?

3 A. Yes.

4 Q. And that you're mad because in his answer to the
5 divorce complaint he was seeking custody and alimony;
6 correct?

7 A. Correct.

8 Q. And you would have to pay that?

9 A. This is true.

10 Q. But you don't have to pay that if he's in jail; do
11 you?

12 A. No, I do not -- or I don't know, actually. My lawyer
13 said I could still have to pay alimony.

14 Q. In fact, his bond was denied?

15 A. One time, I think.

16 Q. And then when he did get out on bond you contacted the
17 police at least two times to try get his bond revoked;
18 isn't that right?

19 A. I contacted the police because he was harassing me.

20 Q. Did the police ever revoke his bond?

21 A. No, they did not.

22 Q. Ever put him back in jail?

23 A. No, they did not.

24 Q. Mrs. Rudd, what was your cell phone number in May of
25 2013?

JENNIFER RUDD - CROSS:ZMROZCEK

1 A. [REDACTED]-4502.

2 Q. And do you recall Mr. Rudd's cell phone?

3 A. [REDACTED]-5120.

4 Q. Ms. Rudd, I'm going to show you what's been marked as
5 Defense Exhibit Six and ask you if can you look at those
6 and identify them.

7 A. These are our phone records.

8 Q. And these are your phone records reflecting from the
9 date May 14th, 2013, through May 28th, 2013; correct?

10 A. Correct.

11 MS. ZMROCZEK: Your Honor, at this time we'd like to
12 move Defense Exhibit Six into evidence.

13 MR. MOLONY: Your Honor, I've seen the records but I'm
14 just not sure if there's any relevance to them at this
15 point. Just indicating that's her records is one thing
16 but there's no relevance been established as to why
17 they're needed.

18 THE COURT: What's the basis of this?

19 MS. ZMROCZEK: Your Honor, these records are going to
20 help establish a time line and motive and bias that,
21 regarding her testimony

22 THE COURT: They better. They better.

23 MS. ZMROCZEK: I'm sorry. It will, Your Honor, I'm
24 sorry.

25 THE COURT: All right. Objection overruled. So

JENNIFER RUDD - CROSS:ZMROZCEK

1 admitted.

2 (Defendant's Exhibit No. 6, telephone records, was
3 received into evidence.)

4 BY MS. ZMROCZEK:

5 Q. Ms. Rudd, isn't it true that on May 28th, 2013 -- I'll
6 show you the exact call. May 26, 2013, which is a Sunday,
7 at 8:25 p.m., that you called Christian Mingle dot com
8 (christianmingle.com), spoke with them about six minutes?

9 A. Yes, it is.

10 Q. You signed up for their dating service; right?

11 A. Yes, I did.

12 Q. May 28th, 2013?

13 A. Whatever date's on there, yes.

14 Q. Ms. Rudd, tell the jury who Robert Corsey is.

15 A. He's a good friend of mine.

16 Q. So a friend that you spent the night at his house
17 several times?

18 A. It is true, yes.

19 Q. Where would your daughters be at that time?

20 A. At their grandparents'.

21 Q. How many times in the last, since June have you spent
22 night there?

23 A. I don't know.

24 Q. More than three?

25 A. Yes.

JENNIFER RUDD - CROSS:ZMROZCEK

1 Q. Who takes **Minor 1** to her doctor's appointments now?

2 A. I do.

3 Q. Do you take her to see Dr. Houk?

4 A. Yes, I do.

5 Q. And you go through her medical condition and her care
6 and her treatment?

7 A. Yes, I do.

8 Q. Beg the Court's indulgence. (Pause.)

9 Ms. Rudd, I just have a few more questions.

10 When you filed for divorce you claimed a fault ground
11 because you knew that you could get it done quicker;
12 correct?

13 A. No.

14 Q. When you filed for divorce, you had already signed up
15 for Christian Mingle dot com (christianmingle.com)?

16 A. Yes.

17 Q. And when you learned that your husband had compared
18 the two vaginas, you didn't call the police because you
19 didn't think it was wrong.

20 A. We had been married for 15 years. I thought they were
21 too old for it, but I trusted him not to hurt my children.

22 Q. And he would compare them because of **Minor 1**'s unique
23 medical situation?

24 A. That's apparently what he was -- I have no idea. I
25 don't know what he was thinking.

JENNIFER RUDD - REDIRECT: MOLONY

1 Q. But that's not unusual in your household with her
2 condition to discuss her, her private parts?

3 A. No, it was not uncommon after her surgery but we had
4 not discussed them in months. In months.

5 Q. You had never discussed her enlarged clitoris before?

6 A. Before it was corrected.

7 Q. But a few months right before it was corrected, you
8 and your husband and Minor 1 all discussed it; correct?

9 A. Yes.

10 Q. Because it was a medical issue?

11 A. Correct.

12 Q. Something that was not normal, but in your household
13 it was normal; right?

14 A. To discuss it. Not to look at it, not to touch it.

15 Q. It was normal to discuss it, and odd but
16 understandable to compare after the surgery?

17 A. I never compared them. I can't say it was
18 understandable. I would say I trusted my husband of 15
19 years.

20 Q. You trusted him because he always cared for you and he
21 always cared for the children?

22 A. Yes.

23 THE COURT: All right. Anything in redirect?

24 MR. MOLONY: Your Honor, if I could briefly?

25 THE COURT: You can.

JENNIFER RUDD - REDIRECT: MOLONY

REDIRECT EXAMINATION

BY MR. MOLONY:

Q. Was it normal for the Defendant to touch Minor 2 ?

A. No.

Q. Did Minor 2 ever go to the doctor for her private parts?

A. No.

Q. Christian Mingle. Where were you when you got on Christian Mingle?

A. I was at the beach.

Q. Were the girls there?

A. Yes.

Q. Was it raining?

A. Yes. Probably. It rained a bit while we were there.

Q. How long were you on Christian Mingle?

A. For two weeks.

Q. Did you ever go out with anybody based on Christian Mingle?

A. No.

Q. This guy she mentioned, when did you meet him?

A. In June.

Q. Where?

A. At a cafe in Columbia.

Q. Had you met him prior to May 23rd of 2013?

A. No.

JENNIFER RUDD - REDIRECT: MOLONY

1 Q. You ever seen him before?

2 A. No.

3 Q. Heard his name?

4 A. No.

5 Q. You said after 15 years you didn't want to believe
6 that this man could do what you heard he did to your
7 daughters; is that right?

8 A. That is correct.

9 Q. Who filed for divorce?

10 A. I did.

11 Q. Was it hard at that time to leave the Defendant?

12 A. It was not hard because he had hurt my children. And
13 the day I found out that is the day my love just stopped.

14 MR. MOLONY: No further questions, Judge.

15 THE COURT: Anything?

16 MS. ZMROCZEK: No redirect (verbatim), Your Honor.

17 THE COURT: Thank you, ma'am. You may step down.

18 All right. Y'all step up here just one second, if you
19 would

20 (Off-the-record discussion.)

21 THE COURT: Okay. Madam Solicitor, do you want to
22 call your next witness?

23 MS. HAMMACK: Yes, Your Honor. The State calls Esther
24 Timmerman.

25 ESTHER TIMMERMAN, having been duly sworn, was examined

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 and testified as follows:

2 THE CLERK: Please have a seat in the witness box and
3 state your full name for the Court, spell your last.

4 THE WITNESS: My name is Esther Timmerman,
5 T-I-M-M-E-R-M-A-N.

6 DIRECT EXAMINATION

7 BY MS. HAMMACK:

8 Q. Ms. Timmerman, where do you work?

9 A. I work for the Department of Social Services.

10 Q. Here in Aiken?

11 A. Yes.

12 Q. How long -- and is it okay if I call that DSS?

13 A. Yes.

14 Q. How long have you worked for DSS?

15 A. Twenty-one years.

16 Q. What's your official job title?

17 A. I'm a supervisor.

18 Q. What do you do as a supervisor?

19 A. I supervisor intake and assessment which is all the
20 reports that come into the department. I have to look at
21 them and determine whether I'm going to accept them for
22 investigation, and then I assign it to an investigator.

23 Q. Okay. And let's talk about those reports. What
24 happens when a report comes into DSS?

25 A. Any report that comes into DSS, we have to look at the

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 report and determine whether it rises to the level of the
2 law of abuse and neglect. And if there is allegations of
3 abuse or neglect, we have to assign it to an investigator
4 and we have to do a formal investigation.

5 Q. Is that a civil investigation or a criminal
6 investigation?

7 A. Civil.

8 Q. Do you have your own investigators or do you use law
9 enforcement?

10 A. We have our own.

11 Q. Okay. Now what happens after a report's given to an
12 investigator?

13 A. The investigator has to go out and do the full
14 investigation. We have 45 days to do an investigation.

15 Q. Do you have 45 days to do an investigation on any
16 report?

17 A. Every report that comes into our office we have 45
18 days, uh-huh.

19 Q. Okay. Is there a rule about how quickly y'all have to
20 respond to a report?

21 A. Depending on the severity of the allegations, we have
22 either a zero- to two-hour time frame to respond or a 12
23 to 24.

24 Q. What about a report of sexual abuse? What kind of
25 time do you got on that?

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 A. That's a zero to two.

2 Q. Okay. Let me ask you this, Ms. Timmerman: Were you
3 working on May 23rd of 2013?

4 A. Yes, I was.

5 Q. Did you get a chance to get involved with the Rudd
6 family that day?

7 A. I did.

8 Q. Okay. Can you tell the jury how you kind of got
9 started with that?

10 A. Well, we received a report, again, on the 23rd, Of
11 sexual abuse allegations. And so then once I accepted
12 that report and sent out the investigator, my
13 investigator -- at that time we only had two, and so she
14 was really busy doing another report. So I went in her
15 place. And so that's how I responded to Mr. Rudd's house.

16 Q. Okay. And you said you went to Mr. Rudd's house.
17 Where is that at?

18 A. I'm not sure exactly the address.

19 Q. Is it in Aiken County?

20 A. Yes, it is.

21 Q. If it wasn't in Aiken County, would a different DSS
22 report?

23 A. That's correct, yes.

24 Q. Now did you go straight to Mr. Rudd's house?

25 A. At first I went to Bi-Lo and met with Ms. Rudd and law

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 enforcement.

2 Q. I was just about to ask you why in the world you went
3 to Bi-Lo.

4 A. Well, after -- anytime that we receive a report of
5 abuse and neglect and especially with sexual abuse
6 allegations, we have to ensure the safety of the child.

7 So any time that that happens we as an agency call law
8 enforcement for assistance and -- because there could be a
9 lot of hostility going on, or if there's nobody going to
10 be at the home to be able to protect the child, we have to
11 have the assistance of law enforcement with us because we
12 don't have the authority to remove a child from a home.
13 So we -

14 Q. Who has -- I'm sorry. Who has the authority to remove
15 a child from the home?

16 A. Law enforcement or a judge, yeah.

17 Q. Is that why you met with law enforcement that day?

18 A. Right. Because we always ask for them to assist us in
19 those situations, so I can make sure that we can ensure
20 that safety.

21 Q. And you said that the whole reason why you first go to
22 the house is to ensure the safety of the children?

23 A. That's correct.

24 Q. When you go to do that, are you supposed to talk to
25 anybody?

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 A. Anytime we do an investigation we're supposed to talk
2 to everybody in the household which would include the
3 perpetrator, the non-perpetrator, any adults that live in
4 the home, and all the victim-children and all the children
5 that reside in the home.

6 Q. Okay. Did you do that on that day?

7 A. Yes, I did.

8 Q. How did you get to and -- well, first let me ask you
9 this: When we talk about -- you said Mr. Rudd's house.
10 Who's Mr. Rudd?

11 A. Mr. Dwayne Rudd. He's the perpetrator. He's the
12 father of Minor 1 and Minor 2 .

13 Q. Is he the Defendant in this case?

14 A. Yes.

15 Q. Okay. How did you get to his house that day?

16 A. I drove a state vehicle.

17 Q. Your state vehicle?

18 A. State vehicle, uh-huh.

19 Q. Okay. Anybody ride with you?

20 A. No. I was by myself.

21 Q. Okay. What did you see when you got to his house?

22 A. When I first arrived, Mr. Rudd was standing outside in
23 the back of the vehicle. And he was just standing there.
24 So I left -- got out of my car and I approached him.

25 Q. Did you see the girls when you got there?

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 A. They were inside the house.

2 Q. Okay. You said you got out and you approached
3 Mr. Rudd. Did you talk to anybody else at the house
4 before you talked to Mr. Rudd?

5 A. No, I did not.

6 Q. Okay. And why did you go to talk to Mr. Rudd?

7 A. Because we had allegations of abuse or neglect, and I
8 had to speak with him to get his side of the story.

9 Q. And that's the DSS policy?

10 A. That's correct.

11 Q. Okay. Did anybody tell you what to say to the
12 Defendant?

13 A. No, they did not.

14 Q. Did anybody tell you what to ask him?

15 A. No.

16 Q. Okay. When you went up to talk to him, did you tell
17 him who you were?

18 A. I did. I introduced myself and I told him the reason
19 why we were there. Whenever we start an investigation or
20 we start doing the interviewing of all perpetrators and
21 non-perpetrators, the first thing I have to ask is just
22 things about them, you know, because I have to determine
23 the protective capacity of the parents that are involved
24 in the household.

25 So I ask them just regular questions like, you know,

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1 if he's employed; if he's the father of the children; if
2 he's had any mental health issues; if, you know, if
3 there's any domestic violence; any criminal history.

4 And then -- and so that's how I proceed with that.

5 And when I get that information then I read out the
6 allegation. And I don't ask too many questions about that
7 because I want to know what his side of the story is, you
8 know. I don't want to ask any leading questions or
9 anything. I just say, these are the allegations and can
10 you tell me what's going on.

11 Q. And by not asking a lot of questions and not asking
12 leading questions, is that a DSS policy too?

13 A. Yes.

14 Q. Okay. You said you went up and you identified him,
15 told him why you were there. Did you tell him who you
16 worked for?

17 A. Yes, I did.

18 Q. Ms. Timmerman, I see you're wearing a badge. What is
19 that?

20 A. That's my ID badge for my job.

21 Q. It's your job ID?

22 A. Yes.

23 Q. Okay. Were you wearing it that day?

24 A. Yes.

25 Q. And I can't see it from way over here, but does it say

ESTHER TIMMERMAN - DIRECT:HAMMACK

- 1 DSS on it?
- 2 A. I believe. Yes, it does.
- 3 Q. When you went to talk to the Defendant you said he was
- 4 standing outside by a car. Was he handcuffed?
- 5 A. No, he was not.
- 6 Q. Was he in a police car?
- 7 A. No, he was not.
- 8 Q. You said you were wearing your ID, you told him who
- 9 you worked for. Did he seem to understand who you were?
- 10 A. I believe he did, yes.
- 11 Q. Okay. And were you wearing a policeman badge?
- 12 A. No, I was not.
- 13 Q. Were you carrying a gun?
- 14 A. No, I was not.
- 15 Q. What about handcuffs?
- 16 A. No.
- 17 Q. Do you carry any of those in your duties as a DSS
- 18 supervisor?
- 19 A. No, I do not.
- 20 Q. Okay. Did the Defendant talk to you at that time?
- 21 A. Yes, he did.
- 22 Q. Did he have to talk to you?
- 23 A. No, he did not.
- 24 Q. Could he have walked away if he wanted to?
- 25 A. Yes, he could have.

ESTHER TIMMERMAN - DIRECT:HAMMACK

1 Q. If he walked away, would you have chased him?

2 A. No.

3 Q. Did you promise him anything to get him to talk to
4 you?

5 A. No, I did not.

6 Q. Did you threaten him if he wouldn't talk to you?

7 A. No, I did not.

8 Q. At any time while the Defendant was talking to you,
9 did he tell you he wanted to quit talking to you?

10 A. No, he did not.

11 Q. About how long did you talk to him?

12 A. Approximately, probably 15, 20 minutes.

13 Q. Okay. What did the Defendant say to you?

14 A. When I read him the allegations, Mr. Rudd said that --
15 first of all, he denied all of those allegations. And he
16 said that **Minor 1**, his daughter, had had surgery in 2012 and
17 that he was checking her to make sure that she was healing
18 properly.

19 **Minor 1** was born, apparently, without a vaginal
20 opening. And I don't know the whole terminology, medical
21 terminology on that, but that she had had some type of
22 reconstructive surgery and that he was examining her and
23 making sure that she was healing properly.

24 And he also told me that he used **Minor 2**, the other
25 child, that he would examine her too because she was

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1 normal. And that he said he would never do anything with
2 a sexual intent and that he might have, his fingertip
3 might have brushed the vagina while he was looking at her
4 but that he would, he never put his finger inside her or
5 anything like that.

6 And that he, that he has sex with his wife and that he
7 would never do that to his children. And that, he said
8 but, you know, I'm the father of this, of these girls so I
9 can touch their vagina if I want to.

10 That's pretty much what he said to me.

11 Q. Okay. After you talked to the Defendant, who did you
12 talk to next?

13 A. After I talked to Mr. Rudd, I went into the home and
14 spoke with Ms. Rudd some more and the girls.

15 Q. And that's part of that whole policy of talking to
16 everybody?

17 A. That's correct.

18 Q. Okay. Did you stay at the house after that?

19 A. No. Mr. Rudd was getting a little bit hostile, and I
20 was told we needed to wrap things up and try to get out of
21 the household as quickly as possible.

22 Q. After all of that happened, did you tell law
23 enforcement about what the Defendant said to you?

24 A. I did.

25 Q. Did they ask you what he said or did you volunteer

ESTHER TIMMERMAN - CROSS:BANK

1 that information?

2 A. I volunteered that information.

3 Q. Did you ultimately write a witness statement for law
4 enforcement?

5 A. I did.

6 Q. Give me just a second. Beg the Court's indulgence.

7 (Pause.)

8 Thank you, Ms. Timmerman. No further questions.

9 CROSS-EXAMINATION

10 BY MR. BANK:

11 Q. Ms. Timmerman, how are you doing today?

12 A. I'm fine.

13 Q. We have never spoken before, have we?

14 A. No, huh-uh.

15 Q. You spoke to co-counsel yesterday?

16 A. That's correct.

17 Q. So you have talked to some of us, but me and you
18 haven't spoken yet?

19 A. That's correct.

20 Q. Now I want to talk about your discussion or your
21 conversation with Mr. Rudd when you arrived at the house.

22 A. Okay.

23 Q. Okay? You were one of the first people there with law
24 enforcement; correct? Or, immediately following law
25 enforcement. You were the first, one of the first people

ESTHER TIMMERMAN - CROSS:BANK

1 at the house?

2 A. Yes.

3 Q. And you were the first person to really have a type of
4 dialogue or question-and-answer with Mr. Rudd?

5 A. That I'm aware of.

6 Q. That you're aware of?

7 A. Uh-huh.

8 Q. And you said that he immediately denied any type of
9 sexual allegations?

10 A. He denied the allegations that I read out to him, yes.

11 Q. Right. And he explained to you that **Minor 1** had a
12 medical condition?

13 A. That's correct.

14 Q. And he explained that he would check on **Minor 1's**
15 healing process?

16 A. Yes.

17 Q. And he explained that he may have touched the vagina
18 but he did not penetrate it or do anything sexual or with
19 any sexual intent?

20 A. That's correct.

21 Q. That's generally the statements?

22 A. Yes, sir.

23 Q. So the first person that he talks to at the scene or
24 the first person that's asking him questions he
25 immediately is saying, I did not sexually assault my

ESTHER TIMMERMAN - CROSS:BANK

1 daughter. If I did anything it was for her medical
2 condition; that's correct?

3 A. That he was --

4 Q. That's the first thing that he was saying to you.

5 A. That he was examining her for the healing process,
6 yes.

7 Q. Now through the course of your investigation with DSS,
8 you knew that the children stayed at home with the dad
9 during the day?

10 A. That was my understanding, yes.

11 Q. Okay. And when you arrived to the house on that day
12 and I guess any date following that that you were with the
13 children, you never saw any marks or bruises on them, the
14 two children?

15 A. I did not observe any marks or bruising on the girls.

16 Q. They seemed to be well kept?

17 A. Yes.

18 Q. And in good physical condition as far as you could
19 tell and as far as you could see?

20 A. Yes.

21 Q. And through the course of your investigation did you
22 find out -- when was it that one of the children told
23 Mrs. Rudd about the touching in this case, to Mrs. Rudd,
24 when did that occur?

25 A. My understanding -- and I just want to clear something

ESTHER TIMMERMAN - CROSS:BANK

1 up first.

2 Q. Yes, ma'am.

3 A. That I am the supervisor and I did the initial
4 contact.

5 Q. Right.

6 A. Okay. And then all the full investigation was done by
7 another investigator.

8 Q. I understand.

9 A. But if I can recall, it was on that Monday.

10 Q. That Monday?

11 A. That Monday, from my understanding.

12 Q. Is when the touching allegations were brought to the
13 mother's attention?

14 A. Yes.

15 Q. Okay. And I wanted to discuss very quickly about a
16 comment or part of the statement that you said, and you
17 can correct me if I'm wrong. Did you say that Mr. Rudd
18 said, they're my kids and I can touch if I want to? I can
19 touch them if I want to; is that what you said Mr. Rudd
20 said?

21 A. I believe what I said, I had written down -- what I
22 believe I said was that he said to me that I'm their daddy
23 and I can touch their vagina if I want to.

24 Q. Right. He didn't say, I'm their father and I can
25 touch it if I need to?

ESTHER TIMMERMAN - CROSS:BANK

1 A. No, that's not what he said to me. I wrote down
2 exactly in my statement in the CAPS, in our system, what
3 he said.

4 Q. How many days after did you write that statement out
5 and put it into your system?

6 A. Right -- I usually do it just right, either the same
7 day that we try to put our dictation in or the following.

8 Q. Okay. I guess the last thing I want to touch -- talk
9 to you about, and I understand that you were only involved
10 in the first part of the investigation --

11 A. Yes, sir.

12 Q. -- and not the rest of the investigation. But the
13 part of the investigation that you were involved with, did
14 you ever review, after hearing what Ms. Rudd had to say,
15 did you ever review any of Minor 1's medical records?

16 A. No, I did not.

17 Q. Did you ever call any of Minor 1's doctors?

18 A. No, I did not.

19 Q. You didn't try to confirm anything about what Mr. Rudd
20 said about his daughter's medical condition and his care
21 for it?

22 A. Not at the initial contact; no, sir.

23 Q. You did not. Okay.

24 And then the other question I have is: During the
25 part of the investigation that you were involved with, you

ESTHER TIMMERMAN - CROSS:BANK

1 didn't look into any reason why Mrs. Rudd would have to
2 make these allegations, or to bring these allegations to
3 the DSS? And I guess I'm not saying that very well.

4 You never looked into any motives that Mrs. Rudd might
5 have in calling DSS and making these allegations and
6 getting her father -- or getting her husband arrested?

7 A. Not at the initial contact, right. At the initial
8 contact my only goal is to make sure the children are
9 safe.

10 Q. And the initial contact is the only part that you have
11 any knowledge of?

12 A. Correct.

13 Q. Or that you were directly involved with?

14 A. Yes, sir.

15 Q. So you didn't look into any of their finances to see
16 if they were having any financial difficulties or fights?

17 A. Not at that time.

18 Q. You didn't ask any questions about any manifestations
19 that they may have been having?

20 A. I did ask if there was domestic violence in the home,
21 and they both denied that.

22 Q. Okay. And is that with each other or was that in
23 terms of domestic violence between the children, or is
24 that --

25 A. That's correct. Between each other. The only thing

ESTHER TIMMERMAN - CROSS:BANK

1 Ms. Rudd said was he does yell at her a good bit.

2 Q. Okay.

3 THE COURT: Anything further?

4 MR. BANK: Excuse me, Your Honor?

5 THE COURT: I didn't know whether you were finished.

6 MR. BANK: I'm sorry. I was just reading something.

7 I should have let you know what I was doing.

8 Q. One last thing. I know I said the last thing was the

9 last thing. I promise this will be the last thing.

10 Didn't he deny ever actually touching **Minor 2** when you
11 spoke to him that day when you were with the police?

12 A. He denied the allegations that I read to him. He said
13 that he may have touched the vagina with his fingertips,
14 but it was because he was checking her --

15 Q. Okay.

16 A. -- out.

17 Q. And I guess my questions is: I understand that he
18 said he may have been touching **Minor 1**, but didn't he deny
19 touching **Minor 2** ?

20 A. He just told me about **Minor 2** , that he just would
21 check her because hers was normal.

22 Q. Okay. So he would compare with **Minor 2** , but he denied
23 ever touching **Minor 2** ?

24 A. He never made a statement on that fact.

25 Q. But he denied the allegations and the allegations

ESTHER TIMMERMAN - RECROSS:BANK

1 included the fact that --

2 MS. HAMMACK: Your Honor, he's asked this question
3 four times.

4 THE COURT: All right.

5 MR. BANK: All right. Thank you.

6 MS. HAMMACK: And, Your Honor, I just have one
7 question, redirect. I'll say it fast.

8 THE COURT: I'm waiting.

9 REDIRECT EXAMINATION

10 BY MS. HAMMACK:

11 Q. Ms. Timmerman, Mr. Bank asked you if you called any
12 doctors about Minor 1 and all of that. Did you ask Mr. Rudd
13 if the doctors told him he could do this?

14 A. Yes, I did.

15 Q. What did he say?

16 A. He said no, they did not.

17 MS. HAMMACK: Thank you.

18 THE COURT: All right. You got a question?

19 MR. BANK: Yes, I'm sorry. I do now.

20 RECROSS-EXAMINATION

21 BY MR. BANK:

22 Q. Ms. Timmerman, my understanding was when that
23 statement was made y'all were talking about some type of
24 medical device that the doctors used on Minor 1 to actually
25 open the vaginal opening?

1 A. Mr. Rudd did mention that there could be a possibility
2 that there may be some type of tool that the doctor may
3 use later on or --

4 Q. Right.

5 A. -- I'm not sure exactly when, but that there would be
6 a tool. So I asked him: Did the doctor ask you to check
7 the girls. And he said, no.

8 Q. So when he said the doctors didn't ask me to check the
9 girls, it was in the context of that medical tool and
10 whether he was using a medical tool; is that correct?

11 A. I don't -- I don't believe so. I asked him if he --
12 if the doctors asked him to check the girls. And he said,
13 no.

14 Q. Was that right after y'all had been talking about the
15 medical tool however?

16 A. That was during the conversation; yes, sir.

17 MR. BANK: All right. Thank you.

18 THE COURT: All right. Thank you, Ms. Timmerman. You
19 may step down.

20 All right. Ladies and gentlemen, we're going to go
21 ahead and recess for the afternoon. I'm going to ask that
22 you not discuss this case with anyone while you leave
23 tonight. I'm going to ask that you not do any independent
24 investigation. Don't get on the Internet. Don't get in
25 the newspaper. Don't -- if there's anything on it, on the

1 TV. And when you come back in in the morning, please do
2 not discuss the case with each other at all.

3 We're going to start tomorrow morning at 9:30. Please
4 be prompt. As Chris Rock once said, you're never early,
5 you're either on time or you're late. So what we don't
6 want to do is be late. So, be here. We'll start at
7 9:30. Y'all have a nice evening and thank you.

8 (Jury exits courtroom at 5:07 p.m.)

9 THE COURT: All right. Madam Solicitor, who are you
10 leading off with in the morning?

11 MS. HAMMACK: We going to lead off with the other DSS
12 worker -- or no, I'm sorry, Judge. Let me correct that.

13 We're going to lead off with Dr. Donohoe, the surgeon.
14 He's got a surgery he's got to do at 11:30. He's asked to
15 be out of here by 10:30, so we're going to start with him.

16 THE COURT: Is there anybody you're not calling?

17 MS. HAMMACK: Your Honor, I don't think we'll be
18 calling Dr. Houk. Everybody else is --

19 THE COURT: Houk. I don't see Houk. Is that how you
20 pronounce it hawk, Christopher?

21 MS. HAMMACK: Judge, I'm going to be honest, I'm not
22 really sure. I've said it about four different ways now.

23 MS. ZMROCZEK: I believe it's hawk.

24 THE COURT: Hawk?

25 MS. ZMROCZEK: Yes, as in the bird.

1 THE COURT: Could be as in the dog.

2 MS. ZMROCZEK: Hawk.

3 THE COURT: A guy lives up the street from me has a
4 dog named Hawk. We'll start at 9:30. Y'all have a nice
5 evening. We'll see you then.

6 END OF DAY'S PROCEEDINGS: 5:09 P.M.

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1 ON WEDNESDAY, DECEMBER 11, 2013 AT 9:47 A.M.:

2 THE COURT: One of the things that I was -- I was
3 informed when I got here by Mr. Whittle, our chief
4 bailiff, that one of the jurors, a Mr. Jay Noonkester who
5 is Juror Number 129, informed him that he has an uncle
6 that has passed away. He indicated, I think -- and I'm
7 paraphrasing. Correct me if I'm wrong, Mr. Whittle. --
8 that he knew about it at the time that we had the jury
9 selection yesterday but did not know when the funeral was,
10 and of course did not know what trial that he might get
11 selected on and the length of that trial.

12 He has learned last night that the funeral is
13 tomorrow. It's a five-hour drive for him to be there.
14 And he's asked if the Court would consider excusing him
15 from service on the jury. He indicated that he, if
16 required he would certainly stay here and serve but he
17 would prefer to be there.

18 I've reviewed that with counsel for the State and
19 counsel for the Defendant. They've graciously consented
20 that he would be excused and I have excused him at this
21 time.

22 Now the two alternates are Mr. Bennett Blue, and
23 Mr. Lynwood Duggan. So what we need to do is write their
24 names on pieces of paper, put the paper in some container
25 and, Madam Clerk, I assume without objection, we'll let

1 one of the clerks draw the name out of the container. I
2 think we did this last time I was here; didn't we?

3 (Clerk complying.)

4 THE CLERK: Mr. Bennett Blue.

5 THE COURT: Mr. Bennett Blue who is Juror Number 13
6 will replace Mr. Noonkester. And Mr. Duggan will continue
7 to be the alternate and of course we don't anticipate the
8 trial concluding today, so it's probably a good thing we
9 have another alternate.

10 Anything from the State with respect to dealing with
11 this juror?

12 MS. HAMMACK: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MS. ZMROCZEK: No, Your Honor.

15 THE COURT: I also was informed that the State has
16 some audio recordings of conversations at the jail. And
17 defense counsel has indicated with one of them they may
18 have a problem, but they're going to listen to the tape
19 and see what it is. And we'll address that prior to those
20 being, at least that portion of the tape, whatever it is,
21 being addressed.

22 Is that okay with defense counsel?

23 MS. ZMROCZEK: Yes, Your Honor.

24 THE COURT: All right. Anything else we need to take
25 up at this time?

1 MS. HAMMACK: Not from the State, Judge.

2 THE COURT: And, again, I was informed that the State
3 has a witness, Dr. Donohoe.

4 MS. HAMMACK: That's correct, Your Honor. He was a --

5 THE COURT: Who was going to be the first witness and
6 he's being delayed for some reason; is that right?

7 MS. HAMMACK: That's right, Judge. He wanted to be
8 the first witness. He's running a little bit late. We
9 told him as soon as he gets here we'd get him in and out
10 but we're prepared to call other witnesses, Judge. That's
11 not an issue.

12 THE COURT: Are you going to put the subpoena on him
13 when he gets here?

14 MS. HAMMACK: Yes, Judge.

15 THE COURT: Good. So we'll keep him here until we
16 need him. Are you all ready to go forward?

17 MS. HAMMACK: Yes, Your Honor.

18 THE COURT: You got a witness?

19 MS. HAMMACK: Yes, Your Honor.

20 THE COURT: Is the defense ready?

21 MS. ZMROCZEK: Yes, Your Honor.

22 THE COURT: All right. Let's bring the jury in if we
23 could.

24 (Jury enters courtroom at 9:51 a.m.)

25 THE COURT: All right. Ladies and gentlemen, good

1 morning to you. Before we begin, let me -- as you're
2 aware, I spoke to you about Mr. Noonkester having the
3 death in his family. And we've excused him from further
4 service on the jury.'

5 As a result, we're having to replace him with one of
6 the alternates. The way under our rules it's done, the
7 alternates' names are placed in the container and the
8 clerk will draw out one of the names and that name is the
9 one that will be the next alternate.

10 On the civil side it's the first alternate drawn. In
11 the criminal court, you draw them out of a hat.

12 And, Mr. Blue, you have been, your name was drawn. So
13 you take that any way you want to take it.

14 All right. Before we begin this morning, let me ask
15 y'all a couple of things.

16 Did anybody have any conversation about this case
17 since we left here yesterday, either with each other or
18 with anybody else, or were you approached by anybody to
19 discuss the case since we left yesterday afternoon?

20 (No response.)

21 THE COURT: Anybody do any independent inquiry,
22 investigation about this case since we left, through the
23 Internet or read anything about it, listen to anything
24 about it, viewed anything about it?

25 (No response.)

1 THE COURT: Okay. Good. I appreciate that.

2 I told you that we were running a little bit late this
3 morning because of a witness problem, but the State has a
4 witness that they are prepared to call until we get that
5 other witness here.

6 So, Madam Solicitor, are you ready to proceed?

7 MS. HAMMACK: Yes, Your Honor.

8 THE COURT: All right. If you would, please, ma'am.

9 MS. HAMMACK: The State calls Shannon Brown.

10 SHANNON BROWN, having been duly sworn, was examined
11 and testified as follows:

12 THE CLERK: Please have a seat in witness box and
13 state your full name for the Court, spelling your last.

14 THE WITNESS: Shannon Brown, B-R-O-W-N.

15 THE COURT: All right. Ms. Brown, we need you to
16 speak up.

17 THE WITNESS: Yes, sir.

18 THE COURT: Because they're, at least the way the
19 audio travels, it's blocked a little bit for the
20 Defendant.

21 And we want them to be able to hear and the jury has
22 to hear and I have to hear.

23 THE WITNESS: Yes, sir.

24 THE COURT: So speak up, please, ma'am.

25 THE WITNESS: Okay.

SHANNON BROWN - DIRECT:HAMMACK

DIRECT EXAMINATION

BY MS. HAMMACK:

Q. If it would help, that's a microphone sitting right in front of you. So speak into that, it will make it a little bit louder.

A. Okay.

Q. Ms. Brown, can you tell us, where do you work?

A. Yes. I work for the Department of Social Services.

Q. And is it okay if I call that DSS?

A. Yes.

Q. Okay. Do you work for Aiken County DSS?

A. Aiken County DSS.

Q. How long have you worked there?

A. For about a year and a half, two years.

Q. Okay. And what's your title at DSS?

A. Human services specialist.

Q. Okay.

A. Case manager.

Q. I'm going to have to ask you, what in the world does that mean you do?

A. I'm a treatment caseworker.

Q. Okay. So give the jury an idea. What do you do on a daily basis as a caseworker.

A. I go out and visit with families who have indicated cases with the department.

SHANNON BROWN - DIRECT:HAMMACK

1 Q. What does it mean to have an indicated case?

2 A. It means that after an investigation was completed the
3 case was passed on to a treatment worker, which would be
4 me, and I go out and monitor the family for a period of
5 time.

6 Q. Is it a set period of time or is it discretionary?

7 A. It's not a set period of time.

8 Q. Okay. And what kind of things do you meet with
9 families about?

10 A. I meet with them about whatever services they may be
11 involved in that have the case indicated and how to get
12 those things resolved so that children are safe in the
13 home.

14 Q. Okay. Is that your primary concern?

15 A. Yes.

16 Q. Tell me, are you familiar with a safety plan?

17 A. I am.

18 Q. What is a DSS safety plan?

19 A. A DSS safety plan is something that we put in place
20 when we feel that there are safety threats in the home.
21 And that's just the paperwork stating that someone is
22 serving as the protector for minor children involved in
23 the case.

24 Q. Are there guidelines that people have to follow in
25 that safety plan?

SHANNON BROWN - DIRECT:HAMMACK

1 A. Yes.

2 Q. And who usually signs that safety plan?

3 A. Usually parents sign the safety plan, myself would
4 sign the safety plan, and my supervisor as well.

5 Q. Now in the course of your work in the last year, have
6 you had a chance to become involved with the Rudd family?

7 A. Yes, I have.

8 Q. How have you been involved with them?

9 A. I served as the treatment case manager for the Rudd
10 case.

11 Q. Okay. And tell me, have you had a chance to talk to
12 the Defendant in this case?

13 A. Yes, I have.

14 Q. Where did you talk to him at?

15 A. I spoke with him in different places so far, but, the
16 jail, his lawyer's office, the DSS office.

17 Q. Okay. Is it your job to meet with everybody involved
18 in a DSS case?

19 A. Yes, it is.

20 Q. Have you also met with the children in this case?

21 A. Yes, I have.

22 Q. Have you met with the mom in this case?

23 A. Yes, I have.

24 Q. Do you recall when the first time was that you met
25 with the Defendant?

SHANNON BROWN - DIRECT:HAMMACK

1 A. No, I'm sure I can recall but not just right off. But
2 I did meet with him back in, I think, July was the first
3 time --

4 Q. Okay.

5 A. -- somewhere.

6 Q. And where did you meet with him the first time?

7 A. I met with him at the Aiken County Detention Center.

8 Q. Okay. This is going to be kind of a hard question to
9 answer, but do you remember what you were wearing when you
10 met with him the first time?

