

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Dorchester County
Honorable Diane Schafer Goodstein, Circuit Court Judge

RECEIVED

UCI 30 2018

THE STATE,

S.C. SUPREME COURT
Petitioner,

vs.

JAMES ARCHIE CREWS, IV,

Respondent.

APPENDIX

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Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES ARCHIE CREWS, IV,

APPELLANT

APPELLATE CASE NO 2016-000670

RECORD ON APPEAL

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State of South Carolina	)	Court of General Sessions
	)	First Judicial Circuit
County of Dorchester	)	Case No. 2013-GS-18-1838

State of South Carolina,	)
	)
Plaintiff,	)

-vs-

)	Transcript of Record
)	(DAYS 1-3 OF 4)
)	

James Crews IV,	)
	)
Defendant.	)

March 14, 16 & 17, 2016
St. George, South Carolina

B E F O R E:

The Honorable Diane Schafer Goodstein, Judge; and jury

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

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Phil Giese, Esquire
Attorneys for the Plaintiff

Ash Chisholm, Esquire
John Loy, Esquire
Attorneys for the Defendant

Krystal J. Smith
Court Reporter

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1 MARCH 14, 2016

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 3:46 p.m.)

5 THE COURT: All right. Ladies and gentlemen, in just a
6 moment I'm going to call on our solicitor and ask our
7 solicitor to please call our first case for trial this week,
8 but before I do that I want to tell you what is a solicitor.

9 We in South Carolina are unique from so many things.
10 Additionally, we are unique because in South Carolina the
11 State's attorney, the district attorney, the prosecutor, if
12 you will, for the State is called the solicitor. You've heard
13 district attorney probably more than anything else. Well, in
14 South Carolina we don't call our prosecutors district
15 attorneys or State's attorneys; we call them solicitors. I
16 think it's a holdover clearly from English law.

17 So, ladies and gentlemen, at this time I am going to call
18 on our Solicitor's Office to please call the first case for
19 trial this week.

20 MS. MIMS: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes.

23 MS. MIMS: The State would call the State of South
24 Carolina versus James Archie Crews IV on Indictment Number
25 2013-GS-18-1838, which is an indictment for criminal sexual

1 conduct with a minor in the first degree.

2 THE COURT: Thank you so much, Ms. Mims. All right.
3 Ladies and gentlemen, oh, I'm not energized. I want to tell
4 you what has happened and then I'm going to tell you what an
5 indictment is and what it is not.

6 What has just happened is Ms. Mims -- who is one of our
7 assistant solicitors in the First Circuit. She has just
8 called the first case for trial this week and she has called
9 my attention to what is called an indictment. Now, I want to
10 talk to you about what an indictment is and what it is not.

11 Ladies and gentlemen, what an indictment is is a piece of
12 paper and it is a piece of paper that gives to a citizen
13 notice that the State alleges that that citizen has violated
14 one or more of the criminal laws of the State of South
15 Carolina. Now, let me tell you what an indictment is not. It
16 is not evidence of any of the allegations that it contains.
17 It is a notice document.

18 Now, I want to also hasten to tell you that to each and
19 every allegation of this indictment the defendant, Mr. James
20 Archie Crews IV, has pled not guilty, and that places the
21 burden of proof on the State to prove guilt beyond a
22 reasonable doubt. And it will be the jury's duty to determine
23 whether the State has met that burden.

24 Now, ladies and gentlemen, in a moment I am going to be
25 reading to you some of the allegations of the indictment. And

1 point later in the trial to ask for a blind expert to be
 2 allowed to testify. If it would be okay with the Court, we'd
 3 like to just have that motion right before she testifies. We
 4 may have to proffer her testimony. She's not here yet.

5 THE COURT: That suits me nicely because I'd like to get
 6 the jury out. Any objection to just waiting? I'm now going
 7 to look at -- Mr. Chisholm?

8 MR. CHISHOLM: No objection, Judge.

9 THE COURT: All right. Very well.

10 MS. MIMS: Your Honor, we would also have a motion for
 11 the admission of out-of-court statements of a child pursuant
 12 to 17-23-175, which is the forensic interview that we'd like
 13 to play at some point. We have the forensic interviewer who
 14 will obviously come in here and make sure we get that admitted
 15 into evidence.

16 THE COURT: We'll handle that then at that point --

17 MS. MIMS: Yes, ma'am.

18 THE COURT: -- with the interviewer. Any objection to
 19 handling it at that point?

20 MR. CHISHOLM: No, Judge.

21 MS. MIMS: And finally, Your Honor, I'm making this sort
 22 of maybe on the opposite side, but prematurely. However, I
 23 would ask that -- originally, Mr. Crews was charged and
 24 indicted for sexually assaulting the next witness, who will be
 25 MI or Minor 1 [REDACTED], but also his sister, Minor 2 [REDACTED]. In a

1 previous court hearing, he was tried on both of those cases
2 and in this proceeding we are going forward on only the boy,
3 **Minor 1** ..