11 A. No, I don't.

12 Q. Okay. Did you tell him who you were when you met with
13 him?

14 A. I did.

15 Q. Did you tell him who you worked for?

16 A. Yes, I did.

17 Q. Were you wearing your DSS ID badge when you met with
18 him?

19 A. I was.

20 Q. If you had gone to the jail and he didn't want to talk
21 to you, would he have had to talk to you?

22 A. Definitely not, no.

23 Q. Did you tell him he had to talk to you?

24 A. No, I didn't.

25 Q. Did you threaten him to get him to talk to you?

SHANNON BROWN - DIRECT:HAMMACK

1 A. No.

2 Q. Did you make him any promises to get him to talk to
3 you?

4 A. No, I didn't.

5 Q. As a DSS worker, do you carry a gun?

6 A. No.

7 Q. Handcuffs?

8 A. No.

9 Q. A badge?

10 A. No.

11 Q. Did you take any of those things in with you when you
12 met with the Defendant?

13 A. I didn't.

14 Q. Did he seem to understand why you were there?

15 A. He did. He seemed pretty surprised, but he understood
16 why I was there.

17 Q. Okay. And did he talk to you at that time?

18 A. He did.

19 Q. What did he tell you?

20 A. In general, or?

21 Q. Sure.

22 A. Just that he was there and -- because of an incident
23 that had occurred. And --

24 Q. Did he say anything about that incident?

25 A. He did.

SHANNON BROWN - DIRECT:HAMMACK

1 Q. What did he tell you about that incident?

2 A. He said that during the time that he checked his
3 children and compared them to one another.

4 Q. Tell me this. We -- you explained to the jury what a
5 safety plan was a minute ago. Was there a safety plan in
6 place in this case?

7 A. I'm sure there's a safety plan in place.

8 Q. Okay. Is that something that he would have had to
9 sign?

10 A. Yes.

11 Q. Is that something that the mom would have had to sign?

12 A. Yes.

13 Q. Is there any provision in a safety plan about contact
14 with children --

15 A. Yes, it is.

16 Q. -- if the parent is a perpetrator in the case?

17 A. Yes.

18 Q. What's that provision about contact?

19 A. Well, for this particular case it would have been no
20 contact until further notice.

21 Q. Is that something that would have been Mom's idea?

22 A. No.

23 Q. Is that a DSS policy?

24 A. It is.

25 Q. Does that mean that the kids can't contact Dad?

SHANNON BROWN - DIRECT:HAMMACK

1 A. That's correct.

2 Q. Does it mean that Mom can't contact Dad?

3 A. That's correct.

4 Q. Does that mean that Dad cannot contact Mom?

5 A. That's correct.

6 Q. Does that mean that Dad cannot contact kids?

7 A. Yes.

8 Q. Would that include not contacting children through
9 letters?

10 A. That's correct.

11 Q. Would that include Dad not contacting kids through
12 notes?

13 A. That's correct.

14 Q. Would that include Dad not contacting the kids or Mom
15 through phone calls?

16 A. That's correct.

17 Q. Facebook?

18 A. That's correct.

19 Q. Give me one second, Ms. Brown; okay?

20 A. Okay.

21 (Pause.)

22 MS. HAMMACK: Thank you. Answer any questions that
23 Ms. Zmroczek may have. Okay?

24

25

SHANNON BROWN - CROSS:ZMROCZEK

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Ms. Brown?

A. Yes.

Q. When was that safety plan provided to Mr. Rudd?

A. I'm not certain. I think it was provided during the investigation stage.

Q. During the investigation stage. After he was arrested?

A. I'm not for certain.

Q. We don't have a date. We don't have a copy of it; do we?

A. No.

Q. Part of your job is to meet with all the parties; correct?

A. That's correct.

Q. And you have been doing that monthly; correct?

A. Yes.

Q. Because you're concerned about who watches the children. We talked about safety and keeping them safe. So is it important to know when the mother is supposed to be watching them isn't at home because she's spending the night with her boyfriend?

A. I'm confused about your question.

Q. Is it important to know who's watching the kids,

SHANNON BROWN - CROSS:ZMROCZEK

1 whether she's with a boyfriend who we don't know or with
2 the mom?

3 A. Yes, it is 'important that we know.

4 Q. Did you know that?

5 A. Did I know?

6 Q. That she had spent the night, several nights during
7 the time that she's met with you not at home, not with her
8 children?

9 A. No.

10 Q. Would that be a violation of her safety plan?

11 A. No, it wouldn't.

12 Q. Would it be important -- isn't it important for DSS to
13 know who's watching these children?

14 A. In most cases what we would say is at the mother's
15 discretion who she, a person of her choosing to watch the
16 children.

17 Q. Okay. And it wouldn't matter to you who that was?

18 A. Well, it would matter to us who it was, yes, it would.

19 Q. Okay. So it would matter?

20 A. Yes, it would.

21 Q. When you met with Mr. -- when you met with Mr. Dwayne
22 Rudd in the jail -- do you have your notes?

23 A. I don't.

24 Q. Okay. Would it help for you to look at them? Or,
25 we'll get to that point.

SHANNON BROWN - CROSS:ZMROCZEK

1 Do you remember what his concerns were when he was in
2 the jail?

3 A. Yes. He was just concerned about, you know, his
4 relationship with his children.

5 Q. What was his -- didn't he talk to you about his wife?

6 A. He did.

7 Q. And didn't you say that he spoke highly of her?

8 A. I don't know if I'd use those exact words but I may
9 have.

10 Q. I'm not trying to trick you.

11 A. Okay.

12 Q. I'll point your note out for you.

13 A. Okay.

14 Q. When you meet with someone, how do you preserve your
15 notes?

16 A. We use our CAP system.

17 Q. And, do you put those notes in shortly after you meet
18 with someone so that they're fresh in your mind?

19 A. That's correct.

20 Q. Okay. Just bear with me one second.

21 I'm going to let them look for the page that I'm
22 looking for. That way I can keep asking you questions.

23 When you met with Mr. Rudd, he never made any threats
24 to the children or to his wife; did he?

25 A. No.

SHANNON BROWN - CROSS:ZMROCZEK

1 Q. Never said he wanted to hurt them or harm them?

2 A. No.

3 Q. Never had a history of any of the such?

4 A. Not as far as I know.

5 Q. You also met with the children and the mother;

6 correct?

7 A. That's correct.

8 Q. When you interviewed the children, did you interview

9 them -- how did you interview them?

10 A. I just spoke with them individually and together.

11 Q. Why is it important to speak with them individually?

12 A. Just so that we can get everybody's, you know,

13 perspective on everything.

14 Q. Are children susceptible to other people's

15 perspectives?

16 A. Of course.

17 Q. And when -- throughout the course of you meeting with

18 them monthly, did you notice a change -- did you notice

19 any similarities between statements that the children

20 would give you in relation to statements that the mother

21 would give you?

22 A. No.

23 Q. Did you notice the similarities in, in their ideas

24 such as -- or, in your notes, didn't you note that they

25 were wanting to get it over with, wanted to get it behind

SHANNON BROWN - CROSS:ZMROCZEK

1 them?

2 A. Yes.

3 Q. Did you meet with Mrs. Rudd?

4 A. Yes.

5 Q. Didn't she tell you that --

6 MS. HAMMACK: Objection, Your Honor. That's hearsay.

7 She's already crossed the mother.

8 THE COURT: Sustained.

9 BY MS. ZMROCZEK:

10 Q. Did you make notes as to what her concerns were? Were
11 her concerns --

12 MS. HAMMACK: Objection, Your Honor. She's just
13 trying to get in the substance of the hearsay by asking it
14 differently.

15 MS. ZMROCZEK: Your Honor, she -- I think she's
16 qualified to testify as to, as her job as a caseworker.

17 THE COURT: If she developed some plan, then she can
18 testify why she developed a plan.

19 MS. ZMROCZEK: Okay. I'll restate the question, Your
20 Honor.

21 THE COURT: Where is the bailiff?

22 THE BAILIFF: Right here.

23 THE COURT: Would you get that cell phone, please?

24 THE BAILIFF: Okay.

25 THE COURT: Give it to clerk. Make sure it's turned

SHANNON BROWN - CROSS:ZMROCZEK

1 off.

2 THE BAILIFF: (Complies.)

3 BY MS. ZMROCZEK:

4 Q. When you -- I'm sorry.

5 When you were interviewing and following your
6 treatment plan, were you aware that the children were
7 going to counseling?

8 A. Yes.

9 Q. And talking about this case?

10 A. (Nods head.)

11 Q. Yes?

12 A. Yes.

13 Q. When you -- what else is involved in your planning?
14 Is it just meeting and taking notes?

15 A. Pretty much.

16 Q. You don't have -- who's -- who's responsible for the
17 investigation and the recommendations that DSS makes is my
18 question.

19 A. For the treatment plan?

20 Q. Yes, ma'am.

21 A. Myself and the parties involved.

22 Q. What materials do you use to make those decisions?

23 A. Just basically conversations that we've had and the
24 allegations of the case.

25 Q. And do you look into any outside sources such as

SHANNON BROWN - CROSS:ZMROCZEK

1 school and doctor records?

2 A. Yes.

3 Q. Did you do that in this case?

4 A. I didn't.

5 Q. Did anyone in DSS do that in this case?

6 A. I don't know. I'm sure.

7 Q. Okay. I'm going to show you your note from July 22nd,
8 2013.

9 MS. HAMMACK: Your Honor, is this supposed to be
10 refreshing memory or --

11 MS. ZMROCZEK: It is.

12 THE COURT: I assume it is.

13 MS. ZMROCZEK: Going back to the original question
14 that I had.

15 THE COURT: Show it to her.

16 BY MS. ZMROCZEK:

17 Q. I don't want you to read it out loud. I just want you
18 to read it and see if that refreshes your memory.

19 A. (Complying.)

20 Q. After reading your notes, are your memory -- is your
21 memory refreshed as to, as to what Mr. Rudd said about his
22 wife? Can you tell the jury what that was?

23 A. Uh.

24 Q. Or what you indicated?

25 A. Right. That he was concerned about his family being

SHANNON BROWN - CROSS:ZMROCZEK

1 together.

2 Q. And how did he speak of his wife?

3 A. He was concerned that he wanted his family together.

4 Q. Okay. Didn't you say that he spoke well of his wife
5 and he hoped his wife was well?

6 A. Yes, uh-huh.

7 Q. No threats?

8 A. No, he didn't make any threats.

9 Q. Did he seem confused as to why he was in jail?

10 A. No.

11 Q. Did -- you said that he said that he had checked and
12 compared. Those were the words that he used?

13 A. Uh-huh.

14 THE COURT: Is that a yes? I need you to answer yes
15 or no for the court reporter.

16 THE WITNESS: Yes, sir.

17 BY MS. ZMROCZEK:

18 Q. Check and compared, those were the words that he used?

19 A. Yes.

20 Q. Were you aware of Minor 1's medical condition?

21 A. Yes.

22 Q. Have you spoken to her doctors as to what direction
23 they have provided the parents?

24 A. No, but I did ask him.

25 Q. You asked him?

1 A. Yes.

2 Q. And you're aware of the treatment that she required
3 after her surgery?

4 A. No, I was not aware of what kind of treatment she
5 needed after her surgery, no, but I asked him.

6 Q. And he told you?

7 A. Uh-huh.

8 Q. And he told you that that's what he did?

9 A. Uh-huh.

10 THE COURT: You got to answer.

11 THE WITNESS: Yes. I'm sorry. I'm sorry.

12 MS. ZMROCZEK: She has to take everything for the
13 record.

14 THE WITNESS: Yes.

15 BY MS. ZMROCZEK:

16 Q. And so what he told you and what he's always told you
17 is that he was checking and comparing based on her medical
18 necessity and her medical condition; correct?

19 A. Yes.

20 MS. ZMROCZEK: Thank you.

21 THE COURT: Anything?

22 MS. HAMMACK: No, Your Honor.

23 THE COURT: All right. Thank you, ma'am. You may
24 step down.

25 MS. HAMMACK: Judge, may she be released to go back to

JEFFREY M DONOHOE - DIRECT:HAMMACK

1 work?

2 MS. ZMROCZEK: Without objection.

3 THE COURT: She's free to leave.

4 THE WITNESS: Thank you.

5 MS. HAMMACK: State calls Dr. Jeff Donohoe.

6 JEFFREY M. DONOHOE, having been duly sworn, was

7 examined and testified as follows:

8 THE CLERK: Please have a seat in the witness box and
9 state your full name for the Court, spelling your last.

10 THE WITNESS: My name is Jeffrey M. Donohoe,
11 D-O-N-O-H-O-E.

12 DIRECT EXAMINATION

13 BY MS. HAMMACK:

14 Q. Good morning, Dr. Donohoe.

15 A. Good morning.

16 Q. Can you tell jury what you do for a living?

17 A. I'm a pediatric urologist. That's a surgeon who's
18 a -- it's a pediatric surgeon who takes care of children
19 who have disorders of their urinary tracts. So we take
20 care of the kidneys, ureters, the bladder, the urethra in
21 the male and the female, and we also operate on genitalia
22 of the males and females.

23 Q. And where do you work?

24 A. At the Medical College of Georgia, Children's Hospital
25 of Georgia as they call themselves now.

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1 Q. Okay. And how long have you been doing that?

2 A. I've been in practice for nine years. I was in
3 training for two years. I did a fellowship in pediatric
4 urology for two years. And I've been a urologist -- I was
5 a urology resident in training for six years.

6 Q. Do you have to do the fellowship and the training in
7 order to be a pediatric --

8 A. You do not necessarily but it's recommended,
9 especially for more complicated types of surgeries.

10 Q. Okay. What kind of education do you have to get to be
11 a urologist?

12 A. You have to -- I mean, you have to go to college and
13 then medical school. And then after your medical school
14 you do a residency so that you can train to become a
15 particular type of surgeon.

16 And for urology it's a six-year program. You do two
17 years of general surgery training and then you do four
18 years of urologic surgery, and then when you finish with
19 that you can either go into private practice or you can do
20 a fellowship and specialize in a field of urology. And I
21 chose to specialize in pediatric urology which is another
22 two years.

23 Q. Okay. And I'm assuming that you did all of that, the
24 medical school, the training?

25 A. I did all of that, yes, yeah. Do you need the

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1 details?

2 Q. I don't think so.

3 A. Okay.

4 Q. Tell me, did you -- other than training, have you ever
5 been -- have you ever been published?

6 A. Published in, like, medical journals?

7 Q. Sure.

8 A. Yes.

9 Q. Have you received any awards or honors in your field?

10 A. I'm a member of the Alpha Omega Alpha Society which is
11 a prestigious membership in a society for people who have
12 done outstanding merits in medicine.

13 Q. Okay. Have you ever spoken or given any presentations
14 in your field?

15 A. Yes, I have.

16 Q. Is there any way you can tell us how many child
17 patients you've seen in your career?

18 A. How many children I've seen?

19 Q. Uh-huh.

20 A. I mean, I generally see about 35 to 40 people every
21 clinic visit. I have two clinic visits per week. I
22 operate on somewhere between 10 to 15 children per week.

23 And then I've been doing this for nine years. So whatever
24 that is.

25 Q. I won't ask you to do the math, Doctor.

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1 A. And then I see in-patient consults as well. So, like,
2 if other services in the hospital ask me to come and see a
3 patient of theirs, then I'll, you know, see that patient
4 too, and eventually they'll see me in the clinic. For the
5 last year, I think I saw 3,000 patients in my clinic last
6 year.

7 MS. HAMMACK: Your Honor, at this time the State would
8 offer Dr. Donohoe as an expert in pediatric urology.

9 MS. ZMROCZEK: Without objection, Your Honor.

10 THE COURT: Any voir dire?

11 MS. ZMROCZEK: I'm sorry?

12 THE COURT: Any voir dire?

13 MS. ZMROCZEK: I do not. We do not object.

14 THE COURT: Ladies and gentlemen, under our rules I
15 told you that you would hear from witnesses who would get
16 up here. We have really two type of witnesses under our
17 rules: Fact witnesses, and that's people who have factual
18 information about the case; and in addition we have what
19 is called expert witnesses.

20 And that's scientific, technical or other specialized
21 knowledge that will assist you, the trier of the facts, in
22 understanding any evidence or determining any fact that
23 may be in issue, then a witness can be qualified as an
24 expert by virtue of his or her knowledge, skill,
25 experience, training, or education and as such may testify

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1 in the form of an opinion. A fact witness generally tells
2 you, I saw the motorcycle wreck. An expert can have
3 factual information and can also offer opinions in his or
4 her areas of expertise.

5 And I'm going to find Dr. Donohoe to be qualified as
6 an expert in the field of pediatric urology. Is that the
7 correct --

8 THE WITNESS: That's correct, sir.

9 THE COURT: And as such he can offer opinions in his
10 area of expertise. You are to give his testimony such
11 weight and credibility as you deem appropriate as you will
12 with any and all witnesses who will testify.

13 Thank you.

14 BY MS. HAMMACK:

15 Q. Now, Dr. Donohoe, I'm going to get you to explain a
16 medical term for all of us. Can you tell the jury what
17 congenital adrenal hyperplasia is?

18 A. Congenital adrenal hyperplasia is a disorder where
19 you're lacking a specific enzyme in your body. And an
20 enzyme is a substance. It's a protein in your body that
21 allows certain biochemical reactions to occur that are
22 necessary.

23 And the particular enzymes that are responsible for
24 congenital adrenal hyperplasia involve steroid hormones,
25 particularly a hormone called aldosterone and a hormone

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1 called cortisol which are very important in the regulation
2 of normal body functions.

3 And when you have one of the deficiencies of these
4 enzymes, when you're a -- when you're inside your mother,
5 when you're a fetus inside your mother, your body is
6 lacking these enzymes, but they're being provided to you
7 by your mother through the bloodstream.

8 However, due to several biochemical processes, your
9 adrenal glands, the glands that actually make these
10 hormones, are hyperactive and they shunt the, because
11 there's a lack of enzyme being -- because the enzyme's not
12 there and the end product isn't being produced, there's a
13 backup into -- there's a backup of one particular
14 substrate, and then it gets shifted over to another
15 biochemical process. And that allows, it allows for over
16 virilization of females while they're inside of their
17 mother.

18 Q. Can that result in any external manifestations or --

19 A. It can.

20 Q. -- complications?

21 A. Well, generally what happens when a child is born with
22 congenital adrenal hyperplasia -- there are several
23 different enzymes. And the most common one is the
24 21-hydroxylase deficiency. And that's the one that
25 involves both the cortisol and aldosterone.

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1 Now, first of all, if it doesn't get picked up
2 immediately after birth the child can actually die from
3 this. If it's -- if it's not corrected for, immediately
4 after birth the baby, they're wasting salts inside their
5 body. They're losing all their salts because of the lack
6 of this aldosterone hormone. And because of the lack of
7 aldosterone the babies can die from cardiac failure, from
8 cardio-respiratory failure due to the lack of the
9 aldosterone and the wasting of salts inside the body.

10 It often gets picked up when the child is first born.
11 When the pediatrician first evaluates the baby, there is
12 usually, in a female infant there is usually
13 over-verilization of their genitalia.

14 Q. What does that mean?

15 A. Basically what that means is that -- so, when a baby's
16 first being -- in the development of a child, initially
17 the body doesn't know if it wants to be male or female.
18 This little, you know, this fertilized egg doesn't know if
19 it wants to be male or female. So there's a series of
20 chemical processes that occur that allow it to become
21 either male or female.

22 And in the presence of certain hormones that should
23 happen, it should differentiate one way or the other way.
24 In the female infant, it starts out female but then
25 because of the over-production of certain hormones,

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1 particularly male steroid hormones, testosterone and not
2 necessarily testosterone but androgens inside the body
3 that are similar to testosterone, they -- the girl's
4 genitalia looks more male.

5 So what I mean by that is the clitoral body is
6 enlarged. The clitoris in the female is the analog to the
7 penis in the male. They're similar structures.

8 And the vagina may not be properly formed. The vagina
9 may actually be completely fused in the middle and it can
10 look like a scrotum. So you can have a girl who's born
11 with a large clitoris and a fused labia majora, and a baby
12 to many people looks like a boy. But yet when you go to
13 palpate for the testicles, and pediatricians are supposed
14 to feel two testicles. When they see a scrotum they're
15 supposed to feel for two testicles.

16 If they don't feel the two testicles, then that's sort
17 of a red flag. And they say, all right, well what do we
18 do now. We have what looks like a boy but there's no
19 testicles. This is something that we need to address
20 because they all know, they've been trained that if you
21 have a child who has what's considered ambiguous
22 genitalia, you need to figure out if it's 21-hydroxylase
23 deficiency because that baby can die in five days.

24 Q. Okay. Doctor, in the course of your career have you
25 had a chance to have Minor 1 as a patient?

JEFFREY M DONOHOE - DIRECT:HAMMACK

1 A. Yes.

2 Q. Does Minor 1 have congenital adrenal hyperplasia?

3 A. Yes.

4 Q. Is that why you saw her?

5 A. Yes.

6 Q. Okay. And ultimately did you have to perform surgery
7 on Minor 1?

8 A. Yes, I did.

9 Q. In very, very layman's terms, can you tell us what you
10 had to do in your surgery for Minor 1?

11 A. Okay. Do you happen to have the medical records?

12 Because I reviewed them, but I don't have them in front of
13 me. Do you have medical records --

14 Q. Sure.

15 A. -- that I could just review so I could...

16 Q. (Documents handed to the witness.) Let me take the
17 pen out of it for you.

18 A. Sure. Just in case I need to refer to it.

19 Q. And there's quite a lot of them, so --

20 A. Yeah.

21 Q. -- I guess you can find --

22 A. Yeah --

23 Q. -- what you need out of them.

24 A. -- if I need to. Just -- I know very basically, you
25 want me to be basic.

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1 Q. Very basic is totally fine.

2 A. What we did for Minor1 was three things: We performed
3 a clitoroplasty; a labioplasty; and a vaginoplasty.

4 So basically what we did was, because of the
5 verilization process due to the male hormones when she was
6 a fetus, instead of having -- so a female is supposed to
7 have three holes, okay, an anus, a vagina and a urethra.

8 Some of the children when they're born with this condition
9 can have, the girls can have two holes. So they have --

10 Q. Doctor, I'm so sorry. Let me stop you right there.

11 Minor1 actually did have three holes; right?

12 A. She had a urogenital sinus and she had an anus
13 and then we created -- she had three holes, but the holes
14 were separate. Basically she had a urogenital sinus and
15 then she had a urethra and a vagina that basically came
16 off of that one urogenital sinus.

17 Q. Okay.

18 A. That's basically what she had. It was, for layman's
19 terms it was technically two holes but then one of those
20 holes branched off to become the two structures, a urethra
21 and a vagina.

22 Q. Gotcha. And that's --

23 A. Part of what I did was I made the urogenital sinus. I
24 opened it up so that it -- I opened it up to the point
25 where it branched. And then I took the vagina and I

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1 brought it down separately so that there are two separate
2 holes now.

3 There are two separate openings, one that she would
4 pee out of and one that eventually her menses would come
5 out of.

6 Q. Now tell me, Doctor --

7 A. That's part of what I did.

8 Q. -- if you remember, how long did this surgery take?

9 A. Several hours. I don't remember exactly but it took
10 several hours.

11 Q. Is that typical?

12 A. It's typical. It depends on how well you can mobilize
13 the vagina. And sometimes that's easy to do, and
14 sometimes it's not.

15 And in her case it wasn't, it wasn't easy to do. It
16 wasn't very complicated, but it took awhile to mobilize
17 the vagina. We were able to do so successfully.

18 Q. In cases where you have to perform this surgery, do
19 you ever direct families to perform any preoperative care
20 at home?

21 A. No, not, not any preoperative care. They're supposed
22 to take their hormones. They take hormones under the
23 direction of the endocrinologist. That's what's saving
24 the child's life.

25 Q. But do you direct the family to do any preoperative

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1 care down there?

2 A. No.

3 Q. Is that something that you would do?

4 A. I mean, I do an examination -- to diagnose this
5 condition you usually, you see the family, you see the
6 patient. And then you do an examination under anesthesia
7 because you can't really see everything that you need to
8 see.

9 So Minor 1, I believe Minor 1 had an examination under
10 anesthesia a few months prior to her surgery.

11 Q. Okay.

12 A. And that's how we determined that she needed it done
13 and things like that.

14 Q. Okay. And when you put Minor 1 under anesthesia to
15 examine her, did you compare her to a normal vagina? Did
16 you bring another person in there and look at both of
17 them?

18 A. No.

19 Q. Did you bring her sister in there and look at both of
20 them?

21 A. No.

22 Q. Why not?

23 A. Why didn't I? Because, I mean --

24 Q. Is that an accepted form of medical practice or
25 diagnosis?

JEFFREY M DONOHOE - DIRECT:HAMMACK

1 A. I mean, that's -- no, I don't -- that's not -- I mean,
2 I examine the patient under anesthesia. I look at her
3 private parts. I determine -- it's very objective
4 measures that I look for. I look for the urogenital sinus
5 and I look to see where it bifurcates is the word, where
6 it splits into two different structures and I measure the
7 length of all these structures.

8 Q. As a doctor, there's an objective sign that you can
9 see to diagnose this?

10 A. Correct.

11 Q. You don't need to compare it to someone else?

12 A. No.

13 Q. Okay. Now after the surgery, was there any
14 postoperative care that you did, Doctor, on Minor 1?

15 A. Well, she was --

16 Q. That you would do on any patient?

17 A. She stayed in the hospital for several days for pain
18 management if I remember correctly. If you need me to be
19 more specific, I would refer to the medical records.

20 Q. That's okay.

21 A. I believe she stayed for a few days, maybe four days
22 overnight.

23 Q. Did you see her in the office?

24 A. It's a lot of work down in your private parts. She's
25 older too. And she's more mobile so she was in a lot of

JEFFREY M DONOHOE - DIRECT:HAMMACK

1 discomfort.

2 Q. Did you see her while she was in the hospital?

3 A. Yes.

4 Q. After she was released home, did you direct her family
5 to perform any postoperative care?

6 A. I don't recall specifically. Usually it's, by the
7 time that they've left the hospital the drains have
8 been -- we have drains that we leave in the parts. The
9 drains had been removed. And all of the stitches that we
10 use are absorbable, so I don't -- I don't -- there's
11 really nothing much that they need to do other than bathe.
12 They need to keep the child clean. And they do baths,
13 like sitz baths. That's about it. Just keep the
14 genitalia clean to prevent -- I mean, stool can get in
15 there and things like that, so.

16 Q. Would you provide any type of cream or anything to
17 apply to keep from infection?

18 A. Sometimes we apply bacitracin ointment to the stitches
19 to just keep stool and fecal matter from getting near,
20 because it's fairly close to the anus down there. And if
21 I'm not mistaken, she might have had one or two stitches
22 that broke down. And there was some -- that's more of an
23 indication to put some Neosporin cream on there.

24 Q. Is that something that would be external or internal?

25 A. External.

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1 Q. Would you advise her family to internally check or
2 examine their child after this type of surgery?

3 A. No, no, we generally see the baby back, child back,
4 like, 30 days later and do another examination under
5 anesthesia. And I believe she had that done.

6 Q. And you said that's under anesthesia?

7 A. Yes, ma'am.

8 Q. You don't just put her up on the table and do what you
9 do?

10 A. Well, if they had -- I mean, I have a routine time
11 that I want to look at the structures because you can,
12 when you do surgery you can have complications. One of
13 the complications is you operated, you make two separates
14 holes, those holes can become narrow. And it's important
15 for me to understand if those holes have become narrow.
16 So I always look in there with a telescope.

17 Now I have a set time that I do that, generally about
18 30 days. If they come to me for specific other
19 complaints, if, like -- if, for instance, Minor 1 had come
20 in and said, I'm still in pain, the pain is out of
21 proportion to the usual, I may have her come in and
22 examine her in the clinic, but typically I do it in the
23 operating room.

24 Q. And to your understanding in this case, you examined
25 her under anesthesia?

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 A. Yes, ma'am.

2 Q. Would you ever advise a parent to use their finger to
3 examine or check their child after this type of surgery?

4 A. Not, I mean, other than bathing them and -- no.

5 Q. Would you ever direct a parent to insert their finger
6 into their child's vagina after the surgery?

7 A. No.

8 Q. Would you ever advise a parent to compare their child
9 to a normal child's genitalia?

10 A. No.

11 Q. Give me one second, Doctor.

12 A. Okay.

13 Q. Thank you, Dr. Donohoe. I'm going to ask you to
14 answer any questions Ms. Zmroczek has for you.

15 A. Okay. Sure.

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 Q. Good morning, Doctor.

19 A. Good morning. How are you?

20 Q. I'm well. You hope you are too. Thank you for
21 coming --

22 A. Yes, thank you.

23 Q. -- and explaining to the jury this condition. Is this
24 condition one that is common and normal?

25 A. Well, I try to stay away from the word normal. I use

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 the word unique.

2 Q. Unique?

3 A. Yeah. It's a unique condition.

4 Q. Let me ask it this way, Doctor: Of the countless
5 patients that you've seen and children that you've
6 treated --

7 A. Uh-huh.

8 Q. -- in the last nine years, how many times have you
9 performed this surgery?

10 A. Somewhere between seven and 10 times.

11 Q. Seven to 10 times?

12 A. Uh-huh.

13 Q. Over your six or nine-year practice?

14 A. Correct. Uh-huh. This particular practice.

15 Q. And seeing these kids over and over and over again?

16 A. Yeah. I've seen several other children that have had
17 this condition. Probably all together this condition
18 probably has about 20 patients that have this condition.
19 They have had different types of surgeries, but this
20 particular type of surgery, about seven to 10.

21 Q. And that's out of the hundreds of thousands of
22 children that you've treated?

23 A. Correct.

24 Q. Doctor, aren't there concerns when the children are
25 born with this disease, not only life threatening but

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 physical-appearance concerns? Isn't that one of the
2 reasons that this is done as well, not just from a
3 strictly medical side?

4 A. Particularly why the surgery is done --

5 Q. Uh-huh.

6 A. -- or -- I don't understand the question.

7 Q. The outcome, the surgery. You obviously have the
8 outcome for the benefit of the health --

9 A. Right.

10 Q. -- to create, like you said, an area for the menses to
11 come out?

12 A. Right. Correct. But also for psychological purposes
13 you're saying?

14 Q. Yes.

15 A. Yes. Depending on the severity of the condition. If
16 there's a spectrum, sometimes it looks much, much more
17 like a boy and the parents almost sometimes raise the
18 child as a boy initially.

19 But, yes, there's a spectrum. And the condition
20 can -- parents will elect to have the surgery done to make
21 it look less unique.

22 Q. You talked about menses, Doctor --

23 A. Yes.

24 Q. -- is it accurate to put that in layman's terms as a
25 girl having her period?

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 A. Yes, ma'am.

2 Q. You treated the patient when Ms. Minor 1 -- how old
3 was she?

4 A. I think she was about 13 when we did the surgery, 13
5 or 14.

6 Q. Thirteen or 14?

7 A. Correct.

8 Q. And she hadn't started her menses; had she?

9 A. No, I do not remember her -- I don't have any
10 independent recollection, but I do not remember Minor 1
11 having had her menses at that point.

12 Q. And, I know you have all of your notes there in front
13 of you?

14 A. I do.

15 Q. Doctor --

16 A. There's a lot. I don't know exactly where it is.

17 Q. And you relied on Dr. Houk's notes too?

18 A. Correct. Dr. Houk sees the patient regularly. In
19 fact, he probably sees her more than I do because he has
20 to manage those medications depending on her weight and
21 obviously she's gaining weight as she gets older.

22 Q. And in reviewing his notes, does it indicate that she
23 had started her menses prior to the surgery?

24 A. This is dated July 2012. And it says: Reached
25 menarche July 12 and has not had vaginal bleeding or

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 intermittent abdominal pain.

2 Q. So she hadn't had any bleeding?

3 A. Apparently, according to his note.

4 Q. Okay. And Dr. Houk when he treats -- you said he sees
5 her more regularly. I'll take that back. He sees her
6 more regularly; correct?

7 A. Correct.

8 Q. And he only -- would he only be concerned about her
9 medications or would he do a visual inspection as well?

10 MS. HAMMACK: Your Honor, I'm going to object. I
11 don't think he's got the personal knowledge to say what
12 another doctor would do.

13 MS. ZMROCZEK: Your Honor, he's qualified as an expert
14 based on --

15 MS. HAMMACK: Well, he can't say what another doctor
16 did.

17 THE COURT: Well, if he doesn't know he can say he
18 doesn't know. You know, he can testify as to what he
19 relied on, what information he had, what knowledge he had,
20 if he had reviewed notes and indicated things of that
21 nature, he can.

22 BY MS. ZMROCZEK:

23 Q. Okay. Do you know, Doctor?

24 A. I don't know if Dr. Houk does as thorough an
25 examination as I do.

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 Q. Okay. You talked about your thorough examination
2 under anesthesia?

3 A. Correct.

4 Q. Did you also do in office, at least one in office?

5 A. Most likely I did. I don't remember independently but
6 most likely I will do a very cursory examination.

7 Q. And explain to the jury how that cursory examination
8 is performed.

9 A. The child will sort of sit frog legged on a table, and
10 I will inspect the genitalia.

11 Q. And she'll be awake?

12 A. Yes.

13 Q. And you'll get her parents' permission?

14 A. Of course, yes.

15 Q. And will her parents be in the room?

16 A. Of course, yes.

17 Q. You talked about the -- they asked you about
18 preoperative care. Doctor, when you have a child with
19 this medical condition, do you rely on the parents also
20 monitoring and their help as they grow older? Is it
21 important to you -- is it important for you to know what
22 changes if any she --

23 A. Well, yes, I mean, in my opinion -- well, not in my
24 opinion. I need to know when the child starts menses
25 especially if I'm doing the surgery because if the child

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1 starts her menses and she's not, it's not coming outside
2 of her, then it's backing up inside her body. If I
3 operated on that tube that allows it to come out and it
4 has become too narrow, then I need to know about that.

5 And I generally give follow-up appointments in terms
6 of that.

7 Q. And, Doctor, when you -- you talked about you did
8 vaginal-plasty?

9 A. Yes.

10 Q. And then a clitoris plasty?

11 A. Clitoroplasty, vaginoplasty, labioplasty.

12 Q. Labioplasty. Basically you created an opening for her
13 vagina?

14 A. Yes.

15 Q. And you created a vagina; correct?

16 A. Yes. Make the introitus appear more normal, less
17 unique; repair the labia so that they look more like
18 internal and external labia; and then the clitoris is
19 reduced. And in her case we reduced the clitoris.

20 Q. And how would you have described her clitoris prior to
21 surgery?

22 A. It was fairly enlarged. All these children have a
23 fairly enlarged clitoris.

24 Q. And can that be -- what physical implications can that
25 have prior to surgery? Can it be painful? Can they have

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 problems?

2 A. Not necessarily painful. I mean, it can. It's an
3 issue that is sensitive to many people.

4 Typically do not do a clitoroplasty unless it is
5 markedly enlarged or if the parent really wishes to have
6 the surgery done. I will often -- if it's specifically
7 because the parent is wishing it, I will review the risks
8 and benefits of having that done with the family and
9 explain to them that one of the risks of a clitoroplasty
10 is denervation of the clitoris. And there's a technique
11 that you use to try to prevent that, however sometimes
12 despite that you can have denervation of clitoris and that
13 can lead to sexual dysfunction as an adult.

14 So the clitoroplasty is something that is determined
15 based on the size of the clitoris and whether it's been
16 agreed upon that this is in the best interests of the
17 child.

18 Q. And in your words, is either if it's remarkably
19 enlarged?

20 A. Yes, I generally will measure it. That's part of my
21 examination under anesthesia.

22 Q. So in this case was it the parents' idea or was it the
23 physical requirement?

24 A. I don't remember specifically.

25 Q. Would it help to review your notes? I have it.

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 (Document handed to the witness.)

2 A. Do you want me to read it?

3 Q. No.

4 A. Okay.

5 Q. Sorry.

6 A. All right.

7 Q. In reviewing your notes, do you recall now if the
8 parents had the idea or if her clitoris was enlarged?

9 A. Well, it says four centimeters in length. That's
10 fairly large. And I will say to the parents, you know,
11 she has an enlarged clitoris. Do you wish to -- because I
12 need their consent to do that. I can't just say, I'm
13 going to reduce her clitoris. I need the family, the
14 family has to tell me they want that done. I'm not going
15 to do that without them telling me.