4 That being said, we are trying to keep this trial as
5 clean as possible. There is going to be -- there has been --
6 there have been prior statements from the child in a forensic
7 interview and in a prior court hearing that at -- that at
8 certain moments when he was being sexually assaulted by Mr.
9 Crews, his sister, **Minor 2** did open the door and see what was
10 happening. He was cross-examined about that. He testified
11 about that.

12 However, in this case I would just ask that the defense
13 not be allowed to ask questions about that or go into that
14 considering that we are not using -- or that we are not
15 proceeding in our case against Mr. Crews regarding the victim,
16 **Minor 2**. If he's allowed to ask about **Minor 2** seeing this,
17 we, of course, cannot put **Minor 2** up to respond to -- well, I
18 guess we could put **Minor 2** up to respond to whether she saw this
19 or not, but based on her prior testimony, Your Honor, she is
20 going to say either I don't think so, I don't remember, and
21 I'm not really going to be able to effectively let the jury
22 understand why she may not remember or why she doesn't think
23 so.

24 In her prior court hearing -- in the prior trial, she
25 stated that she had gone through counseling and through that

1 counseling they have helped her learn to forget. And if she's
2 allowed to -- if defense is allowed to go into whether **Minor 2**
3 saw this and **Minor 2** has to take the stand about not remembering,
4 we're going to have some issues with that.

5 So I don't know if I'm bringing this up prematurely or
6 not, but **M1** is about to testify. So I would -- I'm asking
7 that the defense not be allowed to ask **M1** about whether or not
8 **Minor 2** ever saw any of these incidents when he was being
9 sexually assaulted by Mr. Crews.

10 THE COURT: Okay. Yes, sir?

11 MR. CHISHOLM: Thank you, Judge. And I think the
12 solicitor went through most of the background of the case. We
13 originally tried this in October where the State went forward
14 on the charges where **Minor 2** was a victim, as well as **M1**. And in
15 our view, one of the most critical parts of our defense was
16 the fact that in **M1** testimony, his forensic interview, he
17 said that when this was happening to me, my sister saw it.
18 She watched.

19 I think his testimony at trial was that she was in the
20 room when it happened, which her testimony -- in her forensic
21 interview rather, her statement was unequivocal. They said
22 did you see this happening to him, did he see it happening to
23 you, and she said -- I think the quote was we haven't seen it
24 happen to each other. Not I don't remember, not that I choose
25 not to think about that, but an unequivocal we didn't see it

1 happen to each other.

2 In trial, I asked her about it this past October and what
3 her statement was -- I don't -- I don't think so. If I did, I
4 don't remember it if it happened. Which I would also argue
5 was pretty unequivocal no. It's not maybe it did, maybe it
6 didn't or I'm choosing not to remember any of that. It's I
7 don't think so.

8 From our perspective, she's addressed this twice and
9 neither time did she say I've repressed these thoughts or I've
10 had my mind wiped through counseling or anything along those
11 lines that would lead me to believe that her testimony would
12 be they've caused me not to remember this.

13 You know, in counseling, I mean I can certainly
14 understand the counselors would try to basically help someone
15 forget a traumatic incident, you know, so you don't wake up in
16 the morning thinking about it, you don't go to sleep thinking
17 about it, and it's not on your mind all day. I think they do
18 attempt to try to give you ways to get through that so this
19 isn't something that's always on your mind, something you've
20 witnessed or happened to you or whatever the case may be.

21 But outside of employing a hypnotist, I don't think they
22 wipe your mind. Something that you said, okay, I saw this,
23 later after you go to counseling, I have no memory of
24 anything. I don't think that's how it works.

25 And lastly, I mean the State has pretty much created this

1 situation by electing to only go forward on MI case. They
2 could have tried them both together. They did last time and
3 obviously they've got tactical reasons for I think only going
4 forward on this case, but by doing that they have --
5 essentially, if we aren't allowed to get into this, which we
6 think is critical to the defense, we are being procedurally
7 barred from presenting a defense which I think would be unfair
8 and, you know, we haven't had any testimony from Minor 2
9 whatsoever anytime she's been asked about this where she's
10 saying what they're concerned about, which is, you know, I've
11 erased this from my memory. I mean that's -- I don't think --
12 I don't know if she's told the solicitor that in private, but
13 there's no record of that whatsoever.