16 Q. Certainly.

17 A. Even if I think it's twice that size that you just
18 gave me, I still have to -- they have to specifically tell
19 me that that's their wishes.

20 Q. And when you're talking with the family and you're
21 discussing these things, obviously this is an unusual
22 situation and this is a --

23 A. Yes.

24 Q. -- private area. And it's an uncomfortable
25 conversation. These jurors have heard a lot of it. But

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 you have those conversations with both of her parents or
2 who's ever there?

3 A. Correct.

4 Q. And you talk about these things and these are
5 conversations that are normal for this situation?

6 A. Absolutely.

7 Q. Okay.

8 A. Yes.

9 Q. This isn't something that just popped up in April?

10 A. April?

11 Q. When you put her under anesthesia in April.

12 A. Okay.

13 Q. This --

14 A. Well, she was born like this.

15 Q. Exactly.

16 A. And her genitalia were like this from when she was
17 born.

18 Q. For her whole life?

19 A. Right.

20 Q. And you talked about the significant masculinization
21 or verilization and you described how due to her adrenal
22 deficiency the 21 --

23 A. Uh-huh.

24 Q. -- that she basically was having boy parts; is that
25 correct?

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 A. She looked more -- she looked somewhat masculinized.
2 She looked like -- she had an enlarged clitoris. Like you
3 would look, you know, a layman would look at that and say
4 that looks odd, if you will.

5 Q. A layman or a parent?

6 A. Perhaps. I would imagine so, yes.

7 Q. Would you imagine?

8 A. I mean, parents come to me concerned.

9 Q. You would hope that a parent would look at it?

10 A. They come to me concerned, yes.

11 (Defendant's Exhibit No. 7, chart, marked for
12 identification.)

13 BY MS. ZMROCZEK:

14 Q. Okay. Dr. Donohoe, I'm going to show you what's been
15 marked as Defense Exhibit Seven.

16 A. Right.

17 Q. Can you identify what is displayed?

18 A. These are diagrams of the genitalia. And you can see
19 that, I would imagine they're trying to say that this is a
20 verilized --

21 Q. Would having a -- would this assist you in showing the
22 jury and explaining to the jury the differences in the
23 locations that you've already described?

24 A. I don't understand what you -- you want to show it to
25 them?

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 Q. Yeah. If it will help explain.

2 A. Okay. I guess it would.

3 Q. At this time we'd like to offer it into evidence.

4 MS. HAMMACK: Your Honor, we would object. We don't
5 know who's produced it. It's not the doctor's note. It's
6 not specific to the child in this case. I mean, we don't
7 even know --

8 THE COURT: Apparently this is for some demonstrative
9 purpose?

10 MS. HAMMACK: She's trying to introduce it into
11 evidence.

12 THE COURT: Well, she hasn't done that yet.

13 MS. HAMMACK: That's what she just asked.

14 THE COURT: No, she didn't. She asked would this
15 assist in explaining what the situation was. She hasn't
16 moved to admit anything.

17 MS. HAMMACK: Well, we would object at the appropriate
18 time if she moves to admit it, Judge.

19 THE COURT: Well, let's wait until we see what
20 happens. Okay?

21 You may step down, Doctor. And if that document will
22 help you in explaining what it is you did, if you think
23 it's a fair and accurate representation of whatever it is.

24 THE WITNESS: I can step down?

25 THE COURT: Yes, sir.

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 THE WITNESS: Okay.

2 BY MS. ZMROCZEK:

3 Q. Doctor --

4 THE COURT: I'm going to ask y'all to swap sides if
5 you would so that the doctor's talking back towards the
6 court reporter.

7 THE WITNESS: You need to see my face. I get that.

8 THE COURT: Your voice will carry better.

9 THE WITNESS: Okay. This is the uterus. This is the
10 bladder. That's the pubic bone. That's the rectum.

11 BY MS. ZMROCZEK:

12 Q. Would this be what would be typically seen in a normal
13 female genitalia?

14 A. Right. This is, there's three holes here; there's a
15 urethra, there's a vagina, and there's an anus. And then
16 you can see they're showing you sort of a cross-section
17 through the body this way, and they're showing a cross-
18 section of the body this way. And that's what that is.
19 They're showing the urethra. I would imagine that's a
20 vagina. And that's, I would imagine that's an anus in the
21 gluteal fold there.

22 Q. And in this case you said that there was the urethra
23 and the anus, but no vaginal --

24 A. What she had was called a -- technically the term is a
25 urogenital sinus. And a urogenital sinus is one hole

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 that's, you go in about, I think in her case it might have
2 been one or two centimeters. It wasn't very long. But it
3 was fairly long. You go in about one centimeter and it
4 splits and the urethra comes first and then the vagina
5 comes second. It's behind the urethra.

6 Q. So what you did was create that second hole?

7 A. You make the two holes so that they have two separate
8 openings so that they don't have that one stem. It's like
9 a flower. You have a stem and you have these little
10 branches that come off the flower. And that one branch
11 becomes, I forget what they call that little part that
12 comes off the stem, whatever it's called, but you make it
13 so the menses, the period, is going to come out through
14 this thing and it's going to go into her urinary tract and
15 that can create problems. So you separate it and you just
16 move it down so that you have two separate holes that have
17 two separate exits, if you will.

18 Q. Thank you, Doctor.

19 A. (Returns to witness stand.)

20 Q. Doctor, after you performed this surgery, you stated
21 that there may have one or two stitches break down and
22 that they would have to -- or they would have received
23 some cream to take home, some medication to help keep it
24 from infecting; right?

25 A. Right.

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 Q. Okay. What are signs of infection?

2 A. Redness, discharge, like --

3 Q. Redness?

4 A. -- like yellow pus coming out of a wound.

5 Q. How would a caretaker know if that existed? Would
6 they have to inspect? Would they have to look? Would
7 they have to check for signs of infection?

8 A. I mean, they would probably note that when they were
9 bathing a child.

10 Q. Note that when they were bathing a child?

11 A. That's what I would anticipate.

12 Q. So if a caretaker was bathing the child, it would not
13 be uncommon, it would -- actually you would hope that they
14 would check for signs of infection, correct, and let you
15 know; right?

16 A. Correct.

17 Q. Where would the Neosporin or the antibiotics be
18 applied on the body?

19 A. Just, like, depending on where the stitches broke
20 down.

21 Q. And do you recall in this --

22 A. Not specifically.

23 Q. -- case?

24 A. I don't remember specifically, but I believe it was on
25 the outside. Like, the final stitch, kind of close to

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 where her anus was. Closer to the anus.

2 Q. Closer to the anus; correct?

3 A. Uh-huh.

4 Q. And not at the top?

5 A. Not near the, like, the clitoral hood. I don't
6 remember there being any clitoral breakdown. Because it's
7 fairly common for that to happen because especially in an
8 older child, because they're more mobile. And they move
9 their legs more. And they put more stress on their legs.
10 So that -- I mean, your leg is coming up to meet your,
11 your gluteus muscle, your butt, if you will.

12 And, you know, that -- there's a lot of mobility there
13 in stretching and abducting your leg, you stretch your
14 leg, whatever, some of the stitches may open up.

15 Q. And, you would have shown the parents where to do that
16 or the caretaker, the person that would have been doing
17 that would have been instructed on where to apply the
18 medication; correct?

19 A. Correct.

20 Q. Do you -- and her dad and her mom were in the office,
21 in the room when you told them this; right? Do you
22 recall?

23 A. I believe so, yes.

24 Q. And do you recall the dad being the primary caretaker
25 because the mom worked; isn't that correct?

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 A. I'm not aware that one was the primary caretaker or
2 the other. They are parents. They were together. As far
3 as I knew, they were together all the time.

4 Q. The parents were together all the time?

5 A. I didn't know -- that's what I understood, yeah. I
6 thought -- yeah.

7 Q. Okay. And it wasn't discussed with you who, which
8 parent had a job and which parent didn't?

9 A. Not -- I don't remember specifically discussing that,
10 no.

11 Q. Okay. All right. But you do recall telling both of
12 them, because they would have been there, where to apply
13 the medication?

14 A. Yeah. I mean, I -- whenever I have a postoperative --
15 when I'm finished with any surgery, I sit down with both,
16 whoever is there. Sometimes grandparents are there.
17 Whoever the parents wish to be present, I discuss that
18 with them. If the parents don't want -- you know, it's up
19 to the parents. And I'll discuss with them the
20 postoperative care and when the postoperative follow up
21 will be and what pain medication the child should receive
22 and what the child can eat. You know, it's commonly-asked
23 questions.

24 Q. And in this situation, Doctor, isn't it -- isn't it a
25 commonly-asked question to know what the vaginal area is

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 going to look like? Are the parents concerned as to what
2 took place on this surgery and how it's going to heal?

3 A. I mean, I basically would tell them if you have any --
4 if you have any concerns you should bring her in for me to
5 take a look at it.

6 Q. Doctor, there's no need for you to compare Minor 1's
7 vagina to a, or her sister's or a normal vagina, is
8 there? You're a professional. You know what the normal
9 vagina looks like; correct?

10 A. Yes.

11 Q. But these are concerns of parents who's just had a
12 daughter that had surgery down there, they bring those
13 concerns to you; don't they?

14 A. Which concerns?

15 Q. Concerns about her appearance, her infection status,
16 her health, all of these concerns. Are they -- those are
17 normal for a parent to have?

18 A. Sure. Infection. Sure. Whenever -- it's fairly
19 common for a parent to come back to the office because
20 they're concerned that the wound is infected or something
21 like that.

22 Q. Because they have to -- they would either be told by
23 the child that it hurts or they would inspect?

24 A. Right. That's correct.

25 Q. And if the child, if the child just told them that it

JEFFREY M DONOHOE - CROSS:ZMROCZEK

1 hurt, would you want the parent to haul somebody to your
2 office for an appointment without knowing if there's a
3 reason for them to be there?

4 A. Would I?

5 Q. Is it common to say, it hurts, okay, well, let me
6 look. Is that normal for these parents in this situation?

7 A. Sure.

8 Q. Doctor, when you do these in-depth visual
9 inspections --

10 A. Uh-huh.

11 Q. -- do you look for signs of abuse, physical abuse
12 particularly?

13 A. Not -- I mean, I don't typically.

14 Q. You don't look for it?

15 A. I'm not looking for that unless I have a concern for
16 that. I don't understand. Like, are you asking, like, on
17 a postoperative patient? I don't understand what you
18 mean.

19 Q. On any patient. If you see some sort of a flag for
20 sexual abuse or some sort of a sign for sexual abuse,
21 would you note that?

22 A. It's my responsibility to bring it to the attention of
23 somebody, right.

24 Q. Did you note that in this case?

25 A. No. /

JEFFREY M DONOHOE - REDIRECT:HAMMACK

1 MS. ZMROCZEK: Thank you.

2 MS. HAMMACK: Very briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. HAMMACK

5 Q. Dr. Donohoe, Ms. Zmroczek asked you a lot about signs
6 of infection after surgery and checking for that. Does
7 that require an invasive checking?

8 A. An invasive checking?

9 Q. If the parent's looking for signs of infection --

10 A. If the skin breaks down, if they see that the stitches
11 have popped, I mean, it's usually --

12 Q. Does it require a parent to put his finger in his
13 child's vagina to see if she's infected?

14 A. No.

15 Q. When you met with Minor 1, could she speak?

16 A. What do you mean?

17 Q. Was she able to talk to you?

18 A. Yes.

19 Q. Okay. So she could tell you how she was feeling?

20 A. She was -- right. Yes. I imagine so, yeah.

21 Q. Okay. We're not talking about a baby in this case?

22 A. Right. She's 13 or 14 years old.

23 Q. Okay. Now if you're looking -- if you're a parent and
24 you're looking for signs of infection after your child has
25 this surgery, would that require you to check a healthy

JEFFREY M DONOHOE - REDIRECT:HAMMACK

1 child too for signs of infection?

2 A. Would I check the healthy child? I don't understand.

3 Q. Would you tell a parent to check their healthy child
4 for signs of infection for surgery for their other child?

5 A. No. I would say if you have a concern about your
6 child that I did surgery on, bring them to the office and
7 I'll check it out.

8 Q. You'd ask them to bring the child to you?

9 A. If they have a concern. If they have a concern or the
10 child has a concern that the parent doesn't understand,
11 then I would tell them to come. I mean, it's fairly
12 common for that to happen.

13 Q. Now, Dr. Donohoe, I just have a couple more questions
14 for you.

15 A. Sure, please.

16 Q. In the care for a child that's had surgery for this
17 adrenal hyperplasia, does that require a parent to squeeze
18 the child's breasts?

19 A. No.

20 Q. Does that require the parent to squeeze the
21 non-affected child's breasts?

22 A. No.

23 Q. Does that require a parent to squeeze the bottom of
24 the non-affected child?

25 A. No.

JEFFREY M DONOHOE -, RE CROSS: ZMROCZEK

1 Q. Thank you, Doctor.

2 MS. ZMROCZEK: I have just a few follow-up questions.

3 RE CROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q. Would you have seen evidence if someone had stuck
6 their finger in the surgical area that you had just
7 created? Could there be physical evidence?

8 A. If somebody had stuck their finger in there? I don't
9 know. I mean, it depends on the size of the finger. It
10 depends on -- I mean, the vagina is very small. Even
11 though she's 13 or 14 years old, it's a fairly small
12 vagina.

13 If you really need to know, I can look at the size of
14 the scope that I used to put in there. I don't remember
15 the size of the scope. I imagine it was probably about
16 three millimeters.

17 Q. Three millimeters?

18 A. Diameter. That's -- if you would like --

19 Q. Using the eraser of my pencil, how is that -- what --

20 A. The scope is probably a little smaller than this.

21 Q. A little smaller than this?

22 A. The diameter.

23 Q. Because it was a small -- it was just a small vagina.
24 And so my question, Doctor, is: If someone's finger went
25 up in that small area, could there be lacerations? Could

1 there be tears? Could there be evidence?

2 A. I would -- if it were a large enough finger, yes, I
3 would imagine, yeah. A pencil's fairly -- smaller than
4 most people's fingers I've seen, so.

5 Q. And you've talked to Minor1. You said she's 14. Did
6 she ever tell you that, that her father or anyone had
7 stuck their fingers in her vagina?

8 A. No. That had never been told to me.

9 MS. ZMROCZEK: Thank you.

10 THE COURT: All right. Thank you, sir. You may step
11 down. You're free to leave.

12 MR. MOLONY: Your Honor, I believe we have a matter to
13 take up outside of the jury's presence.

14 THE COURT: All right. Ladies and gentlemen, I'll let
15 you step back to the jury room. We'll take about a
16 15-minute break. Please do not discuss the case when
17 you're back there. We'll be with you as soon as we can.
18 Thank you.

19 (Jury exits courtroom at 11:00 a.m.)

20 MR. MOLONY: Your Honor, I believe if we had a matter
21 of five minutes we could let her hear this redacted
22 portion of the one phone call in question.

23 THE COURT: All right. Y'all do that and then come
24 back and see me.

25 MR. MOLONY: Yes, sir.

1 THE COURT: We'll stand in recess for about 15
2 minutes.

3 MR. MOLONY: Yes, sir.

4 (Break taken at 11:00 a.m. At 11:16 a.m., the trial
5 resumed:)

6 THE COURT: Ms. Zmroczek, you will not get your phone
7 back.

8 MS. ZMROCZEK: Yes, Your Honor. I understand. I'm
9 sorry that it was on vibrate. I think it was witnesses we
10 were concerned with for this afternoon, but I certainly
11 apologize for that but that's why.

12 THE COURT: I will not permanently keep it but you
13 will not have it in this courtroom.

14 MS. ZMROCZEK: Okay. Thank you.

15 THE COURT: Did y'all resolve whatever it is you're
16 going to resolve?

17 MS. ZMROCZEK: We revolved it, Your Honor. I
18 stipulate to whatever they want to use.

19 THE COURT: How about whatever happened to
20 Mr. Molony?

21 MS. HAMMACK: Judge, he's in the boy's room but I
22 don't think it's going to take long. He didn't indicate
23 that it was a crisis, so.

24 THE COURT: Well, I think we talked enough about that.

25 MS. HAMMACK: She's going to go bang on the door.

NICHOLAS GALLAM - DIRECT: MOLONY

1 THE COURT: I don't think you need to do that. That
2 might embarrass him.

3 MS. BETH ANN YOUNG: He's hard to embarrass, Your
4 Honor.

5 (Pause.)

6 MR. MOLONY: Sorry, Judge.

7 THE COURT: I want he went to Presbyterian College,
8 makes for thick skin when it comes to that.

9 MR. MOLONY: Understatement.

10 THE COURT: All right. Let's bring the jury in if we
11 could.

12 (Jury enters courtroom at 11:18 a.m.)

13 THE COURT: State want to call your next witness?

14 MR. MOLONY: Thank you, Your Honor. The State calls
15 Captain Nick Gallam.

16 NICHOLAS GALLAM, having been duly sworn, was examined
17 and testified as follows:

18 THE CLERK: Please have a seat in the witness box.
19 State your full name for the Court and spell your last.

20 THE WITNESS: Nicholas Gallam, G-A-L-L-A-M.

21 DIRECT EXAMINATION

22 BY MR. MOLONY:

23 Q. Captain Gallam, where are you employed?

24 A. I'm employed with the Aiken County Sheriff's Office as
25 the jail administrator.

NICHOLAS GALLAM - DIRECT:MOLONY

1 Q. What are your duties as the jail administrator?

2 A. Care, custody and control of county prisoners
3 incarcerated at the Aiken County Detention Center.

4 Q. How many inmates are at the detention center?

5 A. Three thirty-three this morning.

6 Q. Three hundred thirty-three?

7 A. Yes, sir.

8 Q. Well, explain to the jury, Captain Gallam, the process
9 when an inmate is taken into the detention center. What
10 happens to them?

11 A. An inmate's taken to the detention center, processed
12 through an intake process, exchange of custody from the
13 law enforcement officer into the custody of the detention
14 center staff, property is accounted for, and they're then
15 processed and fingerprinted, booked; administrative-type,
16 things.

17 Q. What about, are inmates allowed to make phone calls
18 while they're in the detention center?

19 A. Yes, sir; they are.

20 Q. Explain how the phone call process works.

21 A. During that booking process they are entered into the
22 phone, telephone system which is provided from a
23 third-party contract with a company called Securis
24 Technologies. They're entered into their web-based system
25 and a PIN number is generated, a unique PIN number for

NICHOLAS GALLAM - DIRECT:MOLONY

1 that individual that's needed in order to access that
2 telephone.

3 Q. Are they informed of anything at that time when
4 they're actually brought into the jail with regards to
5 these phone calls being recorded?

6 A. Yes, sir. They're -- actually in two different ways.
7 It's -- they're given a rules and regulations of the
8 facility which a section is, covers telephone usage.

9 And then, secondly, any time that they make a call, at
10 the beginning of that call there's an admonishment telling
11 them that that call is subject to being recorded and
12 monitored.

13 Q. And getting back to this PIN number, the PIN number
14 that each inmate is given, it's specific to every inmate?

15 A. Yes, sir. When they're booked in, when they're
16 entered into the Securis system it's generated, a PIN
17 number through the system, and then that PIN is then
18 provided to that inmate.

19 Q. What is a call detail report?

20 A. A call detail report. Of course, every call that is
21 placed is tracked. A call detail report simply lets you
22 know what calls were made by what inmate, to what number,
23 duration, from which phone in the facility it was made
24 from.

25 MR. MOLONY: Your Honor, may I approach?

NICHOLAS GALLAM - DIRECT:MOLONY

1 THE COURT: You may.

2 BY MR. MOLONY:

3 Q. Captain Gallam, I want to show you what's been marked
4 for identification as State's Exhibit Five and ask you if
5 you recognize this.

6 A. Yes.

7 Q. What is this?

8 A. That's a CD containing calls.

9 Q. Have you listened to this CD?

10 A. I have. I have.

11 Q. Okay. And with regards to these phone calls, were you
12 able to determine the PIN number that's associated with
13 them?

14 A. Yes, sir.

15 Q. And whose PIN number is that?

16 A. The PIN number came back to a Dwayne Rudd.

17 Q. What was that PIN number?

18 A. 501698.

19 Q. Were you able to determine -- how many phone calls are
20 on this disk?

21 A. Two.

22 Q. And were you able to determine the dates of the two
23 phone calls?

24 A. Yes, sir.

25 Q. And what were those dates?

NICHOLAS GALLAM - DIRECT:MOLONY

1 A. The first one being June 15th, 2013, at 4:59. And the
2 second one, July 1st, 2013, at 14:16.

3 Q. And both of those phone calls were made from the PIN
4 number associated with the Defendant?

5 A. That is correct.

6 MR. MOLONY: Your Honor, at this time the State would
7 move to introduce State's Exhibit Five into evidence.

8 MS. ZMROCZEK: May we approach, Your Honor?

9 (Off-the-record discussion.)

10 MS. ZMROCZEK: Subject to our previous agreement, Your
11 Honor.

12 MR. MOLONY: And before --

13 THE COURT: So admitted.

14 MR. MOLONY: Thank you, Judge.

15 THE COURT: I'm not sure what the previous agreement
16 is but.

17 MR. MOLONY: Yes, sir.

18 (State's Exhibit No. 5, CD containing audio recording,
19 received into evidence.)

20 BY MR. MOLONY:

21 Q. Before I ask if we can publish it, are these the
22 complete phone calls of those two calls on those two
23 dates?

24 A. No, sir. They're just excerpts of those two calls.

25 MR. MOLONY: Your Honor, at this time the State would

NICHOLAS GALLAM - CROSS:ZMROCZEK

1 move to publish Exhibit Five to the jury.

2 THE COURT: All right.

3 MS. ZMROCZEK: Your Honor, for the record, that was
4 the agreement that I was subjecting my agreement to, that
5 it was just a portion of the phone calls. It wasn't ...

6 THE COURT: Y'all have a boom box?

7 (State's Exhibit No. 5 played for the jury.)

8 MR. MOLONY: Thank you, Judge. Thank you, Captain
9 Gallam. I don't have any further questions.

10 THE COURT: All right.

11 MS. ZMROCZEK: Captain Gallam, I just have a few
12 questions for you.

13 CROSS-EXAMINATION

14 BY MS. ZMROCZEK:

15 Q. Do you have the phone log in front of you?

16 A. Yes, ma'am.

17 Q. How many phone calls were made?

18 A. Two, ma'am.

19 Q. How many phone calls were made the whole time that
20 Mr. Rudd was in the jail?

21 A. I don't have that information, ma'am.

22 Q. You do provide that information; correct?

23 A. It is available; yes, ma'am.

24 Q. Okay. And every phone call that an inmate makes is
25 recorded; correct?

1 A. That is correct; yes, ma'am.

2 Q. And then provided to the solicitor's office?

3 A. They have access to it; yes, ma'am.

4 MS. ZMROCZEK: I have no further questions.

5 THE COURT: All right. Thank you, sir. You may step
6 down.

7 THE WITNESS: Thank you, Your Honor.

8 MS. HAMMACK: Your Honor, at this time the State
9 rests.

10 THE COURT: All right. Ladies and gentlemen, the
11 State has rested which means they have now presented their
12 evidence in their case in chief.

13 I need to take up some matters with the attorneys for
14 a few minutes before we go forward at this time. So,
15 again, I'm going to ask you to step back to the jury
16 room. Please do not discuss the case while you're back
17 there. We'll bring you back in just a few minutes. Thank
18 you.

19 (Jury exits courtroom at 11:27 a.m.)

20 THE COURT: All right. Anything we need to take up at
21 this time?

22 MS. ZMROCZEK: Your Honor, at this time the defense
23 would move for a directed verdict on all the CSC second
24 charges. Your Honor, it requires -- the elements of CSC
25 second require under the definition of sexual battery

1 penetration however so slight. Your Honor, there's
2 been -- the only testimony that has been provided was from
3 the girl saying he stuck his finger in my hole.

4 We just don't feel like that -- even the evidence in
5 the best light to the State, we don't feel that that is
6 enough to survive a directed verdict in this matter on
7 those charges, Your Honor.

8 THE COURT: Tell me why it's not. What is the
9 standard?

10 MS. ZMROCZEK: The standard for --

11 THE COURT: Any direct evidence or any substantial
12 circumstantial evidence; correct?

13 MS. ZMROCZEK: And, Your Honor, if I'm reading the
14 rule right, I believe it was any, any --

15 THE COURT: Are you saying there's no evidence --

16 MS. ZMROCZEK: No, no, no, Your Honor.

17 THE COURT: -- or the evidence is not sufficient?

18 MS. ZMROCZEK: The evidence is not sufficient. It's
19 not that there was no evidence. Obviously she got up
20 there and testified.

21 THE COURT: Well, I mean, that's all it takes.

22 MS. ZMROCZEK: Well, Your Honor, based in the light of
23 all the testimony that was provided.

24 THE COURT: In the light most favorable to the
25 non-moving party which is the State. Is there any direct

1 evidence? This lady -- I mean, both these youngsters
2 testified that they were vaginally penetrated by their
3 father's finger.

4 MS. ZMROCZEK: That is their testimony; correct, Your
5 Honor.

6 THE COURT: Whether that's credible or not, there is
7 some evidence, in the Court's opinion.

8 MS. ZMROCZEK: Okay.

9 THE COURT: So I'm going to deny the motion.

10 MS. ZMROCZEK: All right. Thank you, Your Honor.
11 Those are the only motions we have at this time.

12 THE COURT: Are y'all ready to go forward?

13 MS. ZMROCZEK: We are, Your Honor. We -- I'll tell
14 you know, the Defendant --

15 THE COURT: Is your client going to testify?

16 MS. ZMROCZEK: The Defendant is going to testify.

17 THE COURT: Is he going to be the first witness?

18 MS. ZMROCZEK: He is, Your Honor.

19 THE COURT: All right.

20 MS. ZMROCZEK: We would like, not some time right now
21 but just, we do need to be -- we were expecting a few more
22 witnesses from the State. And so at some point outside of
23 the courtroom, outside of the courthouse, if I could call
24 our witnesses to have them lined up so that we could keep
25 this moving.

1 THE COURT: All right. Well, your co-counsel, you got
2 a cell phone?

3 MR. BANK: Your Honor, I don't have any of the phone
4 numbers. I mean, they're all saved in her phone as far as
5 I know. I don't have them saved in my phone.

6 THE COURT: You do have a cell phone?

7 MR. BANK: I do have a cell phone. I just don't have
8 the cell phone numbers that I need. Yes, sir.

9 THE COURT: Let's talk very briefly about your
10 witnesses. You intend to lead off with Mr. Rudd.
11 Dr. Donohoe is already finished. Who else do you intend
12 to call after that? I mean, I'm not going to limit you,
13 but.

14 MS. ZMROCZEK: I intend to call --

15 THE COURT: Debra Russell?

16 MS. ZMROCZEK: No.

17 THE COURT: Whoever that is. Douglas Parker?

18 MS. ZMROCZEK: Who? I'm sorry.

19 THE COURT: Douglas Parker.

20 MS. ZMROCZEK: Yes. Michelle Green.

21 THE COURT: Michelle Green.

22 MS. ZMROCZEK: And Sara Shealy.

23 THE COURT: No relation to the Shealy boys?

24 MS. ZMROCZEK: No relation, Your Honor.

25 THE COURT: We might have to instruct the jury.

1 MS. ZMROCZEK: Yes. No relation. And then John
2 Johnson.

3 THE COURT: John Johnson. All right. Well, I will
4 give you access to your telephone so you can get those
5 numbers.

6 MS. ZMROCZEK: I will not use it. I will make sure
7 that he calls them.

8 THE COURT: Well, I don't mind if you go call them.

9 Mr. Rudd, let me get you to stand and raise your right
10 hand, if you would, please.

11 (Defendant placed under oath.)

12 THE COURT: Mr. Rudd, I'm not going to ask you
13 anything about the facts of this case, but I do want to
14 inquire as to your understanding of your right to not
15 testify and to testify. Okay?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I need you to answer me now --

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: -- because the court reporter has to pick
20 up what you say. Your lawyer has indicated that you
21 intend to testify in this trial; is that correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. And you have had a chance to
24 be counseled by both your attorneys about your testifying
25 or not testifying?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Do you understand that you
3 have the right not to testify? They can't compel you to
4 do so. You don't have to do so. And in fact, if you
5 elected not to testify, I would instruct the jury they
6 couldn't even consider that fact that you didn't testify
7 in the course of their deliberations. Do you understand
8 that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And, of course, if you testified then
11 you're being subject to cross-examination by the counsel
12 for the State. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And in the course of that cross-
15 examination they can ask you whatever they believe to be
16 relevant and if the Court concurs, you would have to
17 answer that and they can attempt to impeach you in your
18 testimony and could impeach you with respect to any
19 criminal record you may have or any other matter that
20 would allow you to be impeached. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: I have no idea what your record is or
23 anything like that, but I just want to make sure you
24 understand that you're being subject to cross-examination.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And, of course, you also have the right
2 not to testify. You don't have to -- I mean, you also
3 have the right to testify -- I'm sorry -- to get up and
4 tell your side of the story.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And to offer what evidence that you can
7 offer. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And, again, by testifying I told you you
10 would be subject to cross-examination by the State.

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. Now is this decision your
13 decision?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And you've made this decision after having
16 counsel with both your attorneys; is that correct?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Have you had any alcoholic
19 beverages in the last 24 hours?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Have you taken any drugs or had any
22 medication in the last 24 hours?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Are you under the influence of any kind of
25 substance here today?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Your decision is being make freely and
3 voluntarily?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Nobody's threatened you, coerced you,
6 forced you or pressured you into making the decision to
7 testify; is that correct?

8 THE DEFENDANT: Yes. Yes, Your Honor. Now say
9 it again. I'm sorry.

10 THE COURT: Nobody has threatened you, coerced you,
11 forced you or pressured you to testify?

12 THE DEFENDANT: No, no.

13 THE COURT: Is that right?

14 THE DEFENDANT: That's right.

15 THE COURT: You're doing so because that's what you
16 wish to do?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you're doing so after having full
19 access to your attorneys and their counsel and advice with
20 respect to your testifying; is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Ms. Zmroczek, is there anything you want
23 me to inquire of your client?

24 MS. ZMROCZEK: No, Your Honor.

25 THE COURT: Do you believe that he fully understands

1 his rights and that this decision is his decision and his
2 decision alone after conferring with you and Mr. Bank?

3 MS. ZMROCZEK: I do, Your Honor.

4 THE COURT: Anything you want to inquire of your
5 client with respect to this issue?

6 MS. ZMROCZEK: No, Your Honor. It's my understanding
7 that he does not have a criminal record.

8 THE COURT: Well, I don't know whether he does. I
9 assume he probably didn't, but I just wanted to make sure
10 that he is subject to being impeached in cross.

11 MS. ZMROCZEK: He understands that. Thank you, Your
12 Honor.

13 THE COURT: All right. I find that he understands his
14 rights. His decision is his decision. He's not been
15 threatened, coerced, forced or pressured. He's not
16 adversely impacted by anything. He understands what he's
17 subject to with respect to cross-examination. And he's
18 had the advice of counsel. And I find that it is his
19 decision and done freely and voluntarily, knowingly and
20 intelligently.

21 Are we ready to go?

22 MS. HAMMACK: Yes, Your Honor.

23 MS. ZMROCZEK: Yes, Your Honor. If I may have a few
24 minutes to rearrange my papers. I have his list of
25 questions that I -- I just need a few minutes before the

1 jury comes in.

2 THE COURT: All right. Well, how much is a few
3 minutes?

4 MS. ZMROCZEK: Literally, like two or three minutes.

5 THE COURT: Sure. We'll sit here and watch you.

6 MS. ZMROCZEK: Okay.

7 THE COURT: See how organized an organizer you are.

8 MS. ZMROCZEK: It's a process, Judge.

9 (Pause.)

10 THE COURT: Do you need a few minutes to talk with
11 your client?

12 MS. ZMROCZEK: Yes, Your Honor.

13 (Pause.)

14 THE COURT: All right. Let's bring the jury in.

15 THE BAILIFF: Bring the jury in.

16 (Jury enters courtroom at 11:38 a.m.)

17 THE COURT: All right. Ms. Zmroczek, ready to
18 proceed?

19 MS. ZMROCZEK: Thank you, Your Honor. May it please
20 the Court.

21 THE COURT: Yes, ma'am.

22 MS. ZMROCZEK: We call Dwayne Rudd.

23 THE COURT: All right.

24 DWAYNE LEE RUDD, having been duly sworn, was examined
25 and testified as follows:

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 THE CLERK: Have a seat in the witness box. State
2 your full name for the Court, spell your last.

3 THE DEFENDANT: My name is Dwayne Rudd, D-W-A-Y-N-E.
4 R-U-D-D.

5 DIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q. Make sure you speak up loud.

8 A. Yes.

9 Q. Are you nervous?

10 A. A little.

11 Q. Have you ever gotten on that stand and practiced with
12 me before?

13 A. No.

14 Q. Never sat in the Judge's chair and practiced?

15 A. No.

16 Q. Dwayne, tell this jury, did you ever put your finger
17 in Minor 1's vagina?

18 A. No, absolutely did not.

19 Q. Did you ever put your finger in Minor 2 's vagina?

20 A. No, I absolutely did not do that.

21 Q. Did you ever squeeze Minor 1's breasts?

22 A. No, I did not.

23 Q. Did you ever squeeze Minor 2 's breasts?

24 A. No, I did not.

25 Q. Did you ever have Minor 2 sit on you and touch her

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1 butt while she was not clothed?

2 A. No, I did not.

3 Q. Dwayne, tell the jury how you checked **Minor 1**.

4 A. I would just, you know, ask her to let me look at her
5 by pulling down her underwear, laying her on -- asking her
6 to lay on the bed and just looking at her and that's it.
7 Told her to put her clothes back on.

8 Q. Why did you do that?

9 A. Because I was concerned with her clitoris and her
10 development of how her surgery was going and just how, how
11 it was healing, how it was looking, if it was done
12 correctly.

13 Q. Is that something that you noticed when you were doing
14 her aftercare?

15 A. Oh, yes.

16 Q. What kind of things did you have to do postsurgery?

17 A. I had to apply cream to her vaginal area on her
18 stitches. I had to help her get her food because she
19 couldn't get out of bed. She couldn't take -- she
20 couldn't move. She was in a lot of pain. I had to just
21 help her to the bathroom. There was a sitz bath that she
22 had to have done daily just, you know, for, to clean it
23 and infection and stuff like that. I had to walk her to
24 the bathroom, set her on the toilet. She was, you know,
25 had to be naked doing that. There was also -- she had to

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1 wear like a diaper thing that had to be changed and put,
2 put a new one on. Those are some of the things I did.

3 Q. Okay.

4 (Defendant's Exhibit No. 8, photograph, marked.)

5 BY MS. ZMROCZEK:

6 Q. Mr. Rudd, do you recognize this photograph that's been
7 marked as Defendant's Exhibit Eight?

8 A. Yes, ma'am.

9 MS. ZMROCZEK: Your Honor, at this time I'd like to
10 publish or move into evidence, Defendant's Exhibit Eight.

11 THE COURT: You got to let them look at it.

12 MS. ZMROCZEK: Oh, I did.

13 MS. HAMMACK: I looked at it, Your Honor.

14 THE COURT: Any objection?

15 MS. HAMMACK: No, Your Honor.

16 THE COURT: So admitted.

17 (Defendant's Exhibit No. 8, photograph, was received
18 into evidence.)

19 BY MS. ZMROCZEK:

20 Q. Dwayne, tell the jury what Defense Exhibit Eight
21 depicts.

22 A. It's a picture of her, my daughter's bathroom with
23 their toilet. And that's where the sitz bath would sit
24 for her to sit on.

25 Q. While you bathed her?

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1 A. Yes, to take care of her wounds.

2 Q. We'll come back to that. Mr. Rudd, tell the jury how
3 long you've been married.

4 A. Fifteen years.

5 Q. Tell them about how you met your wife.

6 A. I met her, you know, when we were younger. We, you
7 know, I went out and met her at a place called Players.
8 It was a local pool hall. And her and her friend was
9 there and we, you know, I saw her from across, you know,
10 the place and asked if I could play pool with them, and I
11 did. And they said yes. And after that I got her phone
12 number and we talked and --

13 Q. How long did y'all date?

14 A. Approximately a year. I'd say about a year.

15 Q. When did you get married?

16 A. 1998, August. I believe it was the 15th.

17 Q. And then, when was your first daughter born?

18 A. She was born a couple months after that.

19 Q. Tell the jury about the medical problems that Minor 1,
20 your daughter, had when she was born.

21 A. She had failure to thrive where she would not eat.

22 And she had her -- obviously the congenital adrenal
23 hyperplasia. She had to be put in ICU for that reason,
24 for failure to thrive. She almost actually died from that
25 at that time. It was very serious.