14 And ultimately, I mean whether she is called as a witness
15 I think would also be a strategic decision for both sides.

16 THE COURT: Okay. Yes?

17 MS. MIMS: If I may, Your Honor?

18 THE COURT: Yeah.

19 MS. MIMS: Actually, I'm looking at the transcripts right
20 now and in the transcript he specifically asked --

21 THE COURT: And just for the record --

22 MS. MIMS: Yes, ma'am.

23 THE COURT: -- transcript of what and where?

24 MS. MIMS: Yes, ma'am.

25 THE COURT: Please.

1 MS. MIMS: It's a transcript of the hearing -- of the
2 trial that we had against Mr. Crews in this -- actually in
3 this courtroom.

4 THE COURT: The one in October?

5 MS. MIMS: Yes, ma'am.

6 THE COURT: Okay.

7 MS. MIMS: October 12th through 16th of -- actually, it
8 was September, Your Honor. I'm sorry. She states -- since
9 you -- Mr. -- Mr. Chisholm asked her since you've met with
10 your counselors, you've forgotten what happened? Her answer
11 is, yes, sir, because they help me, like, talk through it and
12 then, like, they help you, like, not remember it mostly, like,
13 not as much as you used to to think about it all the time.

14 So she specifically did testify that through counseling
15 she has been helped to not remember what's happened. She's
16 also testified in that -- in that trial that she did not
17 recall even telling the forensic interviewer that she didn't
18 see it happen.

19 So I -- obviously, if she does take the stand and if she
20 is asked did this -- did you ever see **M1** being sexually
21 assaulted and she says I don't remember, I'm obviously going
22 to ask her, you know, why don't you remember, **Minor 2** I mean I
23 think otherwise it's misleading to the jury. The jury needs
24 to understand she's not just an independent witness who would
25 have opened the door and seen something horrifying. She was

1 also experiencing the same trauma and she's been counseled for
2 it and that may be why she's answering the way she's
3 answering.

4 So I think it's misleading to the jury to put her up
5 there as an independent witness when she definitely is not,
6 but that's what her testimony was.

7 THE COURT: And that's page and line too from the
8 transcript?

9 MS. MIMS: Yes, ma'am. That is going to be on page
10 number 238, lines number 1 through 11.

11 THE COURT: And the date of the trial was?

12 MS. MIMS: October 12th through 16th of 2015. I
13 apologize. I misspoke.

14 THE COURT: That is okay. No, no, no, that is perfectly
15 fine. Okay. Response, Mr. Chisholm?

16 MR. CHISHOLM: Yes, Judge. As far as the transcript goes
17 and we're talking about her counselors, this is basically --
18 what they're talking about is they're saying what is it that
19 happened to you, can you remember all these different
20 incidents, and she says I remember the last incident. I don't
21 remember these other incidents, and that's what this is in
22 response to.

23 I'll try to find the line here. One moment, Judge. I
24 can't remember if we're lined up correctly on our transcripts
25 here.

1 Okay. The question was did you remember the specific
2 incidents that you don't remember now, talking about all the
3 previous incidents she was testifying about, and she said,
4 yes, sir. I said you've forgotten them since you met with her
5 -- since I met with my counselors.

6 And basically what she's talking about is why she can't
7 remember specific details of every incident and when this
8 happened to her. She's not talking about -- this isn't a
9 response to the question of did you see this happen to MI
10 It's something completely different before that question even
11 comes out.

12 And I think it is worth noting that in the trial when I
13 asked her about that and she said I don't remember that or I
14 don't recall that happening that on redirect this isn't
15 something the solicitor questioned her about. She didn't
16 question her then why don't you remember it. Is it because of
17 your counseling? Did they wipe your memory? It doesn't come
18 out then. I don't see why it would be an issue now.

19 And I mean the point is we've got a witness, MI, who says
20 while this was happening to me, this person was here watching,
21 and we've got this person who has said twice before now, no, I
22 don't remember that or the first time just, no, we never saw
23 it, period. I think I should get pretty wide latitude to
24 cross-examine MI to go towards his credibility.

25 THE COURT: Okay. Very well. It's very difficult to

1 rule in a motion *in limine* such as this, and I'll ask this
2 question. Mr. Chisholm, is it critical to your opening that
3 you are able to mention **Minor 2**

4 MR. CHISHOLM: No, Judge.

5 THE COURT: Okay. Let me then say this. I appreciate
6 that. That gives me an opportunity to hear the testimony, but
7 for your planning purposes I think that your -- I think that
8 cross-examination is a basic fundamental due process right and
9 I am reluctant to limit your cross-examination in that regard.