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1 Q. As she grew, what kind of problems did she have?

2 A. She had problems with, you know, she would be getting,
3 you know, she'd get a fever, she would throw up her food.
4 She wouldn't hold down her food. And she would -- she
5 just didn't, you know, wasn't able to comprehend things
6 and, you know, things like that. She wasn't -- she had a
7 lot of health problems, a lot of, lot of problems. We
8 were in and out of the hospital her whole life with Minor 1.

9 Q. Okay. When you said that she had eating problems --

10 A. Yes.

11 Q. -- what did you have to do to monitor that?

12 A. We --

13 Q. Let me ask it this way: Was she given any medication?

14 A. Yes. She was actually given, it was an
15 antihistamine. She had to take daily to keep, give her an
16 appetite where she would eat because she was so
17 underweight. I mean, it was getting pretty serious where
18 she was so underweight that it was becoming where you'd
19 see her bones. Her bones would stick out of her back and
20 her rib cage was starting to show so, yeah, they gave her
21 medicine for that.

22 Q. What other kind of medicine did she take?

23 A. The medicine Dr. Houk -- Donohoe was talking about,
24 the cortisone and florinef for retaining salt. She
25 couldn't retain salt.

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1 Q. And who gave her that medication?

2 A. Occasionally I did, and my wife.

3 Q. Did y'all share duties in the house?

4 A. Absolutely, yeah, we did.

5 Q. You're not telling this jury -- are you -- tell the
6 jury what your role was.

7 A. My role was to take care of the girls. Ever since
8 they were little I've been a stay-at-home dad. You know,
9 every need they had was me. I mean, if they had an issue
10 with anything in their life it was, they came to me about
11 it. If they, if they wanted, if they had -- if they
12 wanted to be -- if they had a cut or a bruise or
13 something, they came to Daddy about it. Their whole life,
14 you know, was me just raising them, feeding them, clothing
15 them.

16 Q. Are you telling this jury that Jennifer, your wife,
17 wasn't involved at all?

18 A. She was involved when she would come home from work,
19 you know.

20 Q. But she was involved?

21 A. Yeah, so, but, yeah.

22 Q. She loved them just as much as you do?

23 A. Yeah. I would say so. Yeah, she's a mom.

24 Q. Tell the jury about your marriage, your relationship
25 with Jennifer.

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1 A. From beginning to now?

2 Q. Yes.

3 A. At first it was really, it was good when we first met,
4 you know. We, well, we were in love. And I loved, you
5 know, I fell in love with her almost immediately.

6 And, you know, we, you know, we had some issues at
7 first. We didn't have very much money. We were starting
8 off, you know, young. We were young and didn't have much
9 money, you know. We rented an apartment and she'd come
10 see me from time to time. She was still in college at
11 that time. And, eventually we got, you know, our
12 relationship grew and she, we moved into a home in the
13 area.

14 Q. When did you move into your last residence?

15 A. The very last residence, [REDACTED]. We moved in
16 there around 2006.

17 Q. Did you buy that?

18 A. Yes, we did. We had it built.

19 Q. You had it built?

20 A. We had it built, yes, yes.

21 Q. You talked about she was still in college. Did you go
22 to college?

23 A. No, I didn't.

24 Q. What's your education level?

25 A. I quit in the eighth grade but then went back for my

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1 GED but I never took the GED test.

2 Q. You haven't taken the GED test?

3 A. No.

4 Q. What kind of work do you do, Mr. Rudd?

5 A. I renovate homes. I buy foreclosure homes, fix them
6 up, sell them for a profit.

7 Q. Were the kids in public school?

8 A. They were in public school their whole life up until
9 two years ago we decided to -- I actually wanted them to
10 not be in public school. You know, I thought it was
11 better for them to be at home. Yeah, they were in --
12 their whole life up until two years they were in public
13 school.

14 Q. Was that your decision alone or was that something you
15 and your wife discussed?

16 A. We both discussed it. We both discussed it, I didn't
17 know what school would be best for them. I mean, I'm
18 sorry. I didn't know what the home school programs or
19 anything like that would be best and she did the research
20 on that.

21 Q. When they did go to school, where did they go?

22 A. Well, they started out at Byrd Elementary School in
23 Graniteville and they graduated from there. And then went
24 to Midland Valley Prep from there.

25 Q. Did they take the bus?

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1 A. No.

2 Q. How would they get to school?

3 A. They got to school by me taking them.

4 Q. Did Jennifer take them sometimes?

5 A. If I couldn't because I may have had an issue with

6 work or something, she may have had to do it.

7 Q. And she would do that; right?

8 A. Yeah, she would.

9 Q. And who picked them up?

10 A. Me. I picked them up every day.

11 Q. Did she pick them up maybe if you got stuck at work

12 once or twice?

13 A. Yeah.

14 Q. Who went on field trips?

15 A. Yeah, I did.

16 Q. Did she go?

17 A. Yeah, she went on field trips, yeah.

18 Q. She, Jennifer went as well when she could?

19 A. Yeah.

20 Q. Okay. After you had picked the girls up from school,

21 what would you do?

22 A. I would help them with their homework. You know,

23 just, just be home taking care of them. Or, actually when

24 I was in school -- when they were -- actually when they

25 were in school, not home school but when they were in

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1 school, I'd have to pick them up from school and take them
2 to the job where I worked, like, the house, because I was
3 able to do that. I actually bought a table where I could
4 take them and they could do their schoolwork at the house
5 where I was working at and I'd help them with their school
6 work while I was working and stuff like that.

7 Q. Did they help you with work?

8 A. Oh, yeah. I wanted them to learn how to do it.

9 Q. I'm going to show you a defense exhibit that's already
10 in evidence, Defense Exhibit Two. Tell the jury what that
11 is.

12 A. Let me see. That is **Minor 2** doing some caulking work
13 around a door frame.

14 Q. And you taught her how to do that?

15 A. Yes, I did.

16 Q. What kind of students were they?

17 A. **Minor 2** was an excellent student. She seemed to do,
18 really have no trouble with school. I mean, occasionally
19 she would have some trouble with math and I'd have to help
20 her with that.

21 But **Minor 1** struggled severely with school, brought home
22 constant Fs. I mean, sometimes four or five Fs a week on
23 a progress report that the teacher would send.

24 Q. Did **Minor 1**, was she in special classes?

25 A. Oh, yeah. Most definitely, yeah. She was in special

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1 classes -- or, yeah, she was.

2 Q. Did you have meetings with the school, you and your
3 wife?

4 A. Yes.

5 Q. Go to the school for meetings to discuss these?

6 A. Yes, I did, yes.

7 Q. Was she still having trouble in school even with the
8 plans the teacher would come up with?

9 A. Yes. We were trying to get her some extra help, you
10 know, because we were struggling with trying to teach her
11 at home. I was taking two hours to try to explain to her
12 something, sometimes longer than that.

13 Q. Okay. Then the last year in 2012, that school year is
14 when you're saying that they were home schooled?

15 A. Last year of 2012, yeah.

16 Q. When they had -- right around the time when
17 Jennifer -- or Minor1 had her surgery?

18 A. Yes.

19 Q. Tell the jury about the visits to Dr. Houk, the
20 endocrinologist.

21 A. Dr. Houk, he would require me or my wife, but it was
22 me mainly because, because she was working. I would take
23 her to his office on appointments that we scheduled for
24 him to examine her, her genitalia to see if, you know,
25 because that, her -- part of her congenital hyperplasia,

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1 you know, she can develop too soon. And that was one of
2 things he would do.

3 He would also take blood from her and the blood work
4 would be used to determine if her medicine was off, you
5 know. If it was off, you know, then she needed more or if
6 she needed less because that would affect her genitalia,
7 her clitoris, with growth and other issues that she would
8 have. It would cause a lot of problems if it wasn't
9 right.

10 And he explained that it was, you know, it was very
11 difficult. It was a science to try to get it just right.
12 That was one of the things.

13 Asking us also, you know, asking me, you know, if my
14 wife was there, you know, did we notice anything, any
15 changes with her, is there -- how is she doing and we
16 would make reports if she had either a fever or she
17 vomited, things like that.

18 Q. So talking with Dr. Houk and checking on your
19 daughter, it didn't all involve the genitalia, did it?
20 Did it involve her overall health?

21 A. Oh, yes, yes, for sure, because the medicine would
22 affect her health as well, the medicine she took. It
23 could make her sick or, you know.

24 Q. How long has she been going to doctors and
25 specialists?

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1 A. Ever since he was born. The day she was born.

2 Q. When she was born and you noticed these problems, did
3 the doctors talk to y'all about it?

4 A. Yeah. Well, at first when she was born we were
5 clueless about anything that was going on. The doctors
6 actually kind of rushed her away when she was born and we
7 didn't understand what was going on. Later they come back
8 to explain to us that she had this congenital adrenal
9 hyperplasia.

10 Q. Is this something that you've had to learn about?

11 A. Oh, yes, definitely. Yeah. We didn't have a clue of
12 what it was.

13 Q. Is this something that you're comfortable or
14 uncomfortable discussing?

15 A. Um, I can talk about it, but, you know, I didn't want
16 to embarrass my girl with talking about people, you know,
17 when she was around or, you know, I didn't want people to
18 really know too much about it. It was kind of a private
19 thing.

20 Q. Do you recall May 23rd, 2012? Excuse me. May 23rd,
21 2013?

22 A. Yes, I do.

23 Q. What did you do that day?

24 A. That day, I woke up as I have done and gotten, started
25 getting ready for work. I think it was around maybe 10

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1 o'clock or something like that.

2 When I got up, I started getting ready for work and my
3 two girls were there with me. And normal, everything was
4 fine. They came and asked me if they could go outside and
5 ride our four-wheelers. We had two four-wheelers for them
6 to ride. And when they did that, you know, they were
7 outside riding and I'm inside getting ready, you know, for
8 my day.

9 And my youngest girl, daughter, Minor2 , comes in and
10 says, Daddy, the four-wheeler ran out of gas and I said,
11 okay. She said, could you go get some. I said yes. So
12 as I did that I started to walk outside to go get the gas
13 and I grabbed the gas can, was walking to my truck. Just
14 before I got to my truck, four deputy sheriffs or cars
15 just, I mean, rushed up and, like, I mean, like a SWAT
16 team. And I was just stunned.

17 And when that happened they, they asked me if my name
18 was Dwayne Rudd and I said yes. And I said what's going
19 on and why are y'all here. And they said they couldn't
20 tell me that right now and then --

21 Q. Where was your wife at this time?

22 A. Supposedly, I thought she was at work.

23 Q. Okay. And where were your daughters when the police
24 got there?

25 A. Well, when they first pulled up they were on the four-

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 wheelers.

2 Q. And then after?

3 A. Well, I mean, the one four-wheeler but the other one
4 was, Minor 1 was still riding the four-wheeler, but Minor 2
5 was the one that said that the other one didn't work,
6 didn't have gas in it.

7 Q. And then did you see your daughters again?

8 A. When they pulled up -- no, they rushed them into the
9 house. The victim -- if I'm saying this correctly, victim
10 advocate said they didn't want them to be around.

11 Q. When was the first time since May 23rd, 2013, that
12 you've seen your daughters?

13 A. I haven't seen them until they were in the courtroom.

14 Q. Until they were in the courtroom?

15 A. Yeah. That's it.

16 Q. When the police came up and you became aware of the
17 allegations, what went through your mind?

18 A. I was shocked. I was -- didn't understand why it was,
19 what was going on, why it was being said, why they -- I
20 just didn't understand. I was shocked and confused.

21 Q. Do you recall meeting with Ms. Timmerman at your
22 house?

23 A. Yes.

24 Q. Did she tell you -- what did she tell you?

25 A. She came up to me and she had a book, a pad and paper

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 and asked me my general information, my name, Dwayne Rudd,
2 and my, you know, who I was, my age.

3 Q. She didn't have a uniform on; right?

4 A. No.

5 Q. Did you still think she was with the police?

6 A. She came with the police. She seemed to be with the
7 police.

8 Q. What kind of things did you tell her?

9 A. Asked her why was -- why was she here, what was going
10 on. I mean, that's what I asked her.

11 Q. What was your understanding as to why she was there?

12 A. I was -- from what I understood there was an
13 allegation that I inappropriately touched my, one of my
14 daughters.

15 Q. Have you inappropriately touched your daughters?

16 A. No, I have not.

17 Q. Did you try to explain to her what you did or did she
18 ask?

19 A. Yeah, she -- what it was, I asked her, I asked her
20 what was she there for. And she said I was there for --
21 someone called and said that I stuck my finger in one of
22 my daughters. And I said no, no, I didn't do that. I
23 said, who said that. And she --

24 Q. Were you told who said that?

25 A. No, she wouldn't tell me.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 Q. What happened next?

2 A. I just was, you know, you know, just sitting there
3 trying to think about what, what was going on. And she,
4 she asked me some more questions. I can't remember what
5 it was, but then I, when I said who, who called, she said
6 well, why would you think anybody would call. And I was
7 like, I guess -- I don't know. I was trying to figure it
8 out myself in my head. I was trying to wonder why. And I
9 said, I guess maybe somebody misunderstood or, you know,
10 got something out of context. I checked one of my
11 daughters and compared her because she had surgery.

12 Q. The doctor never told you to compare your daughters;
13 did he?

14 A. No.

15 Q. Why were you doing it? Why did you compare?

16 A. Because from my understanding from the surgery it, you
17 know, it was supposed to look like a normal vagina. And
18 it was supposed to, you know, that was what they were
19 doing, construction to make it look normal. That was a
20 concern of mine, and that it was healing correctly, and
21 that it would just look normal. That it was normal to a
22 normal vagina.

23 Q. So when you looked, did you -- did -- how did you look
24 -- did it -- did it require you touching them?

25 A. No, huh-uh. No.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 Q. Do you think that that was a right thing for you to
2 do?

3 A. At the time I thought it was okay. I mean, I was
4 their father. I raised them. I've been there their whole
5 life and didn't think it was a problem or an issue.

6 Q. You heard the videotape?

7 A. Yes.

8 Q. Do you believe you committed a sin?

9 A. No.

10 Q. What were you talking about?

11 A. Well, brother, I call him brother but John, he goes to
12 church with me. He was consulting me in the jail and, you
13 know, as a Christian, I am -- I profess to be a born-again
14 Christian. And as a Christian, you know, we -- the Bible
15 describes that, you know, sin can be anything from, you
16 know, a lie, you know, stealing, all these things may be,
17 you know, not being faithful to God, not reading your
18 Bible all the time. I was referring to him that, you
19 know, maybe I wasn't close enough to God and this was
20 something God was, you know, allowing me to go through.

21 Q. Are you sure you weren't just saying that you sinned
22 because you touched your daughters inappropriately?

23 A. No, I was not -- yeah -- no, no. Nothing to do with
24 that at all.

25 Q. When you were taking care of Minor 1 and Minor 2 , but

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 just strictly Minor 1 and her health concerns, did you
2 discuss that with your wife? Did she know about it?

3 A. Yes, I did. I did discuss that with her. I talked to
4 her when she'd come home from work. She would go to the
5 bathroom -- my wife's schedule was when she'd go to work
6 she'd come home, she cooked for the kids because I was on
7 a diet, eating different food. I didn't like their food
8 so she cooked something different. She'd cook for the
9 kids.

10 She'd do that. Not until recently of this year she
11 started helping Minor 1 a little bit more with her work.
12 Before that I was, but she would do that and then she
13 would take a bath. And then when she'd take a bath the
14 family, myself, my daughters would go -- that's where we
15 would conversate (verbatim) with her because that was the
16 time that you could.

17 And so I'd go in there and I would talk to her about
18 the day as I always did. And I would tell her, say, you
19 know, I checked Minor 2 today, you know. And she wouldn't
20 say nothing. She'd be like okay. I was concerned with
21 her, you know, the size of her clitoris.

22 Q. Do you mean Minor 2 ? Did you tell her you checked
23 Minor 2 today?

24 A. I told her --

25 Q. Did you check Minor 2 or did you check Minor 1?

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 A. Well, I would tell her I would check Minor 1 and I told
2 her I'd check Minor 2 .

3 Q. Uh-huh.

4 A. And she didn't seem to have any problems with any of
5 that.

6 Q. And it was all surrounding the surgery and the
7 treatment and your ability to know if things were normal
8 or not; right?

9 A. Yes.

10 Q. Did you go to work after, after -- in the afternoons?

11 A. Yeah. Yes, I did.

12 Q. Not every day, but sometimes?

13 A. No, not every day. Sometimes.

14 Q. You both had a cell phone, you and Jennifer; right?

15 MS. HAMMACK: Your Honor, I'm going to object. She's
16 asking leading questions.

17 BY MS. ZMROCZEK:

18 Q. Okay. Do you have a cell phone?

19 A. Yes, I do.

20 Q. Does Jennifer have a cell phone?

21 A. Yes, she does.

22 Q. Did y'all communicate through cell phones?

23 A. Yes, we did.

24 Q. Did you call her during the day at work?

25 THE COURT: You're still leading.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 BY MS. ZMROCZEK:

2 Q. Okay. When did you -- when would you communicate with
3 Jennifer?

4 A. As in, for, any particular reason at all? I would
5 call her at work. I could call her at work. I could talk
6 to her when she got home.

7 Q. Did y'all communicate very well?

8 A. Did we communicate very well?

9 Q. Did you communicate very well? Did y'all talk to each
10 other?

11 A. Yeah, yeah. We talked to each other.

12 Q. Did y'all fight?

13 A. Yeah.

14 Q. What did y'all fight about?

15 A. Money because I spent, I spent a lot of money buying
16 things like jet skis, four-wheelers, such-and-such.

17 Q. Jet skis, four-wheelers. Were those for you?

18 A. It was for the family to go out and enjoy, you know.
19 I'm -- for me, I never had those kind of things as a kid
20 and I wanted to experience -- I wanted my kids to
21 experience, you know, things I didn't have as a kid.

22 So I would use those as, you know, go four-wheeling
23 with them, going fishing with them, you know, yeah, that's
24 for the kids and for the family to enjoy together, family
25 time.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 Q. How much money did you make?

2 A. Varies. Probably could be \$40,000, somewhere around
3 there, a year.

4 Q. How much money did Jennifer make?

5 A. About a \$120,000 a year.

6 Q. What -- do you recall specifically having any fights
7 around May of 2013?

8 A. Yeah.

9 Q. What were those fights about?

10 A. About money.

11 Q. Why were you fighting about money?

12 A. Well, I was looking to buy -- I wanted to buy a jet
13 ski because we had one already and it wasn't that big.
14 And I wanted us to have two of them so that we would all,
15 you know, because we'd have to share that one. And I was
16 looking to buy one and they were quite expensive. I was
17 pretty adamant about getting it.

18 Q. And you fought with her about that?

19 A. Yes.

20 Q. Dwayne, who's the first person that you called when
21 the police left your house and your family left your
22 house?

23 A. My wife.

24 Q. Have you had a chance to speak to her since then?

25 A. No.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 Q. What's the next form of communication you received
2 from your wife?

3 A. The next form of communication?

4 Q. Form of communication.

5 A. A divorce petition.

6 Q. What did that divorce petition say?

7 A. That she was --

8 MS. HAMMACK: Your Honor, I'm going to object to the
9 hearsay, asking about the substance of a document.

10 THE COURT: What difference does it make?

11 MS. HAMMACK: And it's still hearsay.

12 MS. ZMROCZEK: Offering it for the truth of the matter
13 asserted, Your Honor, asking him --

14 THE COURT: Wait a minute. You're not offering it for
15 the truth of the matter asserted.

16 MS. ZMROCZEK: What the complaint was --

17 THE COURT: All right. Objection's sustained.

18 MS. ZMROCZEK: Okay.

19 Q. Mr. Rudd, did you ever hit your wife?

20 A. No.

21 Q. Did you ever threaten your wife?

22 A. No.

23 Q. When the police came that day, were you served with
24 papers saying you couldn't talk to your wife on May 23rd?

25 A. Yes.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 Q. On May 23rd, the day the police came, the first day
2 the police came.

3 A. Was I served papers that I couldn't talk to my wife?

4 Q. Right. On May 23rd.

5 A. On May 23rd?

6 Q. Right.

7 A. No.

8 Q. When did the police tell you you couldn't talk to her,
9 or DSS, anybody tell you you couldn't talk to her?

10 A. That would be when I received some divorce papers.

11 Q. What else did you receive besides divorce papers?

12 A. The protection of order saying no contact.

13 Q. No contact?

14 A. No contact with anybody or with them at all.

15 Q. Did you write on the wall?

16 A. I did.

17 Q. Tell the jury why.

18 A. Well, because I've been with my kids since they were
19 babies. They've been in my life. I've never been without
20 them. I've been their father. I've been there for them
21 for everything in their life. I love them with all my
22 heart and soul. And they were immediately ripped from my
23 life. And I was just, I was in shock. I couldn't believe
24 it that they weren't there.

25 And I knew that -- well, I didn't know, but I had a

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1 possibility that I wouldn't be able to talk to them again
2 or see them again because I knew that the police were all
3 involved and she took, you know, they left with their
4 mom. And I just wanted them to know that I love them and
5 that I care for them.

6 And I put it on the wall because I knew my wife was so
7 upset. I mean, at this point I knew she was upset. And
8 if I wrote, I felt like if I wrote a letter or a note or
9 something, she would just rip it up and they would never
10 even see it. And it was important for me for them to know
11 that I love them.

12 (Defendant's Exhibit No. 9, photograph, marked for
13 identification.)

14 BY MS. ZMROCZEK:

15 Q. Mr. Rudd, I'm going to show you what's been marked as
16 Defense Exhibit Nine. Does that fairly and accurately --
17 can you identify this?

18 A. Yes, ma'am.

19 Q. Does it fairly and accurately represent --

20 A. Yes, ma'am.

21 MS. ZMROCZEK: Your Honor, at this point we'd like to
22 introduce Defendant's Exhibit Nine into evidence.

23 MS. HAMMACK: Same relevance objection.

24 THE COURT: I don't know what it is.

25 MS. ZMROCZEK: Your Honor, it depicts a writing.

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 (Document handed to the Judge.)

2 THE COURT: I don't know what it is but overrule the
3 objection.

4 (Defendant's Exhibit No. 9, photograph, received into
5 evidence.)

6 BY MS. ZMROCZEK:

7 Q. Can you tell the jury what this picture depicts?

8 A. It depicts, I wanted to just keep track of my
9 daughters' growing and have a memory of their growth and
10 we wrote it on -- we made a little chart on the door frame
11 in our house for it, to measure them, just to keep track
12 of their growth as they're growing up.

13 Q. I'm showing you State's Exhibits Three and Four that
14 are already into evidence. Did you write on that? Did
15 you write these?

16 A. Let me see. Yes, ma'am.

17 Q. Tell the jury why you wrote on **Minor 2** 's wall.

18 A. I wrote on **Minor 2** 's wall because I felt like, you
19 know, she was -- as a kid, you know, she, she was like
20 with me all the time, you know. We fished together. We,
21 you know, went hunting together. This was, you know, like
22 we were real close. And we did everything together and --

23 Q. Why did you write -- sorry, forgive me -- on the wall?

24 A. Because when I was going through this thing I started
25 realizing, you know, I started thinking about how **Minor 1**

DWAYNE LEE RUDD - DIRECT:ZMROCZEK

1 was, you know, how we were kind of, we, we were really
2 hard on her about school and her main place that she
3 stayed was in her room.

4 Minor 1 stayed in her -- unless we, I took her out or
5 something, that's why I took her out and I spent time with
6 her because I felt bad for her being in that room. I
7 wrote sorry on that wall for that, you know, she had to
8 stay in that room that she was -- it was like a prison to
9 her. And I just, I just wanted her to know that, that,
10 that I was sorry that she had to go through that. And I
11 wished I could have change that had.

12 Q. Why were you asking for your children's forgiveness?

13 A. Because, well, I was asking for Minor 2 's forgiveness
14 because there was a piece of paper that she -- or,
15 actually she used to write -- Minor 2 's very artistic.
16 And she likes to draw and make little, little, like, cards
17 and things. And I found one of them during all of this.
18 I was looking through my drawers getting all my stuff. I
19 found one of the cards that she had made and, you know, at
20 this moment everything is starting to be more clear. I'm
21 starting to just look back at things. And I saw the card
22 and I didn't notice it before. She was writing a, made a
23 book about how she loved me. She loved her daddy, you
24 know, how much she cared for her family. Was a book about
25 her family.

DWAYNE LEE RUDD - CROSS:HAMMACK

1 So that book, I actually started seeing that my
2 daughter, you know, just loves me. And she was doing all
3 these things. And I just threw them in the drawer at the
4 time. So I wrote on the wall. I drew it actually on the
5 wall so she'd know what I was talking about, that she'd
6 understand that I got this, her message. And I was
7 telling her I'm sorry. Forgive me for not seeing this
8 before, not seeing that message before, not knowing what
9 she wrote to me before, not paying that much attention to
10 her, her little cards and notes that she wrote to me.

11 Q. Dwayne, did you -- why -- I want to make sure I phrase
12 the question correctly.

13 Did you want to divorce your wife?

14 A. No.

15 Q. Did you ever touch your children in a sexual way or
16 for your sexual gratification?

17 A. Never.

18 MS. ZMROCZEK: Please answer any questions that the
19 solicitor has.

20 THE COURT: All right.

21 CROSS-EXAMINATION

22 BY MS. HAMMACK:

23 Q. Mr. Rudd, how old are you?

24 A. I'm 40.

25 Q. Minor 1 and Minor 2 , they're your girls?

DWAYNE LEE RUDD - CROSS:HAMMACK

- 1 A. Yes.
- 2 Q. Your biological daughters?
- 3 A. Yes, ma'am.
- 4 Q. How old are they?
- 5 A. Well, right now Minor 2 is 13, and Minor 1 will be 15
- 6 but she's 14.
- 7 Q. She'll be 15 tomorrow?
- 8 A. Yes, ma'am.
- 9 Q. You said you were real close to your girls; right?
- 10 A. Yes.
- 11 Q. You bought them presents, wanted to give them things
- 12 that you never got to experience?
- 13 A. Yes.
- 14 Q. Let's talk a little bit about this whole surgery thing
- 15 that's come up a lot.
- 16 A. Okay.
- 17 Q. That surgery was in October of 2012; right?
- 18 A. Yes.
- 19 Q. And a doctor had to do that surgery; right?
- 20 A. Yes.
- 21 Q. And even before the surgery y'all took Minor 1 to a
- 22 doctor; right?
- 23 A. Yes.
- 24 Q. When did you go to medical school?
- 25 A. I didn't.

DWAYNE LEE RUDD - CROSS:HAMMACK

1 Q. You don't have a medical degree?

2 A. I do not.

3 Q. Because you're not a doctor; right?

4 A. No.

5 Q. And that's why you take your kids to the doctor;
6 right?

7 A. Yes.

8 Q. That's why you trust doctors with medical care. Would
9 you trust a doctor to caulk your house?

10 A. Yeah.

11 Q. Is that something that doctors do all the time?

12 A. Sure. They have -- they do that if they wanted to,
13 yeah. I don't know if they do it all the time.

14 Q. But specifically for medical care, you trust doctors
15 with your children; right?

16 A. Yes.

17 Q. And your testimony just a minute ago was that after
18 Minor 1 had surgery that the doctor gave you a cream --

19 A. Yes.

20 Q. -- to put on; right?

21 A. Yes.

22 Q. For infection?

23 A. Yes.

24 Q. And you said that after the surgery you had concerns
25 that it was done correctly. That was your testimony just

DWAYNE LEE RUDD - CROSS:HAMMACK

1 a minute ago.

2 A. Concerns that it was either done correctly or it
3 looked normal.

4 Q. Okay. And because of that you asked **Minor 1** to let you
5 look at her?

6 A. Yes.

7 Q. And it was your testimony that you looked at her in
8 your bedroom?

9 A. Today I testified to that. Okay.

10 Q. And it was your testimony that you had her lay down on
11 the bed; right?

12 A. Yes.

13 Q. You had her lay down on the bed without her pants or
14 her panties on; right?

15 A. Yes.

16 Q. And that's when you would check her?

17 A. Yes.

18 Q. **Minor 1**'s mom wasn't there when you checked her; was
19 she?

20 A. No.

21 Q. But she came home that night; right? Your testimony
22 was you talked to her about it.

23 A. Yes.

24 Q. But she wasn't there when you checked her in your
25 bedroom alone.

DWAYNE LEE RUDD - CROSS:HAMMACK

1 A. No.

2 Q. And you've heard testimony earlier and you talked
3 about this whole cortisone shot thing. You had to give
4 **Minor 1** cortisone shots sometimes?

5 A. Yes.

6 Q. In her leg?

7 A. In her thigh.

8 Q. Sorry. I'm over here. In her leg?

9 A. Yeah, thigh, yeah.

10 Q. And your wife would have to kind of help you with that
11 because it hurt; right?

12 A. Uh, not all the time.

13 Q. But your wife could help hold **Minor 1** if you were having
14 to administer the shot?

15 A. If necessary.

16 Q. Okay. And you just testified that you checked **Minor 1**
17 and you checked **Minor 2** ; right?

18 A. Yes.

19 Q. You checked **Minor 1** because you were concerned about her
20 clitoris?

21 A. That was one issue.

22 Q. Okay. And you talked about talking to DSS and you
23 talked to Ms. Esther and you talked to Ms. Shannon?

24 A. Yes.

25 Q. And you told Ms. Esther that you checked your girls?

DWAYNE LEE RUDD - CROSS:HAMMACK

1 A. I told her I, I checked, I checked to compare.

2 Q. And compare them; right?

3 A. Right.

4 Q. Okay. And you told Shannon that you checked and
5 compared your girls?

6 A. Shannon which is, with?

7 Q. Brown. The DSS lady.

8 A. I told her I compared my girls, yes, after surgery.

9 Q. And in fact when you told these DSS ladies that, both
10 of them asked you if the doctor told you to compare the
11 girls; right?

12 A. I don't recall the DSS lady asking me that. And
13 what's her name, Ms. Brown?

14 Q. Uh-huh.

15 A. I don't recall her, I don't remember her asking me
16 that.

17 Q. Okay. But Esther asked you that?

18 A. I believe she did.

19 Q. And you told her that the doctor didn't tell you to
20 compare?

21 A. I told her that about -- no, I didn't tell her that
22 the doctor didn't tell me to compare. I told her that I
23 was going to use a device -- that they were going to use a
24 device and the doctor didn't tell me to use that.

25 Q. Because you're not a doctor; right?

DWAYNE LEE RUDD - CROSS:HAMMACK

- 1 A. I'm her father. I'm a father.
- 2 Q. You're not a doctor --
- 3 A. I'm not a doctor.
- 4 Q. -- right?
- 5 A. No.
- 6 Q. Okay. Let's talk about one of the things that
- 7 Ms. Zmroczek brought up. You haven't seen your girls
- 8 since May 23rd. You haven't talked to your girls since
- 9 May 23rd; right?
- 10 A. Right.
- 11 Q. Well, that's not quite true; is it?
- 12 A. That's true.
- 13 Q. Okay. You wrote notes on their walls for them; right?
- 14 A. I wrote on walls on their note -- or on the wall, yes.
- 15 Q. Wrote them letters?
- 16 A. Yes.
- 17 Q. Tried to call your wife?
- 18 A. That was the day of the incident.
- 19 Q. And after that?
- 20 A. A couple times.
- 21 Q. Tried to text your wife?
- 22 A. A couple times after the incident.
- 23 Q. Tried to use that whole Facebook thing to talk to your
- 24 wife?
- 25 A. No.

DWAYNE LEE RUDD - CROSS:HAMMACK

1 Q. And when Ms. Esther came and talked to you, you didn't
2 sign that safety plan thing that she gave you; did you?

3 A. I did not.

4 Q. Did you bother to read that safety plan?

5 A. I didn't even -- they didn't even hand me -- they
6 didn't show it to me, never.

7 Q. Because you refused to sign it; right?

8 A. I did not refuse to sign it.

9 Q. So it's your testimony today that you didn't know you
10 weren't supposed to be contacting your girls?

11 A. Not until after I got a protective order. To my
12 recollection -- I mean, to my understanding it was not
13 until I got a protective order that I wasn't supposed to
14 contact them. I wasn't the -- as far as I understood,
15 they were telling me they were going to remove them from
16 the house until they did their investigation. That was
17 all that I was told.

18 Q. It's your testimony today, you just said on direct,
19 that you didn't think it was a problem or an issue to look
20 at your daughters. That was your testimony?

21 A. To compare for a normal one to a, one that wasn't
22 normal.

23 Q. Okay. Just a couple more questions for you,
24 Mr. Rudd.

25 You said on direct that you wanted your daughters to

DWAYNE LEE RUDD - CROSS:HAMMACK

1 be home schooled; right? That's what you said; isn't it?

2 You said, I wanted them to be home schooled; right?

3 A. When they got older.

4 Q. Okay. And that would be home with you; right?

5 A. Sure.

6 Q. With Mom out of the house; right?

7 A. Right.

8 Q. Okay. We looked at some of those pictures over
9 there. You taught your girls about working on houses;
10 didn't you?

11 A. Yeah.

12 Q. You didn't teach your girls about sex, though; right?

13 A. No.

14 Q. Because you told your wife that they weren't ready to
15 know about sex; right?

16 A. They weren't ready to know about sex.

17 Q. That's why you didn't tell them.

18 A. I don't remember telling my wife that.

19 Q. Okay. Let's talk about a couple other things you
20 said. While you were in the jail, you made phone calls?

21 A. Yes.

22 Q. Talked to your sister a lot; didn't you?

23 A. Yeah.

24 Q. Okay. Do you remember talking to your sister on June
25 15th, 2013?

DWAYNE LEE RUDD - CROSS:HAMMACK

1 A. I talked to her a couple times. I do not remember
2 that specific day talking to her.

3 Q. Okay. And you would admit that you told your sister,
4 talking about your wife, if she feels I did something
5 wrong there still should be some forgiveness there?

6 A. I don't remember saying that to her.

7 Q. Would it help you to remember if you listened to you
8 say it? I got it on a CD. Would it help you to remember?

9 A. If -- go ahead.

10 (CD played for the jury.)

11 BY MS. HAMMACK:

12 Q. I pray the Lord will soften her heart and find some
13 forgiveness; is that your exact words?

14 MS. ZMROCZEK: Object. That's not the question that
15 she asked.

16 THE DEFENDANT: I didn't even --

17 THE COURT: Overruled.

18 BY MS. HAMMACK:

19 Q. Let's talk about some other things that you said to
20 your sister on these phone calls.

21 You would admit that you told your sister, again,
22 talking about your wife, even if she thinks I did
23 something, my girls are not hurt. I didn't hurt them.
24 They were fine up until the day this happened. They were
25 fine.

DWAYNE LEE RUDD - CROSS:HAMMACK

1 You would admit you said that?

2 A. If, if it's on -- if it's -- I don't remember it,
3 but...

4 Q. Would it help if we played it?

5 A. If you want to. I mean, I just don't remember every
6 call that I had said -- to talk to my sister in that jail.

7 Q. Does it sound like something you would say?

8 A. Sounds like something I probably would have said.

9 Q. You would admit that you told your sister, whatever
10 I'm being accused of, there is one thing that I'm being
11 accused of that I didn't do?

12 A. Okay.

13 Q. Do you admit that you said that?

14 A. Say it again.

15 Q. Whatever I'm being accused of, there is one thing that
16 I'm being accused of that I didn't do.

17 A. I don't remember.

18 Q. Would it refresh your memory to play the jail call?

19 A. Sure.

20 (CD played for the jury.)

21 BY MS. HAMMACK:

22 Q. And, Mr. Rudd, isn't true that you told your sister
23 that, maybe my choices and my thinking was really warped?

24 A. My choices and my thinking was really warped.

25 Q. Isn't it true you said that to your sister?

DWAYNE LEE RUDD - REDIRECT:ZMROCZEK

1 A. Again, I don't remember saying it, but you can play it
2 if it's on there.

3 Q. Are you denying that you said that?

4 A. No. I don't remember saying those things. I was in
5 jail. This was a long time ago.

6 Q. So you don't remember if you told your sister that
7 your thinking was warped?

8 A. No, I don't.

9 MS. HAMMACK: Thank you.

10 REDIRECT EXAMINATION

11 BY MS. ZMROCZEK:

12 Q. You did not get to hear the phone call; right?

13 A. Yeah, I didn't. I didn't hear it at all.

14 Q. Why do you think your thinking was warped?

15 A. Why do I think my thinking was warped?

16 Q. Why were you having those conversations with your
17 sister?

18 A. About being what exactly? About the -- my sister was
19 talking to me and about, several things, about, you know,
20 when I'm getting out, about what, what's going on with the
21 stuff that she has, you know, money and stuff of mine.

22 I just, I don't even remember the conversation
23 about --

24 Q. Do you remember -- do you -- tell the jury why your
25 thinking is warped. Why -- do you think you did anything

DWAYNE LEE RUDD - REDIRECT:ZMROCZEK

1 wrong?

2 A. No, I do not think I did anything wrong.

3 Q. Then explain to the jury when they take a snippet and
4 they tell you that your thinking was warped, what's that
5 referring to?

6 A. I guess that --

7 Q. When --

8 A. -- Minor 1 was unusual, maybe. I don't know. I don't
9 know.

10 Q. Was this an unusual situation?

11 A. Yeah.

12 Q. Did you do anything criminal?

13 A. No, I did not.

14 Q. When checking and comparing your children, did you
15 insert your fingers?

16 MS. HAMMACK: Your Honor, this is outside the scope of
17 cross.

18 MS. ZMROCZEK: She asked checking.

19 THE COURT: You're leading.

20 BY MS. ZMROCZEK:

21 Q. Okay. How did you check and compare your daughters?

22 A. Well, Minor 1, I would, I would ask her to lower her
23 pants and I would ask her to lay on the bed. And I would
24 just, just look at her.

25 Q. Why would you compare that to Minor 2 ?

DWAYNE LEE RUDD - REDIRECT:ZMROCZEK

1 A. To Minor 2 , uh, Minor 2 , I would, I asked Minor 2 one
2 time to go -- I asked her to go into her room and I said I
3 wanted to, I wanted to make sure that -- because Minor 1 ,
4 she knows Minor 1 just had her surgery. I wanted to make
5 sure that her surgery -- you know, I was concerned with
6 Minor 1. Minor 1 has a complex about herself already.

7 And, you know, I knew she was struggling with the way
8 she looked as a female and all of that stuff because she
9 didn't do female things. She didn't go shopping with, you
10 know, my wife and daughter. They didn't do that. That
11 was always my wife and daughter's thing. So Minor 1 and me,
12 you know, did boy things. I knew she was concerned with
13 all of that.

14 I wanted to make sure that she looked like a female,
15 like she was supposed to. So I asked Minor 2 if I could
16 -- I told Minor 2 , I said, I'm going to, I'm going to, I
17 want to look at you to see if it looks the same as
18 sister's does, see if yours looks the same as sister's.

19 And so I asked Minor 2 to lower her pants down, and to
20 take her hands and to, to move the skin back so I could
21 see. And that's it. And then I told her, and I looked at
22 it and then that was it. Told her to put her pants back
23 on and went about her day, just went back to normal. She
24 went back to playing and I just went back to what I was,
25 whatever I was doing.

DWAYNE LEE RUDD - REDIRECT:ZMROCZEK

1 Q. Did you ever touch either one of them?

2 A. No.

3 Q. Do you think that that's normal?

4 A. Do I think it's normal?

5 Q. What you do.

6 A. I think my situation was not normal as a father. You
7 know, concerned with, you know, my daughter's well being
8 and care and my, me being the stay-at-home dad. I thought
9 it was normal because that's what I did. I took care of
10 them.

11 Q. Do you think it's normal now?

12 A. I mean, maybe it was -- maybe it wasn't. I could have
13 done things a little differently but, you know, at the
14 time I didn't think it was, not nothing, normal.

15 Q. Do you think your thinking is warped?

16 A. I don't think it's warped. I think it's unusual
17 compared to my situation that I had as a, as a -- with my
18 wife the way our marriage was and the way I was as a
19 father.

20 Q. You gave those statements to Ms. Timmerman and
21 Ms. Brown about checking and comparing. Did they ever ask
22 you about using your hands or fingers?

23 A. No.

24 Q. You're not a medical doctor?

25 A. No.

1 Q. You agree with Ms. Hammack that you would take your
2 daughters to the doctor if they needed care?

3 A. Yes.

4 Q. What were your roles as a father then?

5 A. What was my role as a father?

6 Q. As far as their medical care is concerned.

7 A. To, you know, to take them to doctors, if -- give
8 them, you know, if they had any medicine, to make sure
9 that they were healthy and, you know, everything,
10 everything was as it should be.

11 Q. Were you told what to look for, for signs of
12 infection?

13 A. There were -- yeah.

14 Q. When the doctor sat down with you and your wife, did
15 he talk to you about that?

16 A. You're talking about?

17 Q. Dr. Donohoe.

18 A. Donohoe. Yes.

19 Q. Did you listen to him?

20 A. Yes.

21 Q. Did you do what you thought he told you to do?

22 A. Yes.

23 Q. Were you caring for you 'daughter?

24 A. Absolutely.

25 Q. Were you -- when you compared to Minor 2 , were you

1 doing it for any sexual nature?

2 A. No, I was not.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: Anything?

5 MS. HAMMACK: No, Your Honor.

6 THE COURT: All right. Thank you. You may step down.

7 All right. Ladies and gentlemen, we'll go ahead and
8 break for lunch. I'm going to ask you, again, not to
9 discuss your case while we're gone.

10 How much time do y'all want for lunch? Hour and 15
11 minutes? 'Is that good? All right. We'll come back here
12 at five minutes till two. That will give you an hour and
13 15 minutes. Y'all have a nice lunch. We'll see you back
14 here at that time.

15 (Jury exits courtroom at 12:44 p.m.)

16 THE COURT: All right, folks. Y'all have a nice
17 lunch. Do you know who you're going to lead off with?

18 MS. ZMROCZEK: I don't, Your Honor. As soon as -- I
19 haven't -- I haven't gotten my phone yet. It will be
20 probably -- I just don't know yet. It will either be, I
21 know that the teachers are in school but they just need a
22 little bit of lead time to get over here and the school
23 nurse, so --

24 THE COURT: All right.

25 MS. ZMROCZEK: -- I'll be arranging that during the

KRISTOPHER EVENSEN - DIRECT:BANK

1 break.

2 THE COURT: These will be relatively short witnesses?

3 MS. ZMROCZEK: Yes.

4 THE COURT: All right. Well y'all have a good lunch
5 and we'll see you back here at five minutes till two.

6 MR. MOLONY: Thank you.

7 (Lunch break taken at 12:45 p.m. At 1:52 p.m., the
8 trial resumed:)

9 THE COURT: Mr. Bank, I need you to come up here, talk
10 to you about something not related to this trial.

11 MR. BANK: Okay.

12 (Off-the-record discussion.)

13 THE COURT: All right. Let's bring the jury in if we
14 could.

15 (Jury enters courtroom at 1:57 p.m.)

16 THE COURT: All right. Ms. Zmroczek, are you ready to
17 proceed?

18 MS. ZMROCZEK: Yes, sir, Your Honor.

19 THE COURT: Call -- I'm sorry, Mr. Bank.

20 MR. BANK: The defense calls Officer Evensen.

21 KRISTOPHER EVENSEN, having been duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Please have a seat in the witness box.
24 State your full name for the Court, spell your last.

25 THE WITNESS: Kristopher Evensen. First name

KRISTOPHER EVENSEN - DIRECT:BANK

1 K-R-I-S-T-O-P-H-E-R. Last name E-V-E-N-S-E-N.

2 THE COURT: Your witness.

3 DIRECT EXAMINATION

4 BY MR. BANK:

5 Q. Mr. Evensen, could you tell the jury who you work for
6 and what you do?

7 A. I'm an investigator with the Aiken County Sheriff's
8 Office.

9 Q. Okay. And just to be clear, you haven't spoken with
10 any defense counsel before right now with you being on the
11 stand; is that correct?

12 A. I spoke to your co-counsel at a previous hearing.

13 Q. Okay. Yeah, at a previous hearing. Outside of the
14 context of you being on the stand, have you spoken with
15 any --

16 A. No.

17 Q. -- defense counsel?

18 A. No.

19 Q. Have you refused to speak to defense counsel?

20 A. After I was advised by your co-counsel I didn't have
21 to speak with her if I didn't want to, I told her I would
22 rather not.

23 Q. Okay. I want to ask a little bit more about what
24 exactly do you do. You're a lead investigator and you
25 were a lead investigator on this case?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. Correct.

2 Q. Do you specifically do sex crimes or sex abuse
3 crimes? Is there certain officers in your department that
4 are given those crimes specifically?

5 A. There's a subsection of the CID unit, criminal
6 investigations unit, referred to as juvenile. We do all
7 crimes against children, crimes involving children, either
8 victims or suspect. We also do elder abuse. And until
9 recently we did all sexual assaults but we do all sexual
10 assaults in relation to children.

11 Q. So this is an area that you're very familiar with?

12 A. Yes, sir.

13 Q. Okay. What I'm going to do is I'm going to put a
14 calendar up on this chalkboard. And I want to go through
15 a little bit of the time line because we've had a lot of
16 dates kind of thrown around in here and I think it might
17 be helpful if we can get them written down.

18 Can you see the board from where you're sitting?

19 A. Yes, sir.

20 Q. You can see that we have the 19th through the 25th,
21 26th through the 1st, which is May, and then going into
22 June 2nd, 8th, 9th through the 15th?

23 A. Correct.

24 Q. Okay. Now, when were you originally made aware of
25 these allegations?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. May 23rd, 2013.

2 Q. May 23rd. So, this is when Aiken County PD gets
3 involved. Is that fair to say?

4 A. Yes, but when Aiken County Sheriff's Office got
5 involved.

6 Q. Okay. And when was Mrs. Rudd make aware of these
7 allegations?

8 A. I believe she was made aware, or one child alleged --
9 or made aware of an incident on the 20th of May.

10 Q. Okay.

11 A. On that previous Monday.

12 Q. On Monday. Right here?

13 A. And then I believe she spoke to both her children on
14 the night of May 22nd.

15 Q. The 22nd. So, we have allegation one, for lack of a
16 better word, and a second allegation or a statement on the
17 2nd (sic); right?

18 A. Correct.

19 Q. So we have first, the second and you're made aware on
20 the 23rd. Is your police department open 24 hours a day
21 or are y'all just open nine to five?

22 A. We're open 24 hours a day, 365 days a year.

23 Q. Okay. Now I want to speak to you, when you were made
24 aware of these allegations you proceeded to meet with DSS
25 and Mrs. Rudd at Bi-Lo; is that correct?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. Correct.

2 Q. Mrs. Rudd left her house where Mr. Rudd was with the
3 children alone and met you at Bi-Lo; that's correct?

4 A. That's incorrect. Well, as far as my knowledge, I
5 believe she was at work when I initially spoke to her
6 earlier that day when she made the initial report.

7 Q. Okay.

8 A. She was not at the house before I met her at Bi-Lo.
9 The reason I know she was not at that house is I did a
10 drive-by at that house before I met her at Bi-Lo.

11 Q. Okay. But as far as you know, Mr. Rudd was at the
12 house alone with the children?

13 A. I don't know that.

14 Q. Did you see anybody else at the house when you did
15 your drive-by?

16 A. I saw the two children.

17 Q. You didn't see anybody besides the two children?

18 A. No, I didn't see her vehicle there.

19 Q. Okay.

20 A. Or the vehicle that she came to Bi-Lo with a short
21 time later.

22 Q. Did you see Mr. Rudd's vehicle there?

23 A. Yes, I did.

24 Q. Okay. After Bi-Lo you went to the house with -- well,
25 I guess DSS came a little bit behind you but you went to

KRISTOPHER EVENSEN - DIRECT:BANK

1 the house with several of the other officers?

2 A. Three other officers, correct.

3 Q. Okay. And when you came up to the house you saw

4 Mr. Rudd outside with the two children working on an ATV,
5 was it?

6 A. He was outside, and I remember them being near an ATV;
7 yes.

8 Q. Okay. And you saw him outside with the children
9 around an ATV?

10 A. Yes, sir.

11 Q. Did they look scared?

12 A. When --

13 Q. Or to be in any danger? I didn't mean to cut you
14 off. Did they look scared?

15 A. When we pulled up, Mr. Rudd looked surprised. He
16 didn't know what was going on.

17 Q. Okay.

18 A. The children immediately walked into the house.

19 Q. When they saw you pull up --

20 A. Right.

21 Q. -- the children at that point walked into the house?
22 Okay. Now after this on 23rd, the next major thing that
23 happened in this case was a forensic interview with the
24 children on the 28th; is that correct?

25 A. Correct.

KRISTOPHER EVENSEN - DIRECT:BANK

1 Q. All right. So, we have forensic interview, FI. So
2 depending on what allegation you're looking at, that's
3 either, one, two, three, four, five, six days or one, two,
4 three, four, five, six, seven, eight days after the
5 allegations are made that they're finally taken to a
6 professional for a forensic interview; is that correct?

7 A. Right.

8 Q. And after you left the house on the 23rd, did you
9 inform Mrs. Rudd of how or if she should talk to the
10 children about the allegation?

11 A. I don't directly remember informing her. Normal
12 protocol is we ask them not to talk to the children to
13 keep the children neutral.

14 Q. Right. Because that's important because of
15 susceptibility of tainting that can happen?

16 A. Right.

17 Q. But you don't remember whether you told her that or
18 not?

19 A. I don't remember directly telling her that.

20 Q. And you didn't directly write about that in your
21 report?

22 A. No.

23 Q. No? Okay. Let's see.

24 The next event I want to talk to you about is on the
25 29th. You told Mr. Rudd -- you contacted him on his cell

KRISTOPHER EVENSEN - DIRECT:BANK

1 phone and told him not to have any contact with the
2 children or Mrs. Rudd; is that correct?

3 A. I'm not sure if it was the 29th. The next contact I
4 actually remember with Mr. Rudd off the top of my head, I
5 believe was the 3rd of June when he was scheduled to come
6 in for an interview.

7 Q. Okay. You made both handwritten and typed notes?

8 A. Correct.

9 Q. Would it help you if you saw your handwritten notes?

10 A. Yes, sir.

11 Q. As -- okay. These are your handwritten notes?

12 A. That's correct. On the 29th, according to my
13 handwritten notes, I spoke to the subject, advised him not
14 to contact the complainant.

15 Q. On the 29th. So on the 29th, let's write, no contact,
16 NC. And I'm just -- this isn't going to be an official
17 board. I'm just -- it's not very large.

18 Let's see. And then one of the next things we have is
19 that Mr. Rudd turns himself in, is that correct, to the
20 police department?

21 A. I believe on the 3rd he informed me he wasn't going to
22 come for a scheduled interview, that he retained an
23 attorney. And then on the 10th of June is when he turned
24 himself in.

25 Q. And when had you written out the warrants on him?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. I can't be sure without looking at the report, but I
2 believe it was the 6th of June.

3 Q. The 6th. We'll go with that for now because I don't
4 know if I have those papers up with me, the warrants.

5 And then the children were taken back to the Child
6 Advocacy Center where the forensic interview was and they
7 were taken to have a medical examination done; is that
8 correct?

9 A. I'm not sure what date that is. That's normal
10 protocol.

11 Q. But it is -- do you remember if it was after Mr. Rudd
12 was arrested?

13 A. I don't remember.

14 Q. You don't remember? Okay.

15 Did you receive a report back from that medical
16 examination of the two children?

17 A. I don't recall. I don't have my case file up here
18 with me.

19 Q. Okay.

20 A. I could --

21 Q. Sir, you were the lead investigator in this case;
22 right?

23 A. Yes, sir.

24 Q. So if there was a report, I mean, we're at -- the
25 children had a medical examination. If there were a

KRISTOPHER EVENSEN - DIRECT:BANK

1 report, it would come to you; correct?

2 A. It should come to me, yes.

3 Q. Okay. But you're saying you don't remember whether
4 there was a report or not?

5 A. I mean, I worked so many of these and I'd have to go
6 back through my case file and look to be certain. I
7 don't --

8 Q. Okay. But --

9 A. -- recall.

10 Q. -- there was a medical examination of these children
11 is what you said, but you don't remember the date.

12 And then we have, last thing is DSS worker Timmerman
13 that went with you to the scene originally?

14 A. Yes, sir.

15 Q. On the 23rd?

16 A. Yes, sir.

17 Q. She gave you a written statement that we've discussed
18 about, not me and you --

19 A. Correct.

20 Q. -- but, do you remember when that statement was given?

21 A. The 11th of June.

22 Q. The 11th of June. Okay. So we'll write DSS
23 statement.

24 Now, sir, is it usual that you wait that long to have
25 the kids taken to a forensic interview?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. Yes.

2 Q. It is?

3 A. We have to schedule with the Center. They have
4 previous, you know -- I don't work for the CAC, so we have
5 to schedule with them --

6 Q. Right.

7 A. -- and whatever schedule they have to fit them in is
8 what we go by.

9 Q. Well, I understand that there's scheduling problems.
10 But there's no protocol out there that says it's best to
11 take the children for a forensic interview within 72 hours
12 of allegations being made?

13 A. We try our best.

14 Q. You try your best to do that. I want to talk to you a
15 little bit about that, because in this case and in a lot
16 of what -- the cases with the child witnesses, you don't
17 actually take statements from the children. You might
18 speak to them, but you don't take a written statement from
19 them like you would a normal witness?

20 A. Correct.

21 Q. But -- and, in fact, it's y'all's protocol not to take
22 statements of children; isn't that correct?

23 A. Correct.

24 Q. Your protocol is instead to take them to a trained
25 professional, what I've been referring to as a forensic

KRISTOPHER EVENSEN - DIRECT:BANK

1 interview, to have a trained profession who knows, who is
2 better with children and more prepared to be able to
3 interview them; is that correct, sir?

4 A. Yes.

5 Q. Okay. And problems that can come from questioning
6 children can oftentimes -- and what you're worried about
7 is problems that they might make up stories; is that
8 correct?

9 A. That is issues with everyone, child or adult.

10 Q. Right, right. But particularly with children?

11 A. We take them to a trained professional forensic
12 interviewer because they use a set protocol.

13 Q. Right. You don't take other witnesses to trained
14 interviewers, you just interview them yourself; right?

15 A. Depending on age and the situation.

16 Q. Right. It's just the children that you go to trained
17 professionals?

18 A. Generally speaking, yes.

19 Q. And that's because of any problems with -- they react
20 differently than other witnesses to, say, leading
21 questions; is that correct?

22 A. Correct.

23 Q. To multiple interviews; is that correct?

24 A. Yes, sir.

25 Q. To lengthy interviews?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. Sometimes, yes.

2 Q. Is that correct? And that they can in essence be
3 tainted by --

4 MR. MOLONY: Your Honor, I'm sorry. At this time, I'd
5 object to the leading questions from --

6 MR. BANK: He's an adverse witness, Your Honor. Under
7 the rules of evidence I'm permitted to cross-examine him.

8 THE COURT: You can cross him but let's lead him, not
9 testify.

10 MR. BANK: Yes, sir. I apologize, Your Honor.

11 Q. Well, let's move on to what you've done in this case
12 and the investigation you did. What is the strongest --
13 what did you consider to be the most important pieces of
14 evidence in this case?

15 A. The forensic interviews.

16 Q. The forensic interviews? The child's testimony and
17 statements?

18 A. (Nods head.)

19 Q. And you relied on that because you didn't have any
20 physical evidence of abuse; correct?

21 A. I relied on that and other information I received that
22 went along with their statements.

23 Q. Did you have any physical evidence in this case?

24 A. No.

25 Q. Did you have any DNA evidence in this case?

KRISTOPHER EVENSEN - DIRECT:BANK

1 A. No, no.

2 Q. And at some point you were made aware, I think, quite
3 immediately from what Mr. Rudd said to Ms. Timmerman, that
4 Minor 1 had a medical condition; is that correct?

5 A. I was made aware, yes.

6 Q. Okay. And did you do any investigation into looking
7 through her medical records?

8 A. At what point?

9 Q. At any point during the course of your investigation.

10 A. I looked through them once I received them from
11 Mrs. Rudd, yes.

12 Q. You looked through them. Did you look to see if
13 everything was there? You actually read all the reports?

14 A. I scanned through them. I'm not a doctor so some of
15 that stuff --

16 Q. I understand.

17 A. -- is Japanese to me.

18 Q. I understand. Well, and I think that's a good point.
19 You're not a doctor. Did you try to contact any of the
20 doctors?

21 A. No, sir.

22 Q. You didn't try to contact any? And so you didn't have
23 any idea as to the responsibilities or care or treatment
24 that Minor 1 needed for her medical condition?

25 A. I was aware of what was advised to me by her mother.

KRISTOPHER EVENSEN - DIRECT:BANK

1 Q. So the basis of your knowledge comes from the mother?

2 A. Correct.

3 Q. Okay. And did you have any -- did you look into
4 anything about the mother in terms of any motive she might
5 have?

6 A. No, I had no reason to.

7 Q. You had no reasons to. You didn't go through any cell
8 phone records of hers?

9 A. No.

10 Q. No cell phone records?

11 A. (Shakes head.)

12 Q. And then you did no investigation into any potential
13 motives of the mother?

14 A. I had no indicators that there were any other
15 potential motives.

16 MR. BANK: Okay. That's all I have. Thank you.

17 MR. MOLONY: No questions, Your Honor.

18 THE COURT: All right. Thank you. You may step down.

19 MS. ZMROCZEK: Your Honor, may I briefly check to make
20 sure my other witnesses are here?

21 THE COURT: All right. (Pause.)

22 MS. ZMROCZEK: Thank you, Your Honor. At this time we
23 call Michelle Green.

24 MICHELLE WILEY GREEN, having been duly sworn, was
25 examined and testified as follows:

MICHELLE WILEY GREEN - DIRECT:ZMROCZEK

1 THE CLERK: Please have a seat in the witness box.

2 State your full name for the Court, spell your last.

3 THE WITNESS: My name is Michelle Wiley Green.

4 DIRECT EXAMINATION

5 BY MS. ZMROCZEK:

6 Q. And spell your last name.

7 A. I'm sorry. G-R-E-E-N.

8 Q. Ms. Green, tell the jury where you work.

9 A. I'm a teacher at Midland Valley Preparatory School.
10 It's a charter school out in Graniteville.

11 Q. Are you familiar with the children, Minor 1 and Minor 2
12 ?

13 A. I am.

14 Q. Tell the jury how you're familiar with them.

15 A. Minor 2 and Minor 1 were my students in my language arts
16 class. Minor 2 in the fifth grade and Minor 1 in the sixth
17 grade during the 2000 -- this is the '12 or '13, '14.

18 Q. 2011?

19 A. '11-2012 school year. I'm sorry.

20 Q. That's fine. You testify in court often?

21 A. Never. First time.

22 Q. Are you familiar with your students, Minor 1 and
23 Minor 2 's parents?

24 A. Yes.

25 Q. How are you familiar with them?

MICHELLE WILEY GREEN - DIRECT:ZMROCZEK

1 A. I spoke to them on several occasions regarding their
2 children's progress in class. It was my responsibility on
3 most school days, not all but most, to call the car line.
4 All of our students go home in cars.

5 So there's one person that calls the students to go in
6 the cars each day. That was predominantly my
7 responsibility. So I became familiar with the cars as
8 they came through. So I remember seeing them as they came
9 to pick up the children.

10 Q. Who picked up the children on most days?

11 A. I would have to say, most days I saw Mr. Rudd picking
12 the children up, but I do remember Mrs. Rudd coming
13 through car line as well.

14 Q. She came through as well?

15 A. Yes.

16 Q. Were they both involved in their children's schooling?

17 A. I would say yes.

18 Q. What kind of students?

19 A. They were wonderful to have in class. Both were very
20 pleasant young ladies, eager to please, very polite, very
21 respectful. Minor 2 especially very bright, added a lot
22 to class discussions, a talented artist. Just a really
23 bright young lady.

24 Q. Minor 2 . Did Minor 2 have any memory problems or
25 anything remembering -- any problems remembering things?

MICHELLE WILEY GREEN - DIRECT:ZMROCZEK

1 A. I don't remember that she did. I remember that she
2 made definitely Bs if not As in my class. Reading
3 comprehension was a strength of hers. She was a good
4 writer. She actually won our school spelling bee the year
5 that she was in fifth grade and participated in the area
6 spelling bee.

7 Q. Did she have trouble recalling information when asked?

8 A. Not that I remember.

9 Q. What kind of student was Minor 1?

10 A. Minor 1 was also -- she tried very hard. You know, all
11 students have areas where they struggle. Not everything
12 is easy for every student. Minor 1 had more struggles
13 compared to her sister but very eager to please. Tried
14 very hard. Very conscientious. Always wanted to make
15 sure she was always doing the right thing.

16 Q. Do you recall any specific problems that you ever had
17 communicating with Minor 1?

18 A. Reading was a struggle for Minor 1 as was writing. She
19 wanted to do -- she wanted to learn. It just didn't come
20 as easy for her as it came for other students. She
21 struggled to recall details in order in a story or
22 anything that we read. Writing, oral, oral and written
23 expression were difficult things for her to do.

24 Q. How did you improve that? How did you work with her?

25 A. Just by continuing to do what -- we would talk a lot

MICHELLE WILEY GREEN - CROSS:HAMMACK

1 before we would write to try to make sure that students
2 just as a class had the ideas that they needed before they
3 started writing.

4 Q. Is it fair to say that repetition helped?

5 A. I would say, yes.

6 Q. Is your school a large school or a small school?

7 A. We're a very small school. I don't remember the exact
8 enrollment that year, but I know for sure we have less
9 than 200 students in grades K to eight and we would have
10 had even less at that time.

11 One of the things that I love about our school is that
12 we are able to develop relationships with children. We
13 get to know them that well. And so that was -- that's one
14 of the things. They don't slip through the cracks. We
15 can, we can monitor them carefully.

16 MS. ZMROCZEK: Thank you. I have no further
17 questions.

18 THE COURT: Anything?

19 MS. ZMROCZEK: Answer any questions the solicitor has.

20 CROSS-EXAMINATION

21 BY MS. HAMMACK:

22 Q. Ms. Green, I'm sorry. My name is Ashley Hammack. I'm
23 the prosecuting attorney here.

24 Do you know why you're here today?

25 A. I understand that I'm here to give information on

SARA SHEALY - DIRECT:BANK

1 parental involvement as it pertained to Minor 2 and Minor 1
2 the year that I had them.

3 Q. Okay. Do you know anything at all about sexual abuse
4 allegations?

5 A. No, just -- I don't know details. I know that they've
6 been made. That's all that I've been made aware of.

7 MS. HAMMACK: Okay. Thank you.

8 THE WITNESS: Uh-huh.

9 THE COURT: All right. You may step down. Thank
10 you. You're free to leave.

11 THE WITNESS: Thank you.

12 MR. BANK: The defense calls Ms. Sara Shealy.

13 SARA SHEALY, having been duly sworn, was examined and
14 testified as follows:

15 THE CLERK: Please have a seat in the witness box.
16 State your full name for the Court and spell your last.

17 THE WITNESS: Sara Teague Shealy. And it's spelled
18 S-H-E-A-L-Y.

19 DIRECT EXAMINATION

20 BY MR. BANK:

21 Q. Ms. Shealy, can you tell the jury what you do for a
22 living?

23 A. I'm a registered nurse at Midland Valley Prep Charter
24 School.

25 Q. How long have you been a nurse for, or a registered

SARA SHEALY - DIRECT:BANK

1 nurse rather?

2 A. Fourteen years.

3 Q. Fourteen years. And how long have you worked at
4 Midland Valley?

5 A. Two and a half years.

6 Q. And could you tell the jury what your responsibilities
7 as a registered nurse at Midland Valley Prep were?

8 A. Taking care of any first-aid, medical concerns,
9 injuries, illnesses, recording medications given at
10 school, contacting doctors or parents for forms and things
11 that needed to be filled out for use at the school.

12 Q. Okay. And as your time as a registered nurse at
13 Midland Valley, did you come to know the Rudd family? And
14 by that I mean Mr. Dwayne Rudd, Jennifer Rudd and their
15 two daughters, Minor 1 and Minor 2 ?

16 A. Yes, I've met them.

17 Q. And how long were the two children students at your
18 school?

19 A. I'm not for sure. I believe they were there for one
20 school year.

21 Q. Okay.

22 A. As best I remember.

23 Q. And were you aware of any of Minor 1's medical
24 conditions?

25 A. Yes.

SARA SHEALY - DIRECT:BANK

1 Q. Okay. And how were you made aware of that?

2 A. Each school year I ask parents -- at that time we had
3 a form that the parents would fill out that would list any
4 allergies, medical conditions, medications they take, any
5 concerns they would need to have while they're at school.

6 Q. Okay. And outside of the forms, do you ever talk to
7 the parents one-on-one about a specific child's medical
8 condition?

9 A. Yes. Parents often come and speak with me about it.
10 Sometimes I'll contact them. It just depends.

11 Q. And did that happen with Minor 1 ?

12 A. Yes.

13 Q. And who was the person that came and spoke with you
14 and talked to you about Minor 1's medical condition?

15 A. Mr. Rudd.

16 Q. Mr. Rudd. And do you remember kind of generally, I
17 don't need the scientific terms for it, but do you
18 remember generally what the condition was?

19 A. I'm trying to think of the name of it.

20 Q. Is it congenital adrenal hyperplasia?

21 A. Oh, yes. That's right. It's like I went blank.

22 Q. Okay. And did Mr. Rudd simply tell you about this
23 condition and leave, or did he have a discussion with you
24 about it? And -- did he have any discussions with you
25 about it?

SARA SHEALY - DIRECT:BANK

1 A. Yes, we did discuss it.

2 Q. And what was the extent of those discussions?

3 A. What the diagnosis was, what that means for her, and
4 the medications that would need to be given if there were
5 a crisis. Sort of -- it was a preparation kind of
6 discussion, to prepare for any emergency that might arise
7 at school.

8 Q. So Mr. Rudd seemed like he had a good grasp on the
9 condition?

10 A. Yes.

11 Q. I want to ask you about field trips. Do the students
12 have -- at Midland Valley Prep ever go on field trips?

13 A. Yes.

14 Q. And what is the protocol if a student on the field
15 trip is one of these children with a medical condition, a
16 special medical condition? What protocol do y'all follow?

17 A. Normally each, each case is individual depending on
18 the condition and the age of the student and their ability
19 to understand how to take care of themselves. But
20 normally it will be that either myself if that's -- if
21 it's a child that has to have an emergency-type
22 medication, either I will go on the field trip with those
23 students or I will have a teacher that I've trained and
24 that she's felt, he or she felt comfortable doing that or
25 a parent will go.

SARA SHEALY - CROSS:MOLONY

1 Q. And do you remember Minor 1 ever having to go on any
2 field trips?

3 A. I know that all of our students go on field trips. So
4 I know she did.

5 Q. And how was that protocol followed with Minor 1? Would
6 you -- were there field trips that you went along with to
7 supervise if anything happened with her medically?

8 A. I don't remember going on one with Minor 1, but I
9 remember her dad went on some with her.

10 Q. Okay. So because her dad was going, there was no need
11 for you, either you or somebody that you've trained, to
12 have to go along with the field trip?

13 A. Correct.

14 Q. And do you remember -- I don't actually remember
15 answering, but did Mrs. Rudd ever take that responsibility
16 on a field trip?

17 A. I don't know of her doing that.

18 Q. Okay. All right. Thank you so much. Please answer
19 any questions of the State.

20 CROSS-EXAMINATION

21 BY MR. MOLONY:

22 Q. Ms. Shealy?

23 A. Yes.

24 Q. I'm Kevin Molony. I'm prosecuting this case. I'm
25 going to be quick.

SARA SHEALY - REDIRECT:BANK

1 A. Okay.

2 Q. You testified that the Defendant came in and told you
3 what Minor 1's condition meant?

4 A. Correct.

5 Q. And the medications involved?

6 A. Correct.

7 Q. And that he had a good grasp on that condition?

8 A. It appeared to be, yes.

9 Q. Did he ever tell you that the condition required her
10 pants and underwear being taken down and her vagina being
11 observed?

12 A. No.

13 Q. Penetrated?

14 A. No.

15 Q. Did you ever have to compare another one of your
16 students with Minor 1's vagina based on what he told you?

17 A. No.

18 MR. MOLONY: No further questions, Your Honor.

19 MR. BANK: Just a quick follow up.

20 REDIRECT EXAMINATION

21 BY MR. BANK:

22 Q. Did you have any knowledge at the time that Minor 1 was
23 at the school that she had yet had any vaginal
24 reconstructive surgery?

25 A. No, I wasn't aware of that.

JAMES DOUGLAS PARKER - DIRECT:ZMROCZEK

1 MR. BANK: Okay. Thank you.

2 THE COURT: All right. Thank you, ma'am. You may
3 step down and you are free to leave.

4 THE WITNESS: Okay. Thank you.

5 MS. ZMROCZEK: Your Honor, we call Doug Parker.

6 JAMES DOUGLAS PARKER, having been duly sworn, was
7 examined and testified as follows:

8 THE CLERK: Please have a seat in the witness box.
9 State your full name for the Court, spelling your last.

10 THE WITNESS: My name is James Douglas Parker.
11 P-A-R-K-E-R, last name.

12 DIRECT EXAMINATION

13 BY MS. ZMROCZEK:

14 Q. Mr. Parker, tell the jury where you work.

15 A. Currently I'm working privately, private
16 investigations in both Georgia and South Carolina. I
17 recently retired from the Georgia Bureau of
18 Investigations, 30 years service for them.

19 Q. During your 30 years at the Georgia Bureau of
20 Investigations, what kind of work did you do?

21 A. We were in charge of investigating any type of crime,
22 whether it be misdemeanor or felony, within the State of
23 Georgia. Certain crimes we had original jurisdiction on,
24 and then we were also involved in other details with
25 dignitary protection and security with certain state

JAMES DOUGLAS PARKER - DIRECT:ZMROCZEK

1 facilities.

2 Q. What kind of training and education did you receive?

3 A. I have a BS in Criminal Justice from Georgia Southern
4 in '81, and then went through two GBI trainings. One of
5 them was a 13-week narcotics, and then another 18 weeks
6 with just general investigations for the bureau and then
7 since then numerous trainings in different fields of the
8 law.

9 Q. Have you ever been published or written any, or given
10 any presentations on law enforcement? Or to law
11 enforcement?

12 A. Yes, I currently do some training for police officers
13 in the field of interpersonal communications and search
14 and seizure.

15 MS. ZMROCZEK: Your Honor, at this time we'd like to
16 offer Mr. Parker as an expert in criminal investigations.

17 MR. MOLONY: No objection, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, I've
19 told what you an expert is. Scientific, technical or
20 other specialized knowledge which will assist you the
21 trier of facts in understanding any issue that's in
22 controversy or any matter that's in question.

23 And an expert can be qualified as an witness by virtue
24 of his or her experience, training, knowledge, and can
25 offer background -- I mean, opinions in his or her areas

JAMES DOUGLAS PARKER - DIRECT:ZMROCZEK

1 of expertise.

2 I find this gentleman to be qualified as an expert in
3 the field of criminal investigations. And you are to give
4 his testimony such weight and credibility as you deem
5 appropriate.

6 BY MS. ZMROCZEK:

7 Q. Mr. Parker, did you ever investigate charges involving
8 criminal sexual abuse?

9 A. Yes, ma'am. Many of them.

10 Q. Tell the jury how you investigate those cases.

11 A. Well, first of all, as far as what the bureau is
12 concerned, we were a requested agency. So we'd get the
13 request from a local agency. They would first receive the
14 initial request or complaint and then they would ask us to
15 come in to assist the local agencies investigating those
16 types of crimes. So that would be the first thing. We'd
17 get a call from the local agency and they would call us.

18 And then we would meet with them and then review the
19 complaint, incident report, any documentation that they
20 may have. Based on that information that we had, then we
21 would plan a course of action as to what we thought was
22 best and, trying to interview certain witnesses, obtaining
23 certain evidence through the course of normal procedures
24 of obtaining evidence.

25 Like I said, conducting those interviews. And then at

JAMES DOUGLAS PARKER - DIRECT:ZMROCZEK

1 each point there was always an assessment. Once we
2 interviewed somebody if I was working with a local agency
3 then we would stop and assess that information and make a
4 determination which way one could go. So it's not always
5 a clear path as to which way to go. Determining what we
6 had and then seeing which way the course of the
7 investigation would lead after that.

8 Q. When you -- when you are brought a complaint, what are
9 some things that are important to investigate and to look
10 into, and with whom to speak when you investigate?

11 A. Well, again, once we talk to people we want to see
12 what, what, first of all, what the complaint is. And then
13 we also look at -- even though in Georgia we didn't have
14 to prove motive, we wanted to see why people were saying
15 certain things. And we wanted to corroborate or verify
16 certain information that we received from witnesses, and
17 then go out and try to match up some information, prove or
18 disprove what was being said.

19 Q. Did you -- how did you do that when children were
20 providing the information?

21 A. When I first came I was trained to interview children
22 but since then we made the change to have them interviewed
23 by someone more trained in child development, those types
24 of things, that could understand the children.