10 If it comes out, the only thing I would tell you is that
11 on -- let me -- obviously, if you were to call this witness,
12 then you are calling this witness, and even though it would be
13 on direct, this is a witness that would be associated with the
14 other side; so you would be cross-examining. So when I use
15 direct and cross-examination, our record is not going to be
16 exactly clear.

17 When the State then would examine this witness, I think
18 you would certainly be entitled to go into you don't remember
19 -- why don't you remember, and then I think she would be
20 allowed to say I have been through counseling and because I
21 have been through counseling, they have helped me forget.

22 MS. MIMS: Yes, ma'am.

23 THE COURT: So I'm telegraphing that to you, although at
24 the time I'd like to -- because I will have heard more, I
25 would put a final answer, if you will, on the record, but I am

1 reluctant to limit the cross-examination and -- and once that
2 door is open -- I don't know how much that door is open. I
3 think it's opened at least to allow you to go into why don't
4 you remember.

5 MS. MIMS: Yes, ma'am. And that could definitely lead to
6 why she was in counseling and why was she in counseling. I
7 mean to me it just opens it wide open.

8 THE COURT: Well, I -- right now, I'm just --

9 MS. MIMS: Yes, ma'am.

10 THE COURT: I'm not all the way.

11 MS. MIMS: Yes, ma'am.

12 THE COURT: The door is not all the way open, but
13 certainly I'm not going to put you in a position where you
14 cannot ask why don't you remember. You don't remember? Why
15 not? Is there a reason you don't remember?

16 MS. MIMS: Yes, ma'am.

17 THE COURT: Okay. Yes?

18 MS. MIMS: I'm sorry.

19 THE COURT: It's fine.

20 MS. MIMS: Cross-dressing. We have a cross-dressing
21 issue, Your Honor, also.

22 THE COURT: Right.

23 MS. MIMS: And that is another thing that the -- that the
24 boy will testify to. (For the record, the mother told a DSS
25 agent when this family was first being -- when investigations

1 were first being started because of the allegations, the
2 mother told a DSS agent that the argument that had started
3 between herself and Mr. Crews that led to the final disclosure
4 was because he had sent her a picture of himself in a dress.

5 At that point, she could no longer handle that
6 relationship. They started moving separate ways in the
7 trailer. This is important because when they started dividing
8 and they looked like they were getting close to ending their
9 relationship, when at some point the mom says should I give
10 him a second chance, the child thinks they're going to get
11 back together, and that's when he discloses. This is why
12 that's relevant.

13 The mother -- the child -- we -- you know, we talked to
14 our witnesses in preparation for trial. In doing so, I've
15 asked deeper questions. I've asked more details. And that
16 child I think could possibly testify that during one of the
17 sexual assaults by Mr. Crews, Mr. Crews was wearing a gown or
18 a dress of some type that he would associate with a woman and
19 that when Mr. Crews showed him magazines in the shed, which
20 were times when he would also sexually assault the child, that
21 those magazines contained images of transvestites, what he
22 describes as a woman who had a penis.

23 He's getting ready to testify right after opening
24 statements. I wanted to make sure I didn't cause any problems
25 and I wanted to put it out there that that's what we would be

1 -- we would ask questions that I think would elicit that type
2 of response.

3 THE COURT: Okay.

4 MS. MIMS: I think he will testify to that.

5 THE COURT: Okay. There are really two issues raised. I
6 think one has to do with the relationship between -- as I
7 understand of the mother and the stepfather, as opposed to the
8 actual events and how the -- how the alleged victim would
9 testify regarding the dress of the defendant and how the
10 alleged victim would testify regarding materials shown by the
11 defendant. Those are really two different issues. Mr.
12 Chisholm, I see those as two different issues. Handle it any
13 way you wish.

14 MR. CHISHOLM: Judge, I'm trying to handle them as best I
15 can. Obviously, my position would be all this should be
16 excluded under Rule 403 that it's more prejudicial than
17 probative in this case. I mean I understand it's 2016 now,
18 but in South Carolina this kind of testimony can still elicit
19 a response from the jury that -- aside from all these
20 allegations, certain jurors my concern is they hear cross-
21 dressing, transvestite, whatever stuff is about to come out,
22 and they're going to have a negative image planted in their
23 head that could cloud the rest of their judgment when they are
24 listening to the case.

25 So I would ask that everything be excluded. I think the

1 intention -- that if they had planned to call MI first and if
2 you were to allow it over my objection and they call MI first
3 and he testifies to that, I think at that point it may become
4 relative -- excuse me -- relevant for his mother to testify
5 about it, but I would object to her coming in and testifying
6 before MI says this is what happened.