25 So those were always left to, we had a Child Advocacy

JAMES DOUGLAS PARKER - DIRECT:ZMROCZEK

1 Center in Georgia where we set up an interview with a
2 trained forensic interviewer. And those children would be
3 interviewed by that person.

4 Q. What did you do with the information that you received
5 from that investigation?

6 A. Well, usually I was there in another room watching the
7 interview myself and taking notes and then of course
8 providing questions that I wanted to have answered because
9 I didn't have the chance to ask the child myself.

10 So we'd take a look at those interviews and review
11 them and see what information was there that we were going
12 to be able to use or not use.

13 Q. Did you try to verify any of that information?

14 A. Yes, ma'am. I mean, again, that's corroborating or
15 verifying information that we received from the children
16 or from any witness. I mean, it wouldn't matter who it
17 was. We would try to verify information that we received.

18 Q. Why is that important?

19 A. Well, we was always seeking the truth. So we wanted
20 to make sure that what they was saying was the truth and
21 proceeding with that, making sure that, you know, people
22 weren't trying to mislead us in the wrong direction.

23 Q. And you do that for every witness?

24 A. Yes, ma'am.

25 MS. ZMROCZEK: Beg the Court's indulgence? (Pause.)

1 Please answer any questions the solicitor may have.

2 MR. MOLONY: I don't have any questions, Your Honor.

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

4 THE WITNESS: Thank you, sir.

5 MS. ZMROCZEK: Your Honor, the defense rests.

6 THE COURT: All right. Ladies and gentlemen, the
7 defense has rested which means the defense has put forth
8 its case. And I need to take up some more matters with
9 the attorneys.

10 So I'm going to let you step back into the jury room.
11 Please do not discuss the case while you're back there,
12 and I'll bring you back in just a little bit. Thank you.

13 (Jury exits courtroom at 2:39 p.m.)

14 THE COURT: All right. Y'all going to have anything
15 in reply?

16 MS. HAMMACK: No, Judge.

17 THE COURT: Y'all ready to argue and charge this
18 afternoon?

19 MS. HAMMACK: Fine with the State.

20 MS. ZMROCZEK: Your Honor, either way it's fine with
21 me. I just asked Mr. Bank, I think we were going to renew
22 our directed verdict motion especially with the CSC
23 second. There's testimony that penetration was not
24 possible and I believe that the standard is reasonable per
25 any information that a reasonable jury could rely upon to

1 make a decision.

2 Your Honor, the doctor testified that, A, she didn't
3 even have a place to penetrate before the surgery, and I
4 know that there are CSC second charges that stem from
5 before the surgery. And then afterwards his testimony was
6 that the vaginal opening that was there was less than
7 three millimeters. And somebody with a very small finger
8 could, you know, insert.

9 Your Honor, we just don't feel that that, a reasonable
10 jury shouldn't have to rely --

11 THE COURT: Tell me what you say the standard is.

12 MS. ZMROCZEK: Well as I'm reading the rule, I
13 understand it's any evidence. Ruling on the motion, the
14 existence or non-existence of the evidence.

15 THE COURT: Wait a minute. Whoa. Slow down. Again?

16 MS. ZMROCZEK: The standard I believe as the rule
17 states is only the existence or non-existence of the
18 evidence, so.

19 THE COURT: Tell me what what has changed since --

20 MS. ZMROCZEK: Nothing has changed, Your Honor.

21 THE COURT: These two youngsters got up and testified
22 that they were sexually assaulted in that they were -- in
23 their genital area they were massaged in their genital
24 areas and in both instances they both testified that they
25 were penetrated. They also testified that their chests

1 were rubbed. And I think one of them testified that their
2 rear end was squeezed and rubbed.

3 You know, the rest of it goes to weight if you ask
4 me. And it's just a matter of whether the jury's going to
5 believe what they say or don't believe what they say.

6 MS. ZMROCZEK: Thank you, Your Honor.

7 THE COURT: You may be able to make a great argument
8 that it's physically not capable of doing what they say
9 was done, but they testified to that. And so there is
10 evidence.

11 I think in a criminal case it's any direct evidence or
12 any substantial circumstantial evidence.

13 MR. BANK: Your Honor --

14 THE COURT: I will not hear but from one lawyer.

15 So, now what I intend to do is I was going to do a
16 verdict form on all eight of the verdicts (verbatim) and I
17 was going to put on top the charge, the date, the time
18 frame and the respective individual. Because otherwise
19 they're not going to have the indictments so they're not
20 going to know which indictment applies to which child,
21 which applies to which time frame.

22 So, anybody have an objection to my preparing the
23 verdict form? Of course, the two verdicts: We find the
24 Defendant guilty, or we find the Defendant not guilty.

25 MS. HAMMACK: No objection at all, Judge.

1 MS. ZMROCZEK: No objection.

2 THE COURT: Now did y'all have any sort of charges you
3 wanted me to look at?

4 MS. HAMMACK: Your Honor, did you want the State's
5 requested charge on the --

6 THE COURT: Say that again.

7 MS. HAMMACK: Do you want the State's requested charge
8 on the testimony of the victim need not be corroborated?
9 It's just a statute.

10 THE COURT: I was going to charge the statute, the
11 testimony of the victim need not be corroborated. And I
12 wasn't going to charge in prosecutions Title 16-3-652
13 through 16-3-658. I was just going to say --

14 MS. HAMMACK: Your standard is fine.

15 THE COURT: I got the statute itself.

16 I was also going to charge that the Defendant is
17 charged with five counts of second degree criminal sexual
18 conduct, and three counts of third degree criminal sexual
19 conduct. When two or more acts of criminal sexual conduct
20 occur at or about the same time, each act is a separate
21 crime rather than one continuous crime.

22 So Mr. Bank wanted to know whether my charge would --
23 sexual battery is a sexual intercourse, cunnilingus,
24 fellatio, anal intercourse or any intrusion however slight
25 of any part of a person's body or of any object into the

1 genital or anal areas of another person except when the
2 intrusion is accomplished for medically-recognized
3 treatment or diagnostics purposes.

4 You wanted to know whether that was in the charge;
5 right?

6 MR. BANK: Yes, sir. And that's sufficient for us.

7 THE COURT: Now the respective circumstance for the
8 CSC second was, you have set forth in the indictments that
9 the victim was less than 16 years old but at least 14.
10 With respect to one, the Defendant was either in a
11 position of familial, custodial or official authority to
12 force the victim to submit, or the Defendant was older
13 than the victim; right?

14 MS. HAMMACK: That's correct, Your Honor. I believe
15 the language on the other indictment does fall under the
16 ages 11 to 14. It's just because she turned 14 in the
17 middle of this.

18 THE COURT: So the victim was at least 11 years old
19 but not more than 14 at the time sexual battery. So both
20 of those would apply in this instance.

21 MS. HAMMACK: Yes, sir.

22 THE COURT: And the CSC third is the lewd act charge.

23 MS. ZMROCZEK: Your Honor, actually as I'm thinking
24 about it, I'm just trying to think of time. I'm trying to
25 make sure that I'm fair to the Defendant and that I do a

1 good job. I actually had some --

2 THE COURT: You've done an excellent job.

3 MS. ZMROCZEK: Thank you.

4 But for my closing, Your Honor, I know that I have
5 some boards that I was going to use. And so when you
6 asked if we were ready to go right now, I have to
7 respectfully change my answer and say I would need some
8 time to -- I hadn't intended on finishing this early
9 today. So I don't want to actually -- and my concern --
10 and I know my concern -- my concern is that it's almost
11 three and that --

12 THE COURT: I don't argue and charge after four. How
13 much time do you believe you're going to need in your
14 closing? Are you going to open on the law? How long is
15 that going to take?

16 MS. HAMMACK: Judge, I'm going to waive opening on the
17 law.

18 THE COURT: Do y'all agree with that?

19 MS. ZMROCZEK: That's fine.

20 THE COURT: All right. How long are you going to take
21 in your closing?

22 MS. HAMMACK: Twenty minutes at most.

23 THE COURT: I'm not trying to limit you. I'm trying
24 to figure out the logistics of it, because defense counsel
25 wants some time.

1 MS. HAMMACK: I wouldn't say more than 20 minutes,
2 Judge.

3 THE COURT: Let's say 30 minutes. How long are you
4 going to take?

5 MS. ZMROCZEK: At least an hour or no more than an
6 hour. But I think it will be close to an hour. And
7 that's my concern is that I don't want to -- I don't want
8 to rush it and then -- because I don't want them to feel
9 like they have to stay here at five o'clock. My concern
10 is just the time but --

11 THE COURT: I don't know what you mean your concern is
12 just the time. Your time or somebody else's time?

13 MS. ZMROCZEK: Well, it's both. I mean, their time.
14 I don't want them to feel --

15 THE COURT: Don't you worry about them. I'm here to
16 protect them.

17 MS. ZMROCZEK: I mean, I just want to make sure that I
18 present everything that I have to present and I know that
19 I have boards that are back at the hotel that are not
20 here, so. I just need some time.

21 THE COURT: Who's running court from the solicitor's
22 office?

23 MS. BETH ANN YOUNG: I am, Your Honor.

24 THE COURT: Do y'all got anything to do this
25 afternoon?

1 MS. BETH ANN YOUNG: I don't believe we have anything
2 scheduled. We didn't bring any jail pleas over, did we?

3 THE CLERK: No.

4 MS. BETH ANN YOUNG: No, sir. Sorry.

5 THE COURT: I'm just trying to think. I hate to leave
6 here at 2:45 in the afternoon when we could be doing
7 something.

8 MS. HAMMACK: I don't know if I'm in the position to
9 suggest anything. I don't know which hotel your boards
10 are at or how long it would take to get them, but maybe we
11 could take a break so she could get the boards that she
12 needs for closing.

13 THE COURT: Well, I'd like to get it to the jury
14 sometime around four o'clock. If we got to wait for her
15 to get to a hotel room.

16 Do you have anything to do with that Tammy Smathers
17 case?

18 MS. BETH ANN YOUNG: I do not, Your Honor. That is
19 Mr. Miller. I can have him come up here if you'd like for
20 me to.

21 THE COURT: Yeah, because they have filed a motion to
22 reconsider and they were going to do that in the morning.
23 And I can't remember what time they were going to do that.
24 So, is Mr. Miller around?

25 MS. BETH ANN YOUNG: He is. I'll go down and get him,

1 Your Honor.

2 THE COURT: We'll take about five minutes and let me
3 see where Mr. Miller is.

4 (Break taken at 2:50 p.m. At 3:05 p.m., the trial
5 resumed:)

6 THE COURT: Have you gotten all your stuff?

7 MS. ZMROCZEK: No, Your Honor. I don't have it. I'm
8 certainly not ready to go this afternoon.

9 THE COURT: I bet you are.

10 MS. ZMROCZEK: I'm sorry?

11 THE COURT: I bet you are. I bet you can show me in a
12 little bit that you're ready to go. All right.

13 Here's the deal. I've got this thing with Mr. Miller
14 and Mr. Whittle tomorrow that I just met with them. It's
15 a reconsideration of a sentence. Going to take a half
16 hour to 45 minutes.

17 I told them that we'll go ahead and argue and charge
18 in the morning. We'll do it starting at 10 o'clock. They
19 may go a few minutes longer than that. But, I want to get
20 this case, get it to the jury as quickly as we can in the
21 morning. I have no idea how long they're going to be on
22 this thing and --

23 MS. ZMROCZEK: And, Your Honor, I assure you, since I
24 have this time to organize it, it probably won't be that
25 long. I'll be able to pace it.

1 THE COURT: Well, I don't think you need an hour.
2 Judge Manning will say any preacher can save you in 15
3 minutes if they're going to save you.

4 So we'll start at that time. I'm going to bring the
5 jury in and tell them what we're going to do.

6 MS. ZMROCZEK: And, Your Honor, Mr. Bank informed me, I
7 have not renewed my objection regarding the indictments,
8 the lack of clarity. And I just wanted to make sure that
9 that was on this record that I did.

10 THE COURT: That is noted.

11 MS. ZMROCZEK: Thank you.

12 THE COURT: All right. Let's bring the jury in if we
13 could.

14 (Jury enters courtroom at 3:06 p.m.)

15 THE COURT: Ladies and gentlemen, as you heard, the
16 Defendant has rested. And anything from the State in
17 reply?

18 MS. HAMMACK: No, Your Honor.

19 THE COURT: The State is not going to offer anything
20 in reply. So we're at the phase of the trial where the
21 lawyers get an opportunity to speak to you.

22 I normally do not argue and charge after four
23 o'clock. Before four, one of these lawyers indicated they
24 wanted about three and a half hours to talk in the
25 morning, so -- just kidding.

1 But, anyway, we're going to come back and argue and
2 charge in the morning because I assume it would probably
3 be 4:30, between 4:30 and five o'clock before you would
4 get the case and that would be late in the afternoon. And
5 we're going to let you come in fresh in the morning to
6 hear the arguments. I'm going to ask you to be here at 10
7 o'clock.

8 But let me give you this little caveat. I was here,
9 maybe this summer, I can't remember, and I sentenced
10 somebody and they filed a motion to reconsider on the
11 sentence. And I had this scheduled for some period of
12 time and I'm going to do that at 9:30. I don't anticipate
13 it's going to take more than 30 minute to do it but it may
14 run a few minutes past 10 o'clock. So if I don't bring
15 you in exactly at 10 it's because I'm dealing with this
16 other matter.

17 But I anticipate we'll start at 10 and we'll turn it
18 over -- the State actually has the right to make two
19 closings. They can make one of them on the law, and then
20 they get to make their argument after the Defendant makes
21 the defense argument. The State is waiving their first
22 argument so we ought to be able to get you the case in
23 fairly quick time in the morning and let you go to work
24 and ultimately make a decision in this case.'

25 So, what I am going to remind you again, do not talk

1 about the case with anybody. Do not -- you've invested
2 two full days and you'll have time tomorrow. So I don't
3 want to do anything to jeopardize your time or the efforts
4 of the State and the defense in this matter. Don't do any
5 investigation. Don't talk to anybody outside the jury
6 room.

7 When you come in the morning, I would like you to
8 select a foreperson. Maybe you ought to be here maybe
9 five minutes or so before 10 so you can select a
10 foreperson. If you'll just write it -- Mr. Whittle or one
11 of the bailiffs will give you a pad. You can just write
12 the name down and they'll give me that name. And that
13 foreperson will occupy the front seat right up where this
14 gentleman is seated. You put the foreperson right here.

15 THE BAILIFF: Uh-huh.

16 THE COURT: Right here where this gentleman is and the
17 rest of you will go wherever you want to go. And of
18 course the alternate sits there.

19 Y'all have a nice evening. We will see you to start
20 at 10 o'clock in the morning. Please be prompt and stay
21 warm. Y'all are free to go. Have a nice night. Don't
22 get on the computer, read anything in the paper or listen
23 to anything on the radio or watch any TV about this
24 matter.

25 Thank you.

1 (Jury exits courtroom at 3:10 p.m.)

2 THE COURT: Anything?

3 MS. HAMMACK: Not from the State, Judge.

4 THE COURT: Caitlyn will have the verdict forms in the
5 morning so you can look at them before we, you make your
6 argument and before they go to the jury so you know
7 exactly what they say.

8 MS. ZMROCZEK: The verdict forms?

9 THE COURT: Ma'am?

10 MS. ZMROCZEK: The verdict forms?

11 THE COURT: Yes, ma'am.

12 MS. ZMROCZEK: And then the charge, I just -- yeah, I
13 just want to -- obviously I'm not going to misstate
14 anything. I'm going to tell them that you give the law.
15 But when I do address my arguments on the law, I just
16 wanted to make sure that --

17 THE COURT: Address your arguments on what?

18 MS. ZMROCZEK: On the law.

19 THE COURT: All right. What portion of the law do you
20 want?

21 MS. ZMROCZEK: No. I think that -- I think it was all
22 clarified that the definition of sexual battery will be in
23 there. That's all.

24 THE COURT: And I don't know if you want to know what
25 I charge with respect to reasonable doubt. You don't care

1 about that?

2 MS. ZMROCZEK: No, if it's your --

3 THE COURT: Pardon me?

4 MS. ZMROCZEK: It's the typical charge, right, for
5 reasonable doubt?

6 THE COURT: I try not to do anything typical.

7 MS. ZMROCZEK: Of course not. It's the most-excellent
8 charge.

9 THE COURT: Hesitate to act. And I do say -- y'all
10 can look at the verdict form before you leave this
11 afternoon if you want. Caitlyn has had them prepared.

12 MS. ZMROCZEK: Okay.

13 THE COURT: Reasonable doubt is the kind of doubt that
14 would cause a reasonable person to hesitate to act. If
15 you have such a doubt as to the guilt of the Defendant,
16 then he would be entitled to a verdict of not guilty.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt. Reasonable
19 doubt may arise from the evidence which is in the case or
20 from the absence or lack of evidence in the case. If you
21 think that the Defendant is probably guilty of the
22 circumstances, suspicions is not enough.

23 MS. ZMROCZEK: Thank you.

24 THE COURT: And if you want to know anything else
25 about the charge, I will be happy to review it with you in

1 the morning. Again, if you want to see what the verdict
2 forms are this afternoon or in the morning, you can look
3 at them in the morning.

4 All right. Anything else y'all want to do today?

5 MS. HAMMACK: No, Your Honor.

6 MS. BETH ANN YOUNG: Your Honor, we don't have
7 anything else prepared. We'll get started bright and
8 early in the morning. We have a pretty full day.

9 (Off-the-record discussion.)

10 THE COURT: Mr. Rudd, you need to make sure you come
11 back in the morning. I don't know what time your lawyer
12 has told you to be here, but you heard we're starting at
13 10. So you be here at least before that or whenever your
14 lawyers have told you to be here. All right?

15 THE DEFENDANT: 9:30. Yes, Your Honor.

16 THE COURT: All right. Y'all have a nice evening.
17 We'll see you tomorrow.

18 THE DEFENDANT: You, too.

19 END OF DAY: 3:14 P.M.
20
21
22
23
24
25

1 ON THURSDAY, DECEMBER 12, 2013 AT 10:05 A.M.:

2 THE COURT: You got something you want me to look at?

3 MR. BANK: Your Honor, I mean, there's no case law on
4 this issue in particular.

5 THE COURT: I'll probably just give my charge. I'll
6 tell them that they have to prove this case beyond a
7 reasonable doubt.

8 MR. BANK: Okay.

9 MS. ZMROCZEK: Will it be improper that I say they
10 have to disprove? That it was not for a medical?

11 THE COURT: You know, I would tell them -- if you're
12 going to start telling them what the law is, you better
13 tell them that they --

14 MS. ZMROCZEK: It comes from you, regardless.

15 THE COURT: That's correct.

16 MS. ZMROCZEK: Okay.

17 THE COURT: All right. Mr. Jesse Williams is the
18 Foreperson of the Jury.

19 Are y'all ready to go?

20 MS. HAMMACK: Yes, Your Honor.

21 THE COURT: And you anticipate that you'll be no more
22 than 30 minutes?

23 MS. HAMMACK: I won't be that long, Judge.

24 THE COURT: No more means it could be from one to 30.
25 And, Ms. Zmroczek, you anticipate you'll be?

1 MS. ZMROCZEK: About 30 minutes, Your Honor.

2 THE COURT: All right. Can we bring the jury in,
3 please?

4 (Jury enters courtroom at 10:13 a.m.)

5 THE COURT: All right. Good morning, ladies and
6 gentlemen. Nice to see you this morning.

7 First thing, I appreciate y'all -- Mr. Williams, I
8 appreciate your willingness to serve as the juror in this
9 matter -- I mean, as a Foreperson. Ladies and gentlemen,
10 thank you for doing that.

11 And before we turn this over to the attorneys, I've
12 got some questions I need to ask you that I asked you
13 yesterday.

14 Anybody have any conversation about this case since we
15 left yesterday with each other or with anyone else? Were
16 you approached by anyone to discuss this case since we
17 left yesterday? Anybody do their own investigation, make
18 their own inquiries either on the computer or some
19 location or anything like that? Read anything about it,
20 hear anything about it, watch anything about it?

21 (Jurors shake heads.)

22 THE COURT: All right. Good.

23 Ladies and gentlemen, as I told you yesterday, we're
24 at the phase of the trial where the lawyers have another
25 opportunity to speak with you. And as I said, normally

1 the State has a right to open on the law and then the
2 Defendant will make their closing argument. And then the
3 State will then make another closing argument. In this
4 instance the State is waiving its rights to open on the
5 law with consent of the Defendant.

6 And so, I call on Ms. Zmroczek, are you ready to
7 proceed, please, ma'am?

8 MS. ZMROCZEK: I am, Your Honor.

9 THE COURT: All right. If you would.

10 MS. ZMROCZEK: Thank you, Your Honor. May it please
11 the Court. Solicitor.

12 Good morning, ladies and gentlemen. I want to thank
13 you for your service. I want to thank you on behalf of
14 myself, I'm sure the Judge, and the solicitor's office,
15 and Mr. Banks. But on behalf of Mr. Dwayne Rudd, you are
16 the most important people in this process.

17 When two sides disagree, our system puts it in your
18 hands. And they ask, and we ask you to examine every bit
19 of evidence and come to a decision of fact.

20 You've sat through testimony. You've sat through me
21 fumbling through questions, some nervous witnesses
22 stumbling through their testimony. And now it's Thursday
23 and we're at the end of our journey.

24 I have to say, I think that you probably have more
25 questions than answers. There's no more evidence in this

1 case. The Judge will tell you and it's true, what we say
2 is not evidence. There were evidence that were not
3 provided to you. There were questions that weren't
4 answered, facts that you were not given.

5 The evidence that came from that witness chair, and
6 these exhibits are what you have to consider. I want to
7 explain to you a little bit about it. This is my last
8 opportunity to talk to you. When I'm finished the
9 solicitor's office will get up and they will come and they
10 will make an argument. And the reason that it's done that
11 way is because they have the burden. They have the burden
12 of proof in this case.

13 You recall Mr. Bank in opening statement said, we may
14 put on a case. We may put evidence and testimony. That's
15 not a two-sided coin. That does in no way shift the
16 burden. We could have sat back and not put up any
17 witnesses, not put in any evidence, and that burden would
18 still be on the State.

19 That's the highest burden in American jurisprudence.
20 And it's done that way for a reason.

21 This is a very serious matter. Serious to Ms. Rudd,
22 and the girls, and it's serious to Dwayne Rudd.

23 I've broken down my opening -- my closing arguments to
24 three sections. I'm going to discuss with you a little
25 bit about the law. And I'm going to tell you this, and I

1 hope to tell you again, what I say and what I explain
2 about the law is not the law. What the Judge tells you is
3 the law, and if what I say in any way varies, the Judge
4 will tell you, you must follow what he says.

5 I'm going to talk about the facts. And again, you
6 have to rely on your recollection. It's true what I say
7 is not evidence. But it's a guide for you to look at it
8 from our perspective, not just a snippet, not just a
9 narrow path, but to look at the whole picture.

10 Mr. Bank told you in opening that this case was about
11 a father in a gender-reversal role, a child with an
12 extremely rare medical condition, and a mother with a
13 motive. He referenced the Salem witch trials and that
14 hysteria that followed. And more panic when we say the
15 words children and sex. And it should because that is a
16 terrible crime.

17 But justice cannot be overlooked. The Constitution.
18 Mr. Rudd, you, should demand more than just words.
19 Because it's easy for anyone to stand up and I submit to
20 you the State will say, this man, this man did it. But
21 don't, but don't look at what this man didn't do. And
22 don't look at what this woman said or what her motives
23 were. Don't, don't look at that. It's this man.

24 Because, ladies and gentlemen, this man is different.
25 And I want to start off and talk about my biggest fear in

1 this case. My biggest fear is that we're dealing with a
2 highly sensitive and highly-emotional issue. The law is
3 going to be your guide on emotion. And the law will tell
4 you, you must base your verdict on evidence and not
5 emotions.

6 We have eight charges, eight charges. Criminal sexual
7 conduct in the second degree and criminal sexual conduct
8 in the third degree. When both sides sit down the Judge
9 is going to give you a very lengthy explanation of what
10 those are and what they entail. And he's going to tell
11 you what the burden is.

12 And when you're looking and deciding on CSC second,
13 criminal sexual conduct in the second degree, and you hear
14 the definition of sexual battery and it tells you, unless
15 it's done for medical treatment or diagnostic purpose. It
16 doesn't say by a doctor.

17 And then in criminal sexual conduct third degree, it
18 talks about lust or for sexual desires.

19 Those things have to be proven to you beyond a
20 reasonable doubt.

21 What has been proven beyond a reasonable doubt? I
22 certainly don't anticipate for you to read this. It's
23 simply a guide. 2011, November and December. 2012.
24 2011, November and December, orange and pink. 2012, all
25 the way through June, orange and pink, because that's when

1 those girls were enrolled in Midland Valley Prep and
2 that's when they told you it happened during the day.

3 Is that possible? They're going to tell you to use
4 your good common since. Use your good common sense.

5 There is no DNA. This isn't CSI, but don't you think if
6 there had been DNA, if there had been physical evidence,
7 if there had been any other witnesses, if there had been
8 any investigation, that it would have become important?

9 2011 starting in July, to May 20th, 2013. All of this
10 time goes by. Every four months we're going to a doctor.
11 They're seeing teachers. They're seeing specialists. Not
12 one outside witness.

13 Mr. Dwayne Rudd told you about how he was trying to
14 purchase another jet ski. And he renovated houses. He
15 did work. And he sat there and he told you that his wife
16 makes three times what he does. And he sat there for the
17 first time yesterday. And he didn't get to practice. He
18 didn't get to come into the courtroom and sit in the
19 Judge's chair or sit in the witness chair and be asked the
20 same questions over and over. He didn't do that. But he
21 got up there and he told you the most intimate,
22 embarrassing things about his family and his life. And he
23 told you that he wanted to buy a jet ski. He spent a lot
24 of money for the family.

25 Monday, May 20th we have a disclosure. The testimony

1 from some say they had full disclosure. The testimony
2 from the mom says, no, I didn't know about the touching.
3 She knew about the touching. We have Tuesday. Minor 1 told
4 you, I told my mom on Tuesday. Then we have the
5 Wednesday. Investigator Evensen said, well, she knew a
6 little bit about it Monday but found out Wednesday.

7 And then we have Thursday, the 23rd. Thursday the
8 23rd of May. Jennifer Rudd gets up, goes to work, calls
9 DSS and calls the police, meets them at the Bi-Lo. The
10 whole time, even these three days, even this day, the
11 whole time leaves those kids with a monster. I submit to
12 you, if your child is being attacked you don't wait three
13 days to pull it back.

14 If your child in the best light tells you on Wednesday
15 night, May 22nd, of the horrible, awful things that have
16 been done to them, you don't get up, go to work, call the
17 police. This case is about protecting your children. And
18 you get them away right away. You don't wait. But she
19 waits.

20 She tells you from the stand, she wrote it in her
21 statement, they told me he checked, compared, but I didn't
22 think anything of it because this is an abnormal
23 situation.

24 The three witnesses that testified, the mom and the
25 two daughters, are very trained in calling it an adrenal

1 condition. An adrenal condition. It is an adrenal
2 condition.

3 And then Dr. Donohoe is not an advocate for any side.
4 He's a scientist. Just stated the facts. And he tells
5 you there were boy parts growing. And I'm not trying to
6 embarrass anyone. But that didn't start on April 20th.
7 It started when she was a child. It's been having to be
8 dealt with by her father and her mother. It's
9 disingenuous for Ms. Rudd and Minor 1 and Minor 2 to sit up
10 there and tell you that he wasn't involved. It's not
11 possible for her to have a full-time job, 7:30 to five,
12 and take care of her children. And it shouldn't be.
13 That's why we have a family unit. Why deny that?

14 Taken from the house on May 23rd. And, yes, it's
15 true. He was upset. I believe Ms. Timmerman said, he
16 started to get agitated. You show up at his house and you
17 take his kids and his wife and you don't tell him why
18 except for you've been sticking your fingers in their
19 vaginas and he gets agitated.

20 The first thing he does is try to call her. What in
21 the world is going on. She loved him for 15 years, but
22 she's not going to talk to him? But what she does do is
23 take those two girls and she goes to Myrtle Beach.

24 And I'm not saying that Minor 1 and Minor 2 got up there
25 and lied. I'm not calling them liars. Children are

1 susceptible. You heard the teachers that saw them every
2 day for a year. Minor 1 is pleasing. Of course she's going
3 to say what's been told to her over and over. Minor 2 is
4 highly intelligent. She won the school's spelling bee,
5 but can't give you one detail. One detail that doesn't
6 match up to what Dwayne already tells you.

7 The only time they can give you details is when it
8 becomes sexual. He told you what he did. And in
9 hindsight he says, maybe I should have done it
10 differently. And he's odd. And he's different. And he's
11 weird. And they want you to convict on that.

12 And the Constitution says you can't do that. And the
13 law says you can't do that.

14 She's in Myrtle Beach May 25th. Saturday, May, 25th,
15 8:31 or 8:01. You have the phone calls. You have the
16 phone records. She calls Christian Mingle dot com
17 (christianmingle.com). So concerned about the safety of
18 her children who has told her that they have been
19 repeatedly digitally penetrated and she doesn't take
20 either one of them to the doctor, not the one that had the
21 10-hour surgery, doesn't take them to the doctor but she
22 does make a phone call to Christian Mingle, but they
23 didn't tell you that. And I submit they didn't tell you
24 that because they didn't know because she didn't tell them
25 that. And they didn't ask.

1 Investigator Evensen, the lead investigator on the
2 case who we called, said, I based, I based my decision on
3 the girls' testimony and the mom. We called the expert to
4 tell you what to look for in these kinds of cases.

5 May 26 is the six-minute call where she actually signs
6 up to Christian Mingle. Still at the beach. All of these
7 days, questioning the girls. Well, did he do this. We
8 don't know what she questioned.

9 But then they get the forensic interview. Tuesday,
10 May 28th. Evensen heard that forensic interview. He
11 heard it from behind the glass. He heard the tales of the
12 blankets and the pillows. Where's the blanket? Where's
13 the pillow? We have a picture of a bedroom. We didn't
14 even get the detail of what color.

15 On May 29th, Dwayne is told to stop contacting his
16 family.

17 And he did, he wrote on the walls. We put this
18 picture into evidence for you. It's his handwriting. He
19 doesn't deny it. He wrote on the walls, but isn't it
20 different how it becomes very criminal when you're writing
21 notes on the wall.

22 In opening the State told you that we're going to try
23 to distract you. But we're not the ones who only put in a
24 portion of the -- he told you he drew all over the wall
25 because he didn't want Jennifer to crumble up anything and

1 throw it away. He wanted the girls to know that he still
2 loved them. He's sorry he had to go through this. He's
3 sorry he didn't get to see what they gave him. Please
4 forgive him. He didn't want them to even have to go
5 through this. It's not been his choice for a long time.

6 They told you, you hear it from his own words. He's
7 in the jail for several months. Every phone call
8 recorded. And they play for you less than a minute. I
9 submit to you, it's not the defense that's not trying to
10 show you the whole evidence.

11 May 31st, Jennifer Rudd files for divorce. June 3rd
12 Evensen says he talked to Mr. Rudd and he's hired an
13 attorney. June 6th he swears out the warrants. June 8th
14 she was only on Christian Mingle for two weeks so that
15 doesn't mean anything. But she did tell you that, or she
16 told the State that she met her boyfriend with whom she
17 spends the night. So worried and concerned about the
18 safety of her children, still hasn't taken them to the
19 doctor.

20 Monday, June 10th. This man, this monster turns
21 himself into the jail. And he's in there. And he does
22 talk on the phone. And he's thinking, like we all think,
23 maybe I did do something wrong. He said, maybe I did have
24 a warped mind. Maybe. Maybe when you look at the
25 abnormal circumstances of his situation and this adrenal

1 condition, maybe. But maybe is not reasonable doubt.

2 One of the jail phone calls, June 15th. What I can't
3 put up on this calendar or any calendar, I can't put up
4 when the medical exam was on the girl because the lead
5 investigator couldn't remember. Because the person who
6 performed that exam did not come and testify. I submit to
7 you, had there been physical evidence of abuse he'd been
8 on that stand. It would have been in front of you.

9 I can't put on here when the interviews with any of
10 the doctors were. The first time a doctor testifies or
11 provides any information in this case was yesterday on
12 that stand.

13 I would like to tell you that I can put up the review
14 of the school records. DSS told you these are very
15 serious matters. We have to respond within two hours,
16 complete our investigation within 45 days. I can't put
17 that on the calendar. I can't put on the calendar the
18 review of any witness who is not a member of the family or
19 an advocate for children.

20 The schoolteacher was asked, why are you here. She
21 had taught those girls for a year. Not one notice. Not
22 one report. It was a small school. It was a charter
23 school. It was done that way on purpose. They build
24 relationships.

25 The father was the one who knew about the disease. I

1 can't put on here any dates that an incident occurred.
2 Minor 1 does say it happened May 20th. Minor 2 says, I
3 can't remember. I submit, I couldn't give you a specific
4 date that something happened. We're not demanding a
5 specific date, but a relevant time frame, a holiday, a
6 relation, an event. Anything.

7 The Judge is going to give you the instruction on
8 reasonable doubt. And I'm going to talk to you a little
9 bit about what we consider to be reasonable doubt in this
10 case.

11 Questions that weren't answered. And I've listed a
12 few. And I'm sure that you'll have a lot more. Why can't
13 the girls provide details? Why didn't Minor 1 tell us she
14 didn't have a hole where her vagina was? How is it even
15 possible to be convicted or guilty of a crime, until he
16 reads you the elements, penetration however so slight.
17 She had no vagina to penetrate. The doctor had to create
18 it.

19 It's interesting that when Dwayne describes the
20 checking and comparing, there's not one person before
21 yesterday said, how did you check and compare. All they
22 were interested in was: Did the Doctor tell you to do
23 that. He's not a doctor. He said himself, I'm not a
24 doctor, I'm a father. I submit, had he not checked, had
25 Minor 1 gotten a wicked infection from her 10-hour

1 reconstructive surgery, it's possible we could be in here
2 for child neglect charges.

3 How did it happen at school? How did it happen during
4 the day when they were at school? What did Dr. Houk's
5 instructions to the parents consist of? What did he do
6 every four months? And the State will tell you, she could
7 have called them. We could have called them and we could
8 have put them up there. But it's not our burden. We
9 showed you a little bit of the investigation that we did.
10 But that's not our job. That's not our burden.

11 Is it criminal to love and protect your children? To
12 make sure that they're normal?

13 Questions with Jennifer's testimony. But this is the
14 one I want you to focus on. She says, I applied the
15 cream. And I asked her, because I knew the answer because
16 I had spoken to the doctor: Where did you apply that
17 cream. Around the clitoris area. That was her
18 testimony. And that doctor when asked: Where did you put
19 cream. The bottom where the stitches were, towards the
20 anus. Clitoris. Anus. It's not that far.

21 But it's a huge difference, because she didn't know.
22 And that's okay. She was working. Don't fault her as a
23 mother for working. She shouldn't be faulted. She should
24 be faulted for lying to you on the stand.

25 I asked her when she took her children to the

1 specialists, to any doctor. I didn't. It's December.
2 Happened in, the last time in May. Still no doctors.

3 She told you that she told the kids before they had
4 their forensic interview that DSS would take them away if
5 they talked to their daddy. The girls admitted that they
6 had discussed their testimony. They had talked about,
7 make sure you tell the interviewer this.

8 I keep repeating myself but the defense does not, is
9 not required to present evidence or prove anything.

10 But where is the medical evidence? No medical
11 evidence. No physical evidence. No investigation into
12 the motives of the mother. No review of suggestiveness to
13 the children. No details. No witness. No independent
14 witness. No one to tell you how he checked and compared
15 except for himself from that chair.

16 Lastly, ladies and gentlemen, I'm going to talk to you
17 about reasonable doubt. Criminal cases are a search for
18 the truth. Verdict. The latin word veredicto, it means
19 to speak the truth. And that's what you will be asked to
20 do. You'll be asked to do it based on that evidence
21 that's provided to you.

22 No matter where you fall along this continuum, if you
23 believe he's innocent, if you believe the evidence shows
24 that he's likely or probably innocent, could be innocent,
25 we don't know, we don't know if he's guilty, probably

1 guilty, probably guilty of something, likely guilty, if
2 you fall anywhere on this continuum, the Judge will
3 instruct you that the law says the case has not been
4 proved beyond a reasonable doubt.

5 I submit that there are few things in life that are
6 certain. The old saying I think used to be death and
7 taxes. Even now I know people don't pay their taxes. So
8 death, that's the only thing certain. And certainty is
9 not required for what's up here. But guilty beyond a
10 reasonable doubt is required.

11 We began by talking and relating this case to the
12 Salem witch trials. I want to sandwich it in there. Is
13 it right for two children to be pawns in a parents'
14 divorce to be used to get out of a marriage? To be the
15 only evidence provided to you and you're asked to convict
16 this man?

17 And when I sit down I can't get up again and I can't
18 say but wait, I can't respond to their arguments.

19 And I would ask that you give the solicitor the same
20 attention that you've given me and every time that your
21 curiosity is piqued, you hold the State to that standard,
22 to that burden of proof. And when you do, you follow the
23 law based on evidence, not emotions, you should find
24 Dwayne Rudd not guilty of every charge.

25 Thank you.

1 MS. HAMMACK: Thank you, Judge. If you'll just give
2 me a second to get set up.

3 THE COURT: Ma'am?

4 MS. HAMMACK: If you'll give me just a second to get
5 set up, Judge.

6 (Pause.)

7 Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. HAMMACK: Members of the jury. This ain't Rudd V
10 Rudd. This isn't a family court case. And we know he's
11 not a doctor. Now, I'm not going to be up here all day.
12 Frankly, I don't have to be.

13 But I want to talk just a minute about what you just
14 heard. The defense wants you to believe that this is a
15 case about Minor 1's medical condition and Mom with a
16 motive.

17 Let's talk about Minor 1's medical condition. They want
18 you to think that because Minor 1's got a medical condition
19 that anything that that man did was okay. That he was
20 just putting medicine on his daughter after her surgery.
21 There's a couple problems with that.

22 First of all, he's the only person in this courtroom
23 that said he ever put medicine on Minor 1. Minor 1 said he
24 didn't. Mama said he didn't. In fact, Mama said we
25 talked about it after we came home from the hospital and

1 we agreed as husband and wife that **Minor 1** was too old for
2 him to be touching her there.

3 Who's got a motive to tell you'll what they want you
4 to hear? The only one that says, oh yeah, I put medicine
5 on her, I did. If he's just putting medicine on his
6 daughter, why does he have to put his finger in her hole?
7 Why would **Minor 1** say that's what he's doing?

8 The doctor said it's an external medicine. I gave
9 them Q-tips to put it on. It doesn't go inside. If
10 that's what he's doing, why does he have to touch her
11 there? If that's what he's doing, how do you explain why
12 **Minor 1**'s telling you that a year before my surgery Daddy
13 was putting his finger in my hole? You heard that the
14 medicine only lasted for about two weeks. And **Minor 1** told
15 you that the last time that her daddy did this to her was
16 in May of this year. If he's not putting on medicine,
17 what's he doing for six months?

18 And if he's just putting medicine on **Minor 1**, why in the
19 world does he have to touch **Minor 2** ? She didn't have
20 surgery. She didn't need medicine. Why would **Minor 2**
21 tell you, my daddy touched the inside of my privates? And
22 I tell you, members of the jury, neither of them needed
23 medicine on their breasts or their bottoms. That doesn't
24 have anything to do with **Minor 1**'s medical condition.

25 He told you, oh, I was just comparing them. I wanted

1 to see what a normal vagina looked like compared to
2 **Minor 1's**. He told DSS, I was examining my girls and I was
3 comparing them.

4 Mom didn't compare them. The doctor didn't compare
5 them. The doctor said, I don't need to. You can look at
6 **Minor 1** and tell what's going on. It's not a
7 medically-recognized diagnosis or treatment to compare
8 these two girls.

9 Now, he also tells you that this is all about **Minor 1's**
10 medical condition and I was trying to be daddy doctor.
11 Now I'm not a doctor but I'm a daddy and I'm taking care
12 of my girls.

13 Members of the jury, there's nothing wrong with being
14 a good father. There is nothing wrong with being a good
15 father. Being a good father does not require a man to
16 penetrate your daughters' vagina with your finger.

17 He's not a doctor.

18 And he says that there was no sexual intent. He told
19 us, I touched them but there was no sexual intent. If
20 there's no sexual intent, why he's got to wait until
21 Mama's not home? Why does he got to close and lock the
22 door? Why does he have to put a pillow or a blanket over
23 his children's heads? Because in **Minor 1's** words, he didn't
24 want me looking at him when he touched me.

25 If it's not sexual, why is he touching their breasts?

1 Squeezing their breasts when he's touching them down
2 there? If it's not sexual, why is he taking Minor 2 naked
3 from the waist down and sitting her in his lap? Because
4 in his words, Minor 2 , I like to squeeze your bottom.

5 If it's not sexual, why does he say, one more time?
6 One more time, Minor 1. If it's not sexual, why did he tell
7 his daughters, don't tell Mama because she won't
8 understand? And if it's not sexual, why is he having to
9 cry and pray after he does this? Why does he tell
10 Minor 2 , I have thoughts in my head and if I do this
11 they'll go away?

12 Members of the jury, this doesn't have anything to do
13 with Minor 1's medical condition. Now, they try to tell you
14 that it's about a mom with a motive. Now, we've got a
15 mastermind right here. They said, I won't point at her
16 but we got a mastermind right here that got these girls to
17 do this.

18 First they said that it took her too long to call the
19 police, but then she was too quick about calling the
20 police and not talking to her husband. I don't know which
21 one they want you to believe. But she told you on Monday,
22 my girls said that Daddy was comparing them and she said,
23 and I quote, we were married for 15 years. I thought they
24 were too old, but I trusted him not to hurt my children.

25 Only after her daughters said, Daddy's hurting us,

1 he's hurting us, Mommy, she does what any mother would do
2 and she calls the police.

3 Now they want to make a big deal about this Christian
4 Mingle phone call thing that happened weeks after the
5 police have gotten involved and law enforcement's gotten
6 involved. She's got this boyfriend. If she's got a
7 boyfriend waiting in the wings, why's she got to call
8 Christian Mingle? This mother of 15 years, this wife of
9 15 years is trying to figure out how to start over after
10 her world has been turned upside down.

11 But here's the thing, y'all, this isn't about her.
12 It's never been about her. It ain't about me. It ain't
13 about the defense. This case is about those two little
14 girls that got up here in front of you and told you what
15 their daddy did to them behind closed doors.

16 Now the Judge is going to tell that you a victim's
17 testimony need not be corroborated. That's a whole bunch
18 of words but what it means is if you believe those girls,
19 that's enough. I didn't see that whole flow chart about
20 guilty-not guilty, whatever. But the Judge is going to
21 tell you, if you believe what Minor 1 and Minor 2 told you,
22 that's enough.

23 Now these are creative. Sure. I haven't heard the
24 doctor daddy or motive mom. But that doesn't make them
25 the truth. That doesn't make them reasonable doubt.

1 Y'all remember what I told y'all ages ago on Tuesday, I
2 think. If something is ridiculous, it's not reasonable
3 and it's not reasonable doubt.

4 This is ridiculous. A guy that's not a doctor that's
5 had a doctor tell him, this is not what we do as doctors.
6 If your kid is hurt, you bring them to me because that's
7 my job. But he ain't going to do that. He's going to be
8 a doctor and then he's going to blame it all on his wife.
9 That's not reasonable.

10 They want you to look at pictures of a bow and arrow.
11 They want you to look over here, pictures of caulking a,
12 I-don't-know-what-you-call-it, whatever. They want you to
13 look over here at a car. Let's look anywhere, guys,
14 except here.

15 They want you to look anywhere except for this bedroom
16 where Minor 1 and Minor 2 and the Defendant himself told
17 you, I took them there. That's what this is about.

18 Now, members of the jury, I've talked a lot about what
19 they said. Let's talk about what we're really here for.
20 Let's talk about these charges.

21 The first is criminal sexual conduct with a minor
22 second degree. And the Judge is going to read you the law
23 on it, but I'm going to give you the same little blurbs I
24 gave you on Tuesday. It's a sexual battery done by
25 somebody in a position of authority, a daddy, and as they

1 told you 400 times, unless it's for a medically-recognized
2 diagnosis for treatment.

3 What's a sexual battery? It's an intrusion, however
4 slight. We're not talking about a whole finger up to a
5 knuckle. Any intrusion into the body, any intrusion into
6 the body, however slight. Minor1 told you he put his
7 finger in my hole. Minor2 told you, he touched the
8 inside of my private. My daddy did that.

9 Those are intrusions into the body. That's a sexual
10 battery.

11 Now, members of the jury, this whole medical diagnosis
12 for treatment thing, we know he's not a doctor. But you
13 got to hear from a doctor. The doctor told you that
14 doctors don't stick fingers in peoples' vaginas. The
15 doctor told you he didn't tell this family or any other
16 family to do that, because that's not a medical treatment,
17 guys. You don't need a doctor to tell you that.

18 When you came in here this morning you may have had to
19 take your belt off or dump your purse, you didn't dump
20 your common sense. You don't need a doctor to tell you
21 that that is ridiculous.

22 This man committed a sexual battery on Minor1 and
23 Minor2 . The easiest of targets, his daughters. He
24 didn't do it once. He didn't do it twice. He did it over
25 and over, year after year.

1 One of your indictments for **Minor 1** is from 2011 to 2012
2 before she ever even had surgery. And the defense wants
3 to say, oh well, she didn't even have a hole then for him
4 to put anything in. Yes, she did. Y'all sat here and
5 listened. The doctor told you, she had a hole. He even
6 talked about it being like a flower. He said more than
7 one thing is connected to it but there's a hole. And he
8 even told you about the type of instrument he used with
9 that hole. That it was three millimeters, it was smaller
10 than a pencil eraser because anything bigger would hurt.

11 You're dang right it hurt.

12 And **Minor 1** told you that when she finally told her
13 mama, the reason she finally told even though Daddy told
14 her not to because Mama won't understand, the reason she
15 finally told, she said, Mama, I got tired of him hurting
16 me.

17 He's also indicted for doing this after she had
18 surgery.

19 And the last time she told you was the Monday, May
20 20th before the police came. The last straw when she
21 started crying on the stand, that was the last straw, the
22 last time Daddy was going to hurt her because she told
23 Mama.

24 **Minor 2** 's. Indicted for the same time period, both
25 before **Minor 1** 's surgery and after **Minor 1** 's surgery. **Minor 2**

1 didn't have surgery. But she said time and time again,
2 year after year, Daddy touched the inside of my private.

3 The other charge that we have is criminal sexual
4 conduct with a minor third degree. Again, you'll hear the
5 Judge tell you all about it more than you probably ever
6 wanted to know, but it's simply touching the body of
7 another person for either their or your sexual desires.

8 Guys, I'm willing to bet and stand before you, it
9 wasn't for Minor 2 's or Minor 1 's sexual desires. He
10 squeezed my boobs, is what Minor 1 said. He pushed my shirt
11 up, and pushed my bra, and while he was putting his finger
12 in my hole he squeezed my boobs.

13 Minor 2 said the same thing except she said breasts.
14 Daddy squeezed my breasts. And then Daddy made me sit on
15 him, sit on his lap on the floor with no pants on and no
16 panties on. I had to sit on his lap facing him while he
17 squeezed my bottom because he told me he likes doing that.
18 That's touching the body of another for sexual desires.

19 You got the same times that you see here.

20 Now, members of the jury, it's just like I told you,
21 if you believe Minor 1 and Minor 2 , that's enough. We don't
22 have to bring you DNA. And we don't have to bring you
23 fingerprints. We don't have to bring you the crime scene
24 or the video cameras from CSI. And we don't have to bring
25 you some expert from across the river in Georgia. If you

1 believe the girls, that's enough.

2 I know it seems like forever ago but I want you to
3 remember little Minor 1. I want you to remember Minor 1
4 sitting right here. Think about what she looked like and
5 what she acted like when she told you what her daddy had
6 been doing. Think about Minor 2 . And what they had to
7 say to you, things that grown-ups don't talk about in
8 public. If those girls weren't telling you the truth
9 then, ladies and gentlemen, let's give them an Academy
10 Award.

11 But we don't even have to rely on just these girls.
12 The Defendant himself put him there. He told you, yeah, I
13 asked Minor 1 to come in my room. I lowered her pants. I
14 lowered her panties. I got her to lay down on the bed for
15 me so I could check her.

16 I did the same thing with Minor 2 . He even told her
17 to spread herself apart so I could examine her.

18 Let's think about the other things he said. My
19 thinking was really warped. Don't tell Mom because Mom
20 won't understand. I have these thoughts in my head but if
21 I do this, they'll go away. Minor 2 , I like touching your
22 bottom. Minor 1, one more time. One more time. I've
23 already paid greatly for my sin.

24 And the defense pitched a fit because we cut out this
25 one little sentence. But we let him explain exactly what

1 he was paying for. And we'll let you hear it one more
2 time why he's paid greatly for this sin, what he's talking
3 about.

4 (Audio played.)

5 MS. HAMMACK: He's not talking about lying or stealing
6 or doing something years ago. You know exactly what he's
7 talking about. He's talking about what he did to these
8 girls. And the only people that had paid for that man's
9 acts are his daughters.

10 Y'all aren't here to punish him. Y'all aren't here to
11 reward him. Y'all are the judges of the facts. You
12 decide what happened. Your job is not to punish this man
13 but to answer two questions: Did he put his fingers in
14 his daughters' vaginas? Did he touch his daughters,
15 squeeze their breasts, squeeze their bottom for his sexual
16 desires?

17 All the evidence that you've heard in this case points
18 you to one verdict; find him guilty.

19 THE COURT: All right, ladies and gentlemen, before I
20 instruct you as to the law -- can y'all move this easel,
21 please?

22 We're going to take a break for just a few minutes and
23 let you step back to the jury room. Please do not discuss
24 the case while you're back there. We'll bring you back in
25 just a few minutes. And, thank you.

1 (Jury exits courtroom at 11:08 a.m.)

2 THE COURT: Aimee, can you and one of the solicitors
3 come up here?

4 (Off-the-record discussion.)

5 THE COURT: All right. Can we see if the jury's ready
6 to come back in? Would you ask if the jury is ready to
7 come in, please, ma'am?

8 (Jury enters courtroom at 11:13 a.m.)

9 * * * *

10 JUDGE'S CHARGE TO THE JURY

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, the eight indictments in this case charge the
13 Defendant with the offenses of, five of them charge him
14 with the offense of criminal sexual conduct in the second
15 degree, and three of them charge him with the offense of
16 criminal sexual conduct in the third degree.

17 I remind you that the fact that the Defendant was
18 arrested, charged, and indicted in this case is not
19 evidence in the case and cannot be considered by you as
20 evidence of guilt, nor does it create any presumption or
21 inference of guilt.

22 The indictments are simply the formal written
23 instruments which contain the charges made against the
24 Defendant. They are the formal documents by which this
25 case is brought into this court.

1 The indictments in this case allege several different
2 offenses against the Defendant. Indictment 2013-GS-
3 02-1681 states that the Defendant, Dwayne Lee Rudd, did in
4 Aiken County at diverse times on or between September 24,
5 2012, and May 20, 2013, commit the crime of criminal
6 sexual conduct with a minor in the second degree, in that
7 the Defendant did commit a sexual battery upon **Minor 2**

8 who was a minor, 12 years of age at the time of the
9 incident, and that the Defendant was in a position of
10 familial, custodial or official authority to coerce the
11 victim to submit or was older than the victim.

12 Indictment 2013-GS-02-1680 states that Mr. Rudd did in
13 Aiken County at diverse times on or between September 24,
14 2011, and September 23, 2012, commit the crime of criminal
15 sexual conduct with a minor in the second degree, and that
16 the Defendant did commit a sexual battery upon **Minor 2**

17 who was a minor who was 11 years of age at the time
18 of the incident and the Defendant was in a position of
19 familial, custodial or official authority to coerce the
20 victim to submit or was older than the victim.

21 Indictment 2013-GS-02-1679 states that Mr. Rudd did in
22 Aiken County at diverse times on or between December 12,
23 2012, and May 19, 2013, commit the crime of criminal
24 sexual conduct with a minor in the second degree and that
25 the Defendant did commit a sexual battery upon **Minor 1** ,

1 a minor who was 14 years of age at the time of the
2 incident and the Defendant was in a position of familial,
3 custodial or official authority to coerce the victim to
4 submit or was older than the victim.

5 Indictment 2013-GS-02-1643 alleges that Mr. Rudd did
6 in Aiken County at diverse times on or between December
7 12, 2011, and December 11, 2012, commit the crime of
8 criminal sexual conduct with a minor in the second degree
9 and that the Defendant did commit a sexual battery upon
10 **Minor 1** , a minor who was 13 years of age at the time of
11 the incident, and the Defendant was in a position of
12 familial, custodial or official authority to coerce the
13 victim to submit or was older than the victim.

14 Indictment 2013-GS-02-1642 alleges that Mr. Rudd did
15 in Aiken County on or between May 20, 2013, commit the
16 crime of criminal sexual conduct with a minor in the
17 second degree and that the Defendant did commit a sexual
18 battery upon **Minor 1** , a minor who was 14 years of age
19 at the time of the incident, and the Defendant was in a
20 position of familial, custodial or official authority to
21 coerce the victim to submit or was older than the victim.

22 Indictment 2013-GS-02-1645 alleges that Mr. Rudd being
23 over the age of 14 did in Aiken County at diverse times on
24 or between September 24, 2012, and May 20, 2013, willfully
25 and lewdly commit or attempt to commit a lewd or

1 lascivious act upon or with the body of Minor 2 , a
2 child under the age of 16 and he did so with the intent of
3 arousing, appealing to, or gratifying the lusts, passions
4 and sexual desires of himself or such child. That's
5 criminal sexual conduct third degree.

6 Indictment 2013-GS-02-1639, it's a criminal sexual
7 conduct with a minor child third degree which alleges that
8 Mr. Rudd did -- being over the age of 14, did in Aiken
9 County at diverse times on or between December 12, 2012,
10 and May 19, 2013, willfully and lewdly commit or attempt
11 to commit a lewd or lascivious act upon or with the body
12 of Minor 1 , a child under the age of 16 with the intent
13 of arousing, appealing to, or gratify the lusts, passions
14 and sexual desires of himself or such child.

15 And the third criminal sexual conduct with a minor
16 third degree alleges that Mr. Rudd being over the age of
17 14 did in Aiken County on or about May 20, 2013, willfully
18 and lewdly commit or attempt to commit a lewd or
19 lascivious act upon or with the body of Minor 1 , a
20 child under the age of 16, with the intent of arousing,
21 appealing to, or gratifying the lusts, passions and sexual
22 desires of himself or such child.

23 Now as I have read, ladies and gentlemen, these
24 indictments deal with different time frames and with two
25 different children. Each indictment charges a separate

1 and distinct offense. You must decide each indictment
2 separately on the evidence and the law applicable to the
3 evidence, uninfluenced by your decision as to the other
4 indictments. The Defendant may be convicted or acquitted
5 on any or all of the charges -- the offenses for which he
6 is charged. You will be asked to write a separate verdict
7 of guilty or not guilty for each indictment.

8 Now, ladies and gentlemen, to these indictments the
9 Defendant has entered pleas of not guilty which places
10 upon the State the burden of proving the Defendant
11 guilty. A person charged with committing a criminal
12 offense in South Carolina is never required to prove
13 himself innocent.

14 I charge you that it is a vital, important rule of the
15 law of evidence that the Defendant in a criminal trial, no
16 matter how great or serious may be the offense for which
17 he is charged, must always be presumed innocent until his
18 guilt has been proven beyond a reasonable doubt.

19 This presumption of innocence remains with the
20 Defendant at all times from the moment of his appearance
21 in this Court throughout the trial and until the jury has,
22 upon the testimony and the evidence presented, reached a
23 verdict of guilty beyond a reasonable doubt. For it is
24 the solemn duty of this jury if not clearly convinced of
25 the Defendant's guilt beyond a reasonable doubt to acquit

1 the Defendant.

2 So the burden of proof is upon the State to establish
3 by evidence to your satisfaction the guilt beyond a
4 reasonable doubt on this Defendant here on trial for the
5 various crimes of criminal sexual conduct with a minor in
6 the second degree and criminal sexual conduct with a minor
7 in the third degree.

8 Now what is a reasonable doubt? A reasonable doubt is
9 the kind of doubt that would cause a reasonable person to
10 hesitate to act. If you have such a doubt as to the guilt
11 of this Defendant, then he would be entitled to a verdict
12 of not guilty.

13 Proof beyond a reasonable doubt is proof that leaves
14 you firmly convinced of the Defendant's guilt. Reasonable
15 doubt may arise from the evidence which is in the case or
16 from the absence or lack of evidence in the case.

17 To think that the Defendant is probably guilty or that
18 the circumstances are suspicious is not enough. You alone
19 must make the determination of whether or not reasonable
20 doubt exists as to this Defendant.

21 Now, ladies and gentlemen, there are two types of
22 evidence which are generally presented during a trial,
23 direct evidence and circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 claims to have actual knowledge of a fact such as an

1 eyewitness. It is evidence which immediately establishes
2 the main fact to be proved.

3 Circumstantial evidence is proof of a chain of facts
4 and circumstances indicating the existence of a fact. It
5 is evidence which immediately establishes a collateral
6 fact from which the main fact may be inferred.

7 Circumstantial evidence is based on inference and not on
8 personal knowledge or observation.

9 The law makes absolutely no distinction between the
10 weight or value to be given either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than of
13 direct evidence. You should weigh all of the evidence in
14 the case. After weighing all of the evidence if you are
15 not convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find the Defendant not guilty.

17 Mr. Foreman and members of the jury, under our
18 Constitution and laws, you are the finders of the facts in
19 this case. I do not have the right to pass upon the facts
20 or even to express any opinion I may have as to those
21 facts, nor may I intimate in any way what I may think
22 about the guilt or the innocence of the Defendant. You
23 are the judges, the sole judges of the credibility, the
24 believability of the witnesses who have testified in this
25 case.

1 In passing upon their credibility you may take into
2 consideration many things such as the demeanor or the
3 manner of testifying of that witness, whether the witness
4 had reason to be biased or prejudiced, whether a witness's
5 testimony was contradicted on the one hand or supported
6 and corroborated on the other hand.

7 You certainly do not determine the credibility or
8 believability by counting the number of witnesses for
9 either side. You may believe a small portion of a
10 witness's testimony and disregard the larger or vice
11 versa. You may believe one witness against many or many
12 against one.

13 Now during the trial you've heard testimony from a
14 child or children. Where a witnesses is a child you must
15 determine as with any witness whether the testimony is
16 believable. In deciding believability you may consider
17 not only matters that have already discussed -- that I've
18 already discussed with you, but you may also consider the
19 age of the child, the child's ability to observe and
20 remember facts, and the child's ability to understand and
21 answer questions.

22 Because young children may not fully understand what
23 is happening here, it is up to you to decide whether the
24 child understood the seriousness of appearing as a witness
25 at the trial, whether the child understood the questions,

1 whether the child had a good memory, and whether the child
2 understands the difference between lying and telling the
3 truth.

4 In addition, young children may be influenced by the
5 way the questions are asked. It is up to you to decide
6 whether the witnesses understood these questions that were
7 asked.

8 Now you've heard the testimony of witnesses who have
9 special knowledge, skill, experience, training or
10 education in particular professions or occupations who
11 have given their opinions as experts as to matters in
12 which they are skilled. In determining the weight to be
13 given such opinions, you should consider the
14 qualifications and the credibility of the expert and the
15 reasons given for the expert's opinion. You are not bound
16 by such opinions. Give the testimony the weight if any to
17 which you deem it is entitled.

18 All of these things you must consider, bearing in mind
19 that you should give the Defendant the benefit of the
20 reasonable doubt.

21 Now the same Constitution and laws which makes you the
22 finders of facts makes me the sole and only instructor of
23 the law. You must accept as correct the law which I
24 charge and apply it to the evidence as you find it and
25 reach your verdict. And finally I charge you in this

1 matter that you should not be concerned about what you
2 think the law ought to be or what you wish the law were,
3 but only what I charge you the law to be.

4 Now, ladies and gentlemen, as I told you, the
5 Defendant is charged with five different indictments of
6 criminal sexual conduct with a minor in the second degree.

7 The State must prove beyond a reasonable doubt that
8 the Defendant engaged in a sexual battery with the
9 victim. A sexual battery is sexual intercourse,
10 cunnilingus, fellatio, anal intercourse, or any intrusion,
11 however slight of any part of a person's body or of any
12 object into the genital or anal openings of another
13 person's body except when the intrusion is accomplished
14 for medically-recognized treatment or diagnostic purposes.

15 The State must prove then beyond a reasonable doubt
16 that the victim was at least 11 years of age but not more
17 than 14 years of age at the time of the sexual battery, or
18 that the victim was less than 16 years of age but at least
19 14 years of age, and the Defendant was either in a
20 position of familial, custodial or official authority to
21 coerce the victim to submit, or the Defendant was older
22 than the victim.

23 Consent, willingness, indifference or ignorance on the
24 part of the minor, if any, as to what was taking place
25 does not in any way affect the charge of criminal sexual

1 conduct with a minor because an unmarried woman under the
2 age of 14 cannot legally consent.

3 Now, ladies and gentlemen, under our Statute 16-3-657,
4 the testimony of a victim need not be corroborated in the
5 prosecution for criminal sexual conduct in the second
6 degree with a minor.

7 As I told you, the Defendant is charged with five
8 counts of second degree criminal sexual conduct and three
9 counts of third degree criminal sexual conduct. When two
10 or more acts of criminal sexual conduct occur at or about
11 the same time, each act is a separate crime rather than
12 one continuing crime.

13 The Defendant is charged with criminal sexual conduct
14 with a minor in the third degree. A minor is a person
15 under the age of 18. The State must first prove beyond a
16 reasonable doubt that the Defendant was over the age of 14
17 years. Next the State must prove that the Defendant
18 willfully and lewdly committed or attempted a lewd or
19 lascivious act on or with the body or its parts of a child
20 under the age of 16 with the intent to arouse, appeal to
21 or gratify the lusts, passions or sexual desires of the
22 Defendant or the child.

23 Willfully means voluntarily and intentionally with the
24 specific intent to do something the law forbids.

25 Lewd means obscene, lustful, indecent, or lecherous.

1 Lascivious means tending to insight lust, lewd, indecent,
2 obscene or tending to deprave the morals in respect to
3 sexual relations.

4 Now, ladies and gentlemen, you have been selected as
5 fair and impartial jurors, sworn to impartially try and
6 determine the facts of this case. And when you comply
7 with your oath to do so, then no one will have a right to
8 criticize your verdict and you will have fully discharged
9 your duty as jurors. You are to decide this case
10 according to the testimony that you have heard from the
11 lips of the sworn witnesses along with other evidence
12 introduced.

13 I charge you that as jurors you must decide the issues
14 in this proceeding without bias and without prejudice to
15 any party. You cannot allow yourself to be governed by
16 sympathy, by prejudice, by passion, by public opinion, or
17 by any arbitrary factor.

18 Both the State and the Defendant have the right to
19 expect that each of you will carefully and impartially
20 consider all of the evidence in the case and that you will
21 follow the law as I have explained it to you.

22 Now, Mr. Foreman, I have prepared eight verdict forms
23 here. There are five of them for the criminal sexual
24 conduct with a minor in the second degree.

25 As I told you, the indictments allege different time

1 frames with different children.

2 At the top of each the criminal sexual conduct, second
3 degree, there is a date, a specific date or a time period
4 and then in parentheses there is a child's name. That
5 indictment, this verdict form relates to that time frame
6 and that indictment for that charge for that child. With
7 criminal sexual conduct there are -- second degree, there
8 are three different time frames as to Minor 2 . There are
9 two different time frames as to Minor 1 .

10 With the criminal sexual conduct with a minor in the
11 second degree, there are three different -- is that
12 right? (Pause.)

13 There's two different time frames with Minor 1 and one
14 different time frame with Minor 2 .

15 Now these verdict forms give you two possible verdicts
16 with respect to each indictment and those possible
17 verdicts are: We the jury unanimously find the Defendant
18 guilty; or, we the jury unanimously find the Defendant not
19 guilty.

20 As these verdict forms indicate, your verdict has to
21 be the unanimous verdict of all 12 jurors. It can't be
22 11-1, 9-3, 7-5. It has to be the unanimous verdict of all
23 12 jurors.

24 Each indictment has to be considered separately and
25 independently and you're going to have to make a decision

1 with respect to each indictment. As I told you, you
2 may -- the Defendant can be guilty on some, not guilty on
3 some, not guilty on all of them, guilty on all of them.
4 But you have to decide them independently of each other in
5 reaching your verdict.

6 Now in just few minutes, Mr. Foreman, ladies and
7 gentlemen, I'm going to ask all of you other than the
8 alternate, if the alternate would remain with me, to step
9 back to the jury room but do not begin your deliberations
10 at that time. I must review with the attorneys the
11 instructions that I have given you to determine whether
12 they believe I either failed to instruct you in some
13 manner or I incorrectly instructed you. If I believe
14 additional instructions are necessary, I will immediately
15 bring you back and give you those instructions.

16 If not, I will have the bailiff bring all of the
17 verdict forms along with all exhibits that have been
18 introduced into this case back to the jury room and you
19 can begin your deliberations at that time.

20 When you have reached your verdict as to all eight
21 charges, then -- I think y'all got a light system.

22 THE BAILIFF: Yes, sir.

23 THE COURT: You push that and that will indicate that
24 you have reached your verdict. We will then bring you
25 back in so that your verdicts can be published.

1 All right. If you will step back to the jury room.
2 Do not begin your deliberation. We'll be with you
3 momentarily.

4 (Jury exits courtroom at 11:36 a.m.)

5 THE COURT: All right, Mr. Alternate. Let me see
6 here. You are Mr. Duggan?

7 THE JUROR: Yes, sir. Duggan.

8 THE COURT: Apparently all but one of the jurors
9 survived the process and they're going to be able to go
10 forward with the deliberations.

11 As you know we lost one alternate and we have
12 replaced -- I mean, one juror. We've replaced him with an
13 alternate. So we're going to be able to turn you loose.
14 And we can turn you loose for the rest of the week.

15 I don't know how you feel about it if after sitting
16 here all week whether you wanted to participate in the
17 decision or you're glad you don't have to participate in
18 the decision. But I do thank you very much for your
19 willingness to be here and work with us in this matter and
20 hope you realize how important y'all are to this whole
21 process.

22 But you should be getting a check from the county for
23 not a whole lot of money but in the not-too-distant
24 future. If you need an excuse for work, I guess they go
25 by the clerk's office?

1 THE CLERK: Yes.

2 THE COURT: You go by the clerk's office, but
3 otherwise you will be excused for the rest of the week.
4 And I thank you very much for your service. All right.

5 THE JUROR: Thank you.

6 THE COURT: Thank you, sir. Have a nice Christmas.

7 (Alternate exits courtroom.)

8 THE COURT: All right. Anything from the State with
9 respect to the instructions?

10 MS. HAMMACK: No, Your Honor.

11 THE COURT: Anything from the Defendant?

12 MS. ZMROCZEK: No, Your Honor.

13 THE COURT: All right. If you will get with Ms. Young
14 and let's make sure we got all the exhibits and we will
15 stand in recess for a little bit, unless ...

16 (Attorneys comply.)

17 THE COURT: Mr. Rudd, I'm going to take you into the
18 custody of the Court at this time. You will be in my
19 custody until the jury reaches a verdict, so I think the
20 deputy will be taking you with him.

21 (Deliberations commence at 12:08 p.m. Thereafter,
22 other matters were heard by the Court. At 12:59 p.m., the
23 trial resumed:)

24 THE COURT: The bailiff has reported that the jury has
25 reached a verdict. Is the State ready to receive the

1 verdict?

2 MS. HAMMACK: Yes, Your Honor. The victim's mother's
3 on the way up now.

4 THE COURT: All right. Let's bring -- we can bring
5 the Defendant out, please.

6 (Defendant enters courtroom at 12:59 p.m.)

7 THE COURT: All right. Mr. Whittle, if we can bring
8 the jury in, please.

9 (Jury enters courtroom at 1:01 p.m.)

10 THE COURT: All right. Mr. Foreman, it's been
11 reported that the jury has reached a verdict.

12 FOREPERSON OF THE JURY: Yes, sir.

13 THE COURT: Have you reached a verdict on all eight
14 indictments?

15 FOREPERSON OF THE JURY: Yes, sir.

16 THE COURT: And is this the unanimous verdicts of all
17 12 jurors?

18 FOREPERSON OF THE JURY: Yes, sir.

19 THE COURT: With respect to all eight indictments?

20 FOREPERSON OF THE JURY: Yes, sir.

21 THE COURT: If you would hand the verdict forms to
22 Mr. Whittle, please, sir.

23 FOREPERSON OF THE JURY: (Complying.)

24 THE COURT: All right. Do you want to publish the
25 verdict?

1 I don't know that these are in any order, so.

2 All right. Madam Clerk, if you would publish the
3 verdict, please.

4 THE CLERK: Your Honor, in the State versus Dwayne Lee
5 Rudd, Indictment Number 2013-GS-02-01642, criminal sexual
6 conduct with a minor second degree, May 20th, 2013, Minor 1,
7 we the jury unanimously find the Defendant guilty. Signed
8 by Foreperson Ricky Williams.

9 Indictment Number 2013-GS-02-01679, criminal sexual
10 conduct with a minor second degree, 12-12-2012, to
11 5-19-2013, Minor 1, we the jury unanimously find the
12 Defendant guilty.

13 Indictment Number 2013-GS-02-01681, criminal sexual
14 conduct with a minor second degree, 9-24-2012 through
15 May-20-2013, Minor 2, we the jury unanimously find the
16 Defendant guilty. Signed by Foreperson Ricky Williams.

17 Indictment Number 2013-GS-02-01680, criminal sexual
18 conduct with a minor second degree, 9-24-2011, through
19 9-23-2012, Minor 2, we the jury unanimously find the
20 Defendant guilty. Signed by Foreperson Ricky Williams.

21 2013-GS-02-1643, criminal sexual conduct with a minor
22 second degree, 12-12-2011, through 12-11-2012, Minor 1, we
23 the jury unanimously find the Defendant guilty. Signed by
24 the Foreperson Ricky Williams.

25 Indictment Number 2013-GS-02-01645, criminal sexual

1 conduct with a minor third degree, September 24th, 2012,
2 through May 20th, 2013, **Minor 2** , we the jury unanimously
3 find the Defendant guilty. Signed by the Foreperson Ricky
4 Williams.

5 Indictment Number 2013-GS-02-01638, criminal sexual
6 conduct with a minor third degree, May 20th, 2013, **Minor 1** ,
7 we the jury unanimously find the Defendant guilty. Signed
8 by Ricky Williams foreperson.

9 Indictment Number 2013-GS-02-01639, criminal sexual
10 conduct with a minor third degree, December 12th, 2012,
11 through May 19th, 2013, **Minor 1** , we the jury unanimously
12 find the Defendant guilt. Signed by Foreperson Ricky
13 Williams.

14 Ladies and gentlemen of the petit jury, if is this
15 your verdict, please indicate so by raising of your right
16 hands.

17 THE JURY (COLLECTIVELY): (Complying.)

18 THE CLERK: All hands are raised, Your Honor.

19 THE COURT: All right. Thank you. Anything from the
20 State with respect to the jury?

21 MS. HAMMACK: No, Your Honor.

22 THE COURT: Anything from the Defendant?

23 MS. ZMROCZEK: We'd ask that the jury be polled
24 individually, Your Honor.

25 THE COURT: All right. Madam Clerk?

1 THE CLERK: As I call your name, please answer the
2 following questions.

3 Juror Number 167, Matthew Stone. Is this your
4 verdict?

5 THE JUROR: Yes.

6 THE CLERK: Do you still agree?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 175, James Tyler, Jr. Is
9 this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Do you still agree?

12 THE JUROR: Yes.

13 THE CLERK: Juror Number 158, Karen Sheppard. Is this
14 your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Do you still agree?

17 THE JUROR: Yes.

18 THE CLERK: Juror Number 73. Is this your verdict --
19 Mark Halsey. Is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Do you still agree?

22 THE JUROR: Yes.

23 THE CLERK: Juror Number 10, Scot Beck. Is this your
24 verdict?

25 THE JUROR: Yes.

1 THE CLERK: Do you still agree?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number 149, Raquel Reyes-Catala. Is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Do you still agree?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 156, Michael Schubert. Is
9 this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Do you still agree?

12 THE JUROR: Yes.

13 THE CLERK: Juror Number 196, Ricky Williams. Is this
14 your verdict?

15 FOREPERSON OF THE JURY: Yes.

16 THE CLERK: Do you still agree?

17 FOREPERSON OF THE JURY: Yes.

18 THE CLERK: Juror Number 89, Kim Ingham. Is this your
19 verdict?

20 THE JUROR: Yes.

21 THE CLERK: Do you still agree?

22 THE JUROR: Yes.

23 THE CLERK: Juror Number 19, Alan Broome. Is this
24 your verdict?

25 THE JUROR: Yes.

1 THE CLERK: Do you still agree?

2 THE JUROR: Yes.

3 THE CLERK: Juror Number 79, Kimberly Hebbard. Is
4 this your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Do you still agree?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 13, Bennett Blue. Is this
9 your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Do you still agree?

12 THE JUROR: Yes.

13 THE COURT: All right. Anything else with respect to
14 the jury?

15 All right. Ladies and gentlemen, I want to thank you
16 very much for your service this week. I know these are
17 tough cases and not very pleasant cases. And
18 unfortunately we have to deal with them sometimes and we
19 have to have your help in doing so.

20 I appreciate your attentiveness in this case. I
21 appreciate your hard work. I'm going to turn you loose
22 for the week. If you need an excuse for work -- do they
23 have to go to the clerk's office or do y'all deliver
24 something?

25 THE CLERK: They'll have to go to the clerk's office.

1 THE COURT: You need to go to the clerk's office. You
2 will be receiving a small token of appreciation from Aiken
3 County for your service. Don't plan a big Christmas on
4 what you get. But this is a service, and as I said, we
5 cannot operate our system of justice without you being
6 here.

7 So again, I thank you very much. You wish all of you
8 the best for the holidays and the new year and y'all are
9 free to go.

10 Thank you again. Y'all have a nice holiday.

11 THE JURY (COLLECTIVELY): Thank you.

12 (Jury exits courtroom at 1:09 p.m.)

13 THE COURT: How about if we, I know y'all want to get
14 back to Columbia but how about if we can just start his
15 sentencing after lunch? Is that a problem to you?

16 MS. ZMROCZEK: No, Your Honor. That's fine.

17 THE COURT: All right. We will -- I'll ask you to be
18 back here at -- it's 10 after. We'll be back here at 2:30
19 and we will do the sentencing at that time and whatever
20 else y'all may have.

21 MS. BETH ANN YOUNG: Yes, sir.

22 THE COURT: All right.

23 MS. BETH ANN YOUNG: Thank you.

24 MS. ZMROCZEK: Thank you, Your Honor.

25 (Lunch break taken at 1:15 p.m. At 2:33 p.m., the

1 trial resumed:)

2 THE COURT: Y'all need to get your client out.

3 (Defendant enters courtroom.)

4 THE COURT: All right. Y'all ready, do you want to
5 step up here please, Mr. Rudd?

6 THE DEFENDANT: Sure.

7 THE COURT: All right. Anything the State wants to
8 say at this point?

9 MS. HAMMACK: Your Honor, the Defendant does not have
10 a criminal record. You've heard the facts in this case.
11 We don't need to say anything.

12 THE COURT: All right.

13 MS. ZMROCZEK: Your Honor, thank you. The Defendant
14 is 40 years old. Like she said, he does not have a
15 criminal record. He has an eighth grade education. He
16 was working towards his GED, has not completed it yet.

17 Your Honor, we spoke with several people that would
18 have liked to be here but they couldn't get off work in
19 time. But, Your Honor, I think that we -- it just speaks
20 to his character that we did call three people and they
21 all called right back and they said that they wanted to be
22 here but unfortunately they couldn't.

23 He has advised me that he does not want to speak but
24 that he understands and respects the jury's decision and
25 would like for me to make sure that you understand that he

1 maintains his innocence.

2 THE COURT: I understand that.

3 All right. Ms. Rudd, anything you want to say?

4 MS. RUDD: No, sir.

5 THE COURT: Anything on behalf of the children?

6 MS. RUDD: Sir?

7 THE COURT: Anything on behalf of the children?

8 MS. RUDD: I just want to see justice served for them.

9 THE COURT: In your mind, what would that be?

10 MS. RUDD: I, I don't know. I just -- it's not up to
11 me.

12 THE COURT: Let me get you to stand, if you would
13 please.

14 MS. RUDD: (Comes forward.) It's not, it's not up to
15 me to judge him. I just want to see justice served.

16 THE COURT: Well, tell me how your children are
17 doing.

18 MS. RUDD: They're doing well.

19 THE COURT: They're being counseled at this time?

20 MS. RUDD: Yes, sir.

21 THE COURT: How often? On a weekly? Monthly?

22 MS. RUDD: They finished counseling but they're
23 probably going to start back after this. One of them's
24 already asked to go back.

25 THE COURT: All right. Anything further?

1 MS. HAMMACK: No, Your Honor.

2 THE COURT: This is a CSC second. That's an 85
3 percenter; isn't it?

4 MS. HAMMACK: That's correct, Your Honor.

5 MS. ZMROCZEK: It is, Your Honor.

6 Sorry, Your Honor, I know you're writing. I wanted to
7 let you know that he does have some health problems. He
8 has sleep apnea which requires a C-Pap but I think that
9 the jail facility is already aware of that.

10 THE COURT: How much time did your client do in jail?

11 MS. ZMROCZEK: He did 90 days, Your Honor. And he
12 does understand he's facing a significant amount of time
13 and did ask that you would consider running the sentences
14 concurrent.

15 THE COURT: All right. Mr. Rudd.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You know, I know you went to trial on what
18 you believe to be your innocence and the jury has spoken
19 and I listened to it. And I clearly understand how the
20 jury did what they did.

21 These children are going to be affected for the rest
22 of their life as you will be. It's a tragic, tragic
23 situation that we ended up here. And hopefully your kids
24 will get on with life and they'll have normal lives and be
25 productive and healthy, happy citizens in the future.

1 You're looking at 145 years in the Department of
2 Corrections of which you would do, I guess on that basis
3 probably close to a hundred before you would max out. At
4 your age that ain't going to happen. I don't know what
5 the right sentence is. This is a sentence where really it
6 just comes down to punishment for you doing it.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: There's no magic to what I do here today.
9 Hopefully you will get out and you'll have some productive
10 years left and you will -- I don't know what happens with
11 you and your children.

12 But ON INDICTMENT 2013-GS-02-1681, CSC WITH A MINOR
13 SECOND DEGREE, SENTENCE OF THIS COURT, YOU BE COMMITTED TO
14 THE DEPARTMENT OF CORRECTIONS FOR A TERM OF 15 YEARS.

15 ON 2013-GS-02-1679, CSC WITH A MINOR SECOND, SENTENCE
16 OF THIS COURT, YOU BE COMMITTED TO THE DEPARTMENT OF
17 CORRECTIONS FOR A TERM OF 15 YEARS.

18 2013-GS-02-1680, SENTENCE OF THIS COURT YOU BE
19 COMMITTED -- THAT'S CSC WITH A MINOR SECOND, YOU BE
20 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
21 15 YEARS.

22 INDICTMENT 2013-GS-02-1642, CSC WITH A MINOR SECOND,
23 SENTENCE OF THIS COURT, YOU BE COMMITTED TO THE DEPARTMENT
24 OF CORRECTIONS FOR A TERM OF 15 YEARS.

25 2013-GS-02-1643, CSC WITH A MINOR SECOND, SENTENCE OF

1 THIS COURT, YOU BE COMMITTED TO THE DEPARTMENT OF
2 CORRECTIONS FOR A TERM OF 15 YEARS.

3 ON 2013-GS-02-1638, CSC WITH A MINOR THIRD, SENTENCE
4 OF THIS COURT, YOU BE COMMITTED TO THE DEPARTMENT OF
5 CORRECTIONS FOR A TERM OF FIVE YEARS.

6 2013-GS-02-1639, SENTENCE OF THIS COURT, YOU BE
7 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR A TERM OF
8 FIVE YEARS PLUS COSTS AND ASSESSMENTS AS APPLICABLE.

9 ON 2013-GS-02-1645, SENTENCE OF THIS COURT -- ON
10 2013-GS-02-1645, CSC WITH A MINOR THIRD, SENTENCE OF THIS
11 COURT, YOU BE COMMITTED TO THE DEPARTMENT OF CORRECTIONS
12 FOR A TERM OF FIVE YEARS, PROVIDED UPON THE PAYMENT OF
13 COSTS AND ASSESSMENTS AS APPLICABLE THE BALANCE IS
14 SUSPENDED WITH PROBATION FOR THREE YEARS.

15 ALL OF THOSE SENTENCES EXCEPT THE CSC WITH A MINOR
16 THIRD THAT I JUST READ, 2013-GS-02-1645, WILL RUN
17 CONCURRENT AND YOU'LL BE GIVEN CREDIT FOR TIME SERVED.

18 THE CSC THIRDS WILL BE FIVE YEARS WITH PROBATION FOR
19 THREE YEARS AND THAT WILL RUN CONSECUTIVE. SO WHEN YOU
20 GET OUT YOU'RE GOING TO BE MONITORED. AND I'M NOT GOING
21 TO ORDER NO CONTACT WITH THE MINOR CHILDREN UNLESS THEY
22 DETERMINE WHEN YOU GET OUT THAT THEY DON'T WANT TO HAVE
23 ANY CONTACT WITH YOU.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: I don't know what's -- these are all

1 violent offenses, most-serious offenses which means that
2 you get other strikes you could potentially be in prison
3 for the rest of your life.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Hopefully you won't. I don't know where
6 you're going to stand with the Sexually Violent Predator
7 Act whether you will be subject to that. Have y'all
8 discussed that with him?

9 MS. ZMROCZEK: I have not, Your Honor, but I will.

10 THE COURT: Sexually Violent Predator Act, they may
11 evaluate you before you're released from the Department of
12 Corrections and if they determine that you're a risk, ask
13 the Court to have you committed for mental health
14 counseling. And you would have -- be entitled to a jury
15 trial on that. It's a civil matter, but conceivably you
16 can be there the rest of your life if you don't do what
17 you need to do.

18 So, all right. Good luck to you.

19 MS. ZMROCZEK: Thank you, Judge.

20 (At 2:48 p.m., other matters were heard by the Court.
21 The trial resumed at 3:03 p.m.:)

22 THE COURT: All right. Let's see if we can -- Ashley,
23 go see if you can find those folks.

24 MS. HAMMACK: Yes, sir.

25 THE COURT: And bring them back out here.

1 (Off-the-record discussion.)

2 THE COURT: Ms. Zmroczek, I forgot to order that he
3 have to register. I don't know whether they require that
4 I order that but --

5 MS. ZMROCZEK: We advised him that was part of it,
6 Your Honor.

7 THE COURT: I'm just going put it on the record.

8 MS. ZMROCZEK: Absolutely.

9 THE COURT: Mr. Rudd, I'm ordering that you have to
10 register on the sexual registry. That may be statutory,
11 I'm not sure. If not, if it requires a finding by the
12 Court, I'm making that finding here today and we'll put it
13 on your sentence sheet. All right.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. Thank you.

16 MS. ZMROCZEK: Thank you, Your Honor.

17 MR. BANK: Thank you, Judge.

18 END OF CASE: 3:06 P.M

19 ***

20 CERTIFICATE OF REPORTER

21 STATE OF SOUTH CAROLINA)

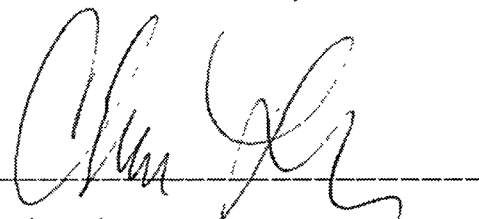
22 COUNTY OF AIKEN)

23 I, Cheri L. Young, Registered Professional Reporter
24 and Official Court Reporter for the State of South
25 Carolina, Second Circuit-At Large, do hereby certify that

1 the foregoing proceedings were written stenographically by
2 me using computer-aided translation; further, that the
3 foregoing is a true, accurate and complete record, to the
4 best of my skill and ability, of all the proceedings had
5 and evidence introduced in the hearing of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Aiken County, on the 9th, 10th, 11th and 12th days of
8 December, 2013.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11 I have hereunder set my hand this 4th day of April,
12 2014.

13
14 

15 Cheri L. Young, RPR
16 Official Court Reporter
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2013A0211000113
2013A0211000112

2016CPC20136

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

6-10-2016
IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant.

DWAYNE LEE RUDD

v.

State of South Carolina

Handwritten signature: Chad Knappe
1725
10/25/16

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention _____
2. Name and location of Court which imposed sentence **Broad River Correctional Institution**
AIKEN COUNTY COURT
3. Name(s) of co-defendant(s) (if any) No
HOUSE P.O Box 583 109 Park Aiken
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) **2013-GS-02-1679 - 81 2013-GS-02-1638 - 39**

(b) **2013-GS-02-1642-43 and 2013-GS-02-1645**

(c) **CSC**
5. The date upon which sentence was imposed and the terms of the sentence:

(a) **December 12, 2013**

(b) **15 years 85% 3 years probation**

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty **x**
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
—YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. **THE SOUTH CAROLINA COURT OF APPEALS**
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **The Court Affirmed**
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **February 24, 2016**
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **Ineffective assistance of Trial counsel**

Ineffective assistance of Appellate counsel

Revised 3/2003

- (a) **Prosecutorial Misconduct**
 - (b) **The Court Lacked Subject Matter Jurisdiction**
 - (c) **See Attached Case Law, Court Rules, Constitutional Law, Facts**
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) **See Attached Memorandum that will support each ground**
 - (b) **See attached Case Law, Constitutional Law, Statutory Law**
 - (c) **See Attached Copies of Documents, motions, Statements.**
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) **Ineffective assistance of counsel only may raise at**

(b) **Post-Conviction-Relief Stage**

(c) **Prosecutorial Misconduct was not preserved for Direct Appeal. Subject Matter Jurisdiction may raise anytime**

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Paul Anderson- 211 York St, NE Suit 2 Aiken Sc 29801
 - ii. Aimee J. Zmroczek- P.O Box 11961 Columbia sc 29211
 - iii. Thommy A. Thomas- P.O. Box 88 Irom, S.C. 29063
- (b) the proceedings at which each such attorney represented you:
 - i. Paul Anderson- Arraignment and Bond Hearing
 - ii. Aimee Zmroczek- Trial
 - iii. Tommy Thomas- Direct Appeal

19. State clearly the relief you seek in filing this application:

~~Vacate or In Alternative Reverse and Remand for New Trial .~~

20. Are you now under sentence from any other court that you have not challenged?

~~No~~

STATE OF SOUTH CAROLINA

)

VERIFICATION

County of)

)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

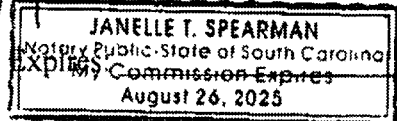
Shirley L. Rush

SWORN to and subscribed before me this 20th

day of May, 2016

Janelle T. Spearman (L.S.)
Notary Public

My Commission



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

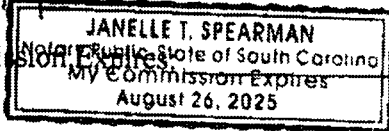
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Deane L. R. R. R.
Applicant

SWORN or affirmed to and subscribed before me this
20th day of May, 2014.

Janelle T. Spearman
Notary Public

My Commission Expires



MLT
2039A

Dodd 4830

**INMATE TRUST FUND ACCOUNT REPORT
for SOUTH CAROLINA COURT FILING FEES**

INSTRUCTIONS TO INMATE: Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): DWAYNE LEE RUDD

SCDC # 358140 INMATE SIGNATURE: Dwayne Lee Rudd

I plan to file this action in the SC County of Aiken

The section below is for SCDC - Financial Accounting Branch's use ONLY.

(1)	Total deposits to inmate's account for preceding six months' period*	\$	<u>0</u>
(2)	Twenty percent (20%) of line-1	\$	<u>0</u>
(3)	Account balance - current date	\$	<u>.09</u>
(4)	PAYMENT AMOUNT ** (lesser of line 2 or line 3)		
	Enclosed check #	\$	<u>0</u>

****NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections
Financial Accounting - Room 234
PO Box 21787
Columbia, SC 29221-1787

*Admission date is noted here if inmate incarcerated less than six months / /

M. Boyer 3/23/14
Prepared by Financial Accounting Branch - SCDC Date

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

A. Trial counsel was ineffective for failing to introduce into evidence the Forensic Interview Transcripts and Dvds conducted by Anne Laver which took place at the CAC on May 28, 2013 for this purpose, to impeach the state's key witnesses ^{Minor 1} and ^{Minor 2},

The state's case was based on the testimony of ^{Minor 1} and ^{Minor 2}, and since this was the strongest evidence the jury received by the state to support these allegations; this was a critical stage in the proceedings, clearly, trial counsel should have impeached the state's two most important witnesses by introducing the transcripts. (See Tr. Pg. 348 lines 10-25). There was no overwhelming evidence, No medical evidence, No physical evidence, No details, No witnesses, No independent witness. (See Tr. Pg. 442 21-25). See Exhibit 1 Transcript.

Certainly, trial counsel should have impeached the state's witnesses, without a doubt, would have caused any reasonable person in the jury box to hesitate as to the credibility of these two witnesses. The might have reasoned in their minds, and say, why is she saying that she has been abused over and over for two years, but in the transcript she says it only happened twice, and that it barely happened. The jury might have also reasoned that at trial she is saying the abuse happened many times before the Monday of 22nd 2013, however, in the transcript she says it did not happen anytime before the Monday of 22nd Of 2013. Undoubtedly, by impeaching the states two key witnesses the jury would have believed the defendant, indeed, would have returned a verdict of not guilty. See FI Transcript.

Truly, trial counsel's error prejudiced the defendant, and violated the defendant's Fifth and Fourteenth Constitutional rights, as a result, the defendant received an unfair trial.

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

B. Trial counsel was ineffective for failing to introduce the Forensic Medical Exam Reports conducted on June 11, 2013. Trial counsel was also deficient for failing to subpoena the doctor that performed the Medical Exam on the state's witnesses ^{Minor 1} for signs of sexual abuse. Trial counsel should have introduced the forensic medical report and subpoena the doctor for the purpose of attacking the credibility of ^{Minor 1} and ^{Minor 2}. The Forensic Medical Exam Report would have contributed to establishing innocents for the defense, in fact, the medical report and state's doctor would have revealed No Physical findings of sexual abuse, obviously, would have created doubt to the charge of sexual battery which the element is penetration however slight. Please see Tr. Pg. 380 lines 15-25 and Tr. Pg. 381 lines 1-11. Also Tr. Pg. 384 lines 11-25 and 385 line 1. Tr. Pg. 438 lines 16-25. Tr. Pg. 429 lines 3-12.

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

C. Trial counsel was ineffective for failing to introduce DSS Supervisor Esther Timmermen's written statement for the purpose of impeachment. Ms. Timmermen testified at trial that she wrote down exactly what Mr. Rudd said. Ms. Timmermen's testimony at trial was that Mr. Rudd stated, "I'm the daddy and I can touch their vagina if I WANT TO". Ms. Timmermen's written statement to the police reads as follows: "Am their father I can touch their vagina if I have to". Clearly, the jury would have saw that these are entirely two different meanings. Ms. Timmermen's testimony at trial would indicate to the jury that Mr. Rudd wants to take pleasure in touching his daughters vagina for sexual desires. Ms. Timmermen's written statement would indicate to the jury that Mr. Rudd was acting as a parent would and only would touch the vagina of his two daughters if he has to, for instance, like in a medical situation. Surely, Ms. Timmermen's written statement should have been introduced to impeach Ms. Timmermen, and would have clearly shown that Ms. Timmermen committed perjury. (See Tr. pg 244 lines 15-25) and (See Tr. pg 225 lines 1-3) Also, (See Exhibit # 2 Statement).

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel .

D. Trial counsel was ineffective for failing to introduce into evidence photographs taken by Detective Kristopher Everson On June 13, 2013 at the home of the defendant of the bedroom walls of ^{Minor 1} and ^{Minor 2}; depicting a complete and full representation of a message the defendant wrote to his two daughters . (See Tr. pg 49 lines 5-8). The state introduced into evidence a portion of remainder message , and that portion was at the beginning of a short statement that reads as follows : " I'm sorry for messing up your marker " . (See Exhibit # 3 remainder photograph). The portion of that statement the state solicitor introduced into evidence was one close-up picture of the words " I'm sorry"

(See Tr. pg 47 line 1) and (Tr. pg 48 lines 1-8). The solicitor in this case, deliberately hide the remainder, leaving the jury no other interpretation , but to infer that Mr. Rudd was apologizing for sexually abusing his daughters , which resulted in unfair prejudice to Mr. Rudd. South Carolina Rule of Completeness states , An adverse party can introduce the remainder of the writings contemporaneously with the portion that was introduced by the state which in fairness clarifies or explains the meaning. (See SCRE 106). Clearly, trial counsel should have introduced into evidence the remainder photographs of the writings on the walls, revealing the true meaning behind the state's deceptive and misleading portion of the writings of a close-up picture of the words " I'm sorry" which the state's assistant solicitor Ashley Hammack introduced to the jury as an admission of guilt by Mr. Rudd, for sexually abusing his daughters ,and clearly the remainder photographs of the writings would have shown that, the state's evidence of a close-up picture of " I'm sorry " was ,in fact, not relevant to the prime charge (See Tr.pg 45 20-25) and , in fact , not an admission of guilt. (See Tr. pg 47 lines 18-25).

Obviously, the false representation of the writings by assistant solicitor Ashley Hammack was ,in fact, prosecutorial misconduct, and the trial counsel's deficiency resulted in Mr. Rudd receiving an unfair and unjust trial which the defendant's rights is afforded under the U.S. Constitution of the Fifth and Fourteenth Amendment which states " no person shall....be deprived of life, liberty, or property, without due process of law, ".

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

E. Trial counsel was ineffective for failing to issue a subpoena commanding requested Forensic Medical Exam Reports performed on June 11, 2013 by Medical Examiner Kate Chappel on state's key witnesses ^{Minor 1} and ^{Minor 2}, for signs of sexual abuse. (See Exhibit #4 Motion To Compel Medical Records Or In Alternative Dismiss) and (See Exhibit Defendant's Motion In Lime Qualifying Kate Chappel As An Expert).

Trial counsel's fatal deficient performance failing to subpoena requested Forensic Medical Reports for use at trial, and for the purpose to impeach two important state's witnesses for allegations of Criminal Sexual Conduct Second Degree, and to conduct an effective cross-examination of state's Forensic Medical Examiner Kate Chappel. Trial counsel's deficiency was a denial of the right of an effective cross-examination was Constitutional error. (See U.S. Constitution Fifth and a Fourteenth Amendmet Due Process of Law).

In this case, the only evidence to support these allegations that the state relied on was primarily ^{Minor 1} s ^{Minor 2} s testimony , DSS worker Esther Timmermen's testimony of the defendant's statement taken without Miranda warnings , the two photographs depicting a portion of writings of apologies , one which , was a close-up picture of the words " I'm sorry " which the solicitor used as a manipulative tool to mislead the jury to see as a confession to the charges against the defendant. There was no overwhelming evidence, and trial counsel introduced no evidence or call any witnesses on behalf of the defendant , as well as , any adverse witnesses to conduct an effective cross-examination to defend against the state's witnesses and state's Exhibits 3 and 4. This is the evidence the state used to establish guilt. The only evidence the jury received from the defense to defend against the charges the defendant was facing was his own testimony. (See Tr. pg 44 lines 6-11).

Clearly, trial counsel fell below the standards of effective assistance of counsel, and did not adequately defend against the very serious charges the defendant was facing, and trial counsel should have issued a subpoena commanding the state's Forensic Medical Exam Reports be produced to conduct an effective cross-examination of state's Medical Examiner Kate Chappel, and impeach state's witnesses ^{Minor 1} and ^{Minor 2}, which would have created reasonable doubt in the minds of the jury. (See Tr. pg 380 lines 5-25) and (Tr. pg 381 lines 1-11) Also, See (Tr. pg 384 10-25 and Tr. pg 385 line 1).

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

P. Trial counsel was ineffective for failing to object to, and require the remainder of a conversation recorded over the jail phone at the Aiken County Detention Center. These conversation were recorded over a three month time period, and were conversations between the defendant's friend Jon Nicoals and the defendant's sister Karan O'brien. The portions played to the jury were explained by the solicitor as an admission of guilt(See Tr. pg 443 lines 24-25) and (Tr. pg 444 lines). The defense was aware that the state planned to introduce these cut out portions of the recordings before trial, but prepared no defense to challenge the state's evidence. (See Exhibit # 6 a copy of an e-mail from Assistant Solicitor Kevin Molony, To: Amiee Zmroczek sent on December 5, 2013 @ 1:36 P.M.).

Trial counsel should have moved for a Motion To Suppress the recordings, and required the remainder of the conversation be played to the jury, and in fairness,would have explained the true meaning of the recordings. Trial counsel should have objected to the recordings because the jury is instructed to be impartial, but on the other hand, the state introduces partial evidence,asking the jury convict on false representation. (See South Carolina's Rule Of Completeness SCRE 106)
Also, See Tr. pg 336 lines 20-25 and Tr. pg 364 lines 1-25.
Tr. pg 366 1-13.

In summary, Trial counsel was deficient in failing to contemporanceously object to the recordings to be properly preserved for Appellate review.

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

G. Trial counsel was ineffective for failing to introduce into evidence doctor Jeffrey M. Donohoe's medical notes and demonstrative evidence in the form of a diagram or model that would have illustrated and clarify the vaginal reconstructive surgery Dr. Donohoe performed on ^{Minor 1} October 16, 2012.

Dr. Donohoe's notes were crucial to the defense case, in order to, prove beyond a reasonable doubt that penetration did not occur, and impossible, in addition, the defendant was indicted for sexual battery before and after ^{Minor 1} had surgery to repair and create a vaginal opening. The element for a sexual battery is , intrusion in the the body of another person vagina or anal. Dr. Donohoe testified in detail what surgical procedure he performed on October 16, 2012, and clearly stated, that ^{Minor 1} was born with two holes and had to create the third: Direct Hammack: Dr. Donohoe: It was for layman's terms it was technically two holes but the one of those holes branched off to become the two structures , a urethra and a vagina. Here, Dr. Donohoe explains that the urogenital is the vagina attached to the urethra, and further explains how he had to bring down the vagina off the urethra to create the third hole which is the vagina opening. Dr Donohoe: Part of what I did was I made the urogenital sinus. I opened it up to the point where it branched. And the I took the vagina and I brought it down separately so that there are two separate holes now. There are two separate openings, one that she would pee out and that eventually her menses would come out of. (Tr. pg 282 and 283).

Dr. Donohoe Also explained that ^{Minor 1} born with Congenital Adrenal Hyperplasia, and as a result from that insufficiency was that girls are born with a fused labia majora, and to many people looks like a boy. Dr. Donohoe's medical notes indicate that ^{Minor 1} was born with a fused labia. Medical note: " 13 year old referred for evaluation of congenital adrenal hyperplasia with fused labioscrotal folds and urogenital sinus". Tr. pg 280 line 11.

The notes also indicate that that the urogenital sinus measured 1 cm in and total vagina length 7 cm to confluence.

On cross, Ms. Zmroczek asked Dr. Donohoe one of things he did was Labioplasty which basically that he created a vagina opening. Dr. Donohoe stated "yes". The reason he had to create a vagina opening is because the labia was fused. Dr. Donohoe also stated that he had to create a vagina. TR. pg 294 line 12-18.

Clearly, there was testimony that ^{Minor 1} was Born without a vagina and a vagina opening, because of this , penetration was impossible, in fact, the doctor's notes, a clear and accurate illustration of what existed before and after surgery was extremely important for trial counsel to effectively and

AFFIDAVIT
POST-CONVICTION RELIEF

PART TWO OF GROUND (G)

Ineffective Assistance of Trial Counsel.

G. accurately cross-examine this state witness, in order, for the jury to fully understand the extremely rare a complex disorder Congenital Adrenal Hyperplasia, as well as, the highly complicated surgery Dr. Donohoe performed.

Obviously, Trial counsel was deficient and the defendant was prejudiced by failure to admit into evidence the doctors notes, and effectively cross-examine Dr. Donohoe with demonstrative evidence, since, the jury heard testimony that Dr. Donohoe had to create a vagina and a vagina opening, still, returned a verdict of guilt on CSC 2nd which the defendant was indicted for before and after KR's surgery. U.S.C.A. Amend 6

See a copy of doctor's notes with affidavit

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

H. Trial counsel was ineffective for failing to issue a subpoena for Forensic Interviewer Anne Laver. Trial counsel should have called Ms. Laver to testify to the inconsistencies in the forensic interview with ^{Minor 1} and ^{Minor 2},

Trial counsel could have cross-examined Ms. Laver, as to, the leading questions that were conducted in the interview and to the statement made by ^{Minor 1} that when asked how many times did these incidents occur she stated they happened only a couple of times as opposed to the multiple times for 2 years that was alleged at trial.

In Pauling V. State 503 SE.2d 468, The Supreme Court held that counsel was ineffective for failing to call as defense witness triage nurse whose note indicated that victim stated that her vagina was not penetrated. U.S.C.A. Const. Amend 6.

In summary, in light of the fact that the defendant was charged with 5 counts of CSC second degree and 3 counts of CSC third degree which span over a time period of two years from May 2011 to December of 2013, without a doubt, Anne Laver's testimony would have been crucial, both as substantive evidence that the incidents the defendant was arrested for and indicted for did not occur, in fact, Anne Laver's testimony should have been used to attack ^{Minor 1's} and ^{Minor 2's} credibility.

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

I. Trial counsel was ineffective for failing to issue a subpoena and call doctor Christopher Houk^{Minor 1}'s endocrinologist since she was she around the age of 7, in light of the fact, that Dr. Houk monitored^{Minor 1}'s Congenital Adrenal Hyperplasia every 4 months and would have testified to the condition and physical appearance of^{Minor 1}, vaginal area. Dr. Houk's testimony would have clarified to the checking an monitoring the defendant testified to , and Dr. Houk's medical notes where important for the fact that there was no existing vagina opening before surgery because Dr. Houk during many visits visually examined the vagina.

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

- J. Trial counsel was ineffective for failing to contemporaneously object to the qualification of juror number seventy nine Kimberly Hebbard, in order, to properly preserve the issue for appellate review. During jury selection, the state and defense exhausted all their peremptory challenges, and eleven jurors have all ready been selected. (See Tr. pg 81 line 3-9). Trial judge's voir dire question was, " Does any member of this jury panel have a family or a close personal friend that has a child with a learning disability? If so, Please stand." Ms. Hebbard states, she has close friend that has a family member that has cerebral palsy. Trial judge asked Ms. Hebbard, " the fact that she has this experience can she listen to the evidence in this case and render a fair and impartial verdict?" Ms. Hebbard replied, " she can try ". Trial judge States, "Ma'am we can't guess. If you think you can be." Ms. Hebbard replies, " well, you're asking me a question I can't answer honestly ". trial judge continues to persist to influence Ms. Hebbard to answer again; after she has all ready stated she could not give an honest answer to the question. Ms. Hebbard further explains that she spends a lot of time with this family and helps take care of the family member with cerebral palsy. Trial judge persist again to elicit a response from Ms. Hebbard. She replied, " I will try to be fair. Yes sir." Trial judge persist again, " can you be fair and impartial? " Finally, Ms Hebbard states, " yes". (See Tr. pg66). she was seated as the 12th juror.

Clearly, Ms. Hebbard has shown some bias due to highly emotional attachment and interaction with a close friend with a family member with cerebral palsy. Trial counsel should have objected to the qualification of juror number seventy nine Kimberly Hebbard, further, Trial judge should have disqualified Ms. Hebbard for cause. A juror should be disqualified by the court if it appears to the court the juror is indifferent. (See State V. Woods 550 SE2d. 282), and Criminal Law 110 Jury Key 97 (1). In the conventional criminal case in which the jury is asked only whether guilt has been proven beyond a reasonable doubt, the bias or prejudice of even a single juror would violate the defendant's Sixth Amendment right to a fair trial. (See, U.S. V. Sampson 820 F.Supp2d 151 (2011)). Inferable or inferred bias exists when a juror discloses a fact that bespeaks a risk of partiality.

POST-CONVICTION RELIEF

k. Trial counsel was ineffective for failing to challenge the trial courts lack of subject matter jurisdiction based on the mandatory statutory provisions of S.C. Code of Laws Title 14 Chapter 9, further, trial counsel failed to investigate the date defect which was raised during pre-trial motions. (See Tr. pg 7 line 2-5.) Trial counsel: " It been explained that the grand jury meet-- the term is listed on one side of the date and the actual date they meet is listed on the other, and so that clarifies our confusion".

The defendant was indicted by an Aiken county grand jury which returned a true bill and filed by the clerk of court on October 3rd 2013, however, on the other side of the indictment it states the Aiken County Grand Jury convened on their oath October 7, 2013. The Terms of Circuit and Family Court calendar for October 2013 states, that there was no term of court, or any General Sessions court in attendance on October 3, 2013, in fact, the calendar shows the term of court began on October 7, 2013 in attendance with the Honorable judge Early. (See Court calendar).

The Aiken Court was established under the provisions of Title 14 Chapter 9:

S.C. Code 14-9-260 reads as follows:

Counties Excepted

The provisions of this chapter shall not apply to the counties of Abbeville, Anderson, Bamberg, Beaufort, Berkeley, Charleston, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Greenville, Greenwood, Horry, Kershaw, Lancaster, Laurens, Lexington, Marion, Marlboro, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Sumter, Union, Williamsburg, and York.

As stated in S.C. Code the counties listed are not under the MANDATORY PROVISIONS of chapter 9, in deed, Aiken County was not listed and, therefore, under Title 14 Chapter 9 Mandatory Provisions.

Part Two of ground (k) Next Page

POST-CONVICTIONS RELIEF

Ineffective Assistance of Trial Counsel.PART TWO OF GROUND K.

KK. As to the legality of the defendants indictments, the assistant solicitor Ashley Hammack presented the defendant's indictments to an illegal and unconstitutional grand jury body. Truly, the defendant's indictments were presented to this illegal grand jury out-side of the Court of General Sessions, most certainly, outside of a term of court, without a doubt, in violation of S.C. Code 14-9-210.

Code 14-9-210, Indictments For County Cases by Grand Jury of
General Sessions.

The county solicitor shall prepare and, through the PRESIDING JUDGE of a court of general sessions, submit to the grand jury, WHILE IN ATTENDANCE UPON THE COURT OF GENERAL SESSIONS, BILLS OF INDICTMENT in all cases pending in county court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days when such cases have not been previously acted on by the grand jury shall act thereon and and report its action to the presiding judge of the county court as its next ensuing term. All case in which bill of indictments are found shall stand for trial by the county court as though found by the grand jury while in attendance upon the county court.

Certainly, the state knowingly violated the provisions of S.C. Code Ann. 14-9-210 by (1) unlawfully impaneling its grand jury outside the jurisdiction of the court of General Sessions, (2) utilizing an unlawful process for the return of true-bill, and (3) causing false information to be printed and published in the defendant's indictments. Consequently, the grand jury was illegal and its indictments null.

Part Three of Ground (K) Next Page.

AFFIDAVIT

POST-CONVICTION RELIEF

Part Three of Ground (K).

No local rule of court, administrative order, policy, or other procedure can take precedent over **STATUTORY LAW**, which is always controlling. (See S.C. Constitution Article V Section 4, and **State V. Cottingham 77 S.E. 2d 897, 224 SC 181 (1953)** **State V. Duncan 264 S.E. 2d 421 (1980)** circuit court rule promulgated by individual judicial circuit was unconstitutional and void. Article V. Section 4 of our constitution provides in pertinent part: " The Supreme Court shall make rules governing the the administration of courts of this state, SUBJECT TO STATUTORY LAW THE Supreme Court rules governing the practice and procedure in all such courts".

Thus, under those requirements , no rules can be made or established for process and return of indictments, unless it comports with section 14-9-210 and 14-9-170. Otherwise, it would be unconstitutional and null, being without binding legal effect.

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

M. Trial counsel was ineffective for failing to object and require trial court to view the indictments while determining their sufficiency.

State V. Baker 769 SE.2d 860 (2015) " In determining whether an indictment meets the sufficiency standard, trial court must look at the indictment with a practical eye in view of all the surrounding circumstances ." State V. Tumbleston, 376 S.C. 90, 97, 654 SE.2d 849, 853 (Ct. App. 2007). In doing so, " one is to look at the surrounding circumstances' that existed pre-trial, in order to determine whether a given defendant has been prejudiced , taken by surprise and hence unable to combat the charges against him.

Further, trial counsel was deficient for failing to properly preserve this issue by contemporaneously objecting.

POST-CONVICTION RELIEF

Ineffective Assistance of Trial Counsel.

W. Trail counsel was ineffective for failing to adequately investigate and prepare a defense against such a serious and complex case. Trial counsel should have requested a continuance because the defendant was attempting to establish an alibi defense that required time to investigate.

This case was only 6 months old at the time it was placed on the docket for December 2013 and trial counsel was retained in september 2013.

There was no time to prepare a defense and investigate the states allegations against the defendant, surely, trial counsel should have filed a motion for continuance.

AFFIDAVIT

POST-CONVICTION RELIEF

Ineffective Assistance of Appellate Counsel.

1. Appellate counsel was ineffective for abandoning relevancy issue, as to, state's exhibits 3 and 4 photographs taken out context depicting written apologies to the defendants two daughters. Photographs were not relevant to the prime charge.