7 THE COURT: It does. It does. This is -- I am not
8 inclined to exclude the -- the testimony by the alleged
9 victim. I think it's integral. I think that if that is a
10 part of his memory with regards to these events, I'm not going
11 to rule that he has to exclude it and that he has to describe
12 what he alleges occurred to him in any particular way. I'm
13 just not going to do that. I'm just not going to do that.

14 MS. MIMS: Yes, ma'am.

15 THE COURT: If he was shown materials -- and I gather the
16 State maintains they were pornographic materials -- I'm not
17 going to limit his description. I'm not going to describe for
18 him what he testifies to this jury. And if I was to say you
19 will describe it excluding this, then I'm telling him what he
20 saw and what he can say and I'm not going to do that. I don't
21 think that's appropriate.

22 With regards to the mother and her testimony, again it's
23 very difficult for me to rule in a vacuum at this moment
24 because I don't know. The relevance at that point we'll just
25 have to determine as we get there because I don't know if it

1 is or if it isn't, quite frankly.

2 I mean why -- why a child discloses may or may not be
3 relevant. The fact that the child discloses is what's
4 important. The reason behind that may or may not be I guess.
5 So at this point I'm a little bit in a vacuum and I hate
6 ruling when I'm in a vacuum. So at this point, it very well
7 may be relevant. Let me hold onto that one.

8 MR. GIESE: If I may, Your Honor?

9 THE COURT: Yes.

10 MR. GIESE: Yes, ma'am. Just so I'm clear, because I've
11 gone over -- I'm doing the testimony of the mother.

12 THE COURT: Yeah.

13 MR. GIESE: And we've kind of gone over that day when he
14 discloses is the fight that they are having is over the cross-
15 dressing. And to be perfectly clear with the Court, shall we
16 wait until after MI testifies before I -- because I advised
17 her, look, if we can't get in the cross-dressing, I'm just
18 going to ask you if you and your husband were having problems
19 and then kind of move on.

20 But I know in the last trial Mr. Chisholm kind of got
21 into the problems that they were having. Now, she never
22 revealed that sort of thing. So just so I'm clear because I
23 would like to advise her beforehand just so she didn't get up
24 there and say, yeah, he cross-dressed and that's why we were
25 fighting when it was inappropriate to.

1 THE COURT: I understand. I don't know. Ask me before
2 she testifies.

3 MR. GIESE: Okay.

4 THE COURT: Because I haven't -- we may or may not even
5 get into the testimony at this point before lunch.

6 MR. GIESE: Yes, ma'am.

7 THE COURT: But clearly the mother will not testify until
8 after lunch.

9 MR. GIESE: Yes, ma'am.

10 THE COURT: Okay. So you'll have some time. Anything
11 else?

12 MS. MIMS: Sorry. No, Your Honor. I think we're done.

13 MR. CHISHOLM: I do.

14 THE COURT: Okay.

15 MR. CHISHOLM: I do have a couple things, Judge.

16 THE COURT: Yes?

17 MR. CHISHOLM: First, I would ask the Court to prohibit
18 any testimony about **MI** receiving subsequent counseling after
19 the incident. I don't think it's particularly relevant what
20 he did after the fact. I don't think it goes towards proving
21 or disproving whether the act ever occurred.

22 The bigger concern that I probably have is that it's
23 almost an improper form of bolstering. Essentially, you've
24 got somebody that goes into counseling and the message that's
25 going to be going to the jury is that the counselors thought

1 there was enough there to keep him in counseling for a year or
2 however long it was. So that would be my concern.

3 THE COURT: Okay.

4 MS. MIMS: Your Honor, I don't think it necessarily
5 bolsters what he has already said. It's something that kind
6 of naturally occurred. Once he went to the forensic
7 interview, he was set up with counseling and I would argue
8 that it's not prejudicial to think that that's just the next
9 step and, in fact, I think some of the way that he may even
10 testify or some of the things that he may not remember may be
11 because of the way he was counseled. I think it's a big part
12 of the story as to where he's at now in his life and how he's
13 adjusted and how he testifies the way he testifies. And I'm
14 not going into that too much at all; but I think -- I don't
15 think that's a big issue. But I don't think it prejudices the
16 defendant in any way to mention that the child went for some
17 counseling after he made the allegations of abuse.

18 THE COURT: Okay. Just before you go into it, let me
19 know and let me have a chance to -- I think it's got to have
20 some unique, if you will, relevance.

21 MS. MIMS: Yes, ma'am.

22 THE COURT: And it very well may. It very well may. So
23 --

24 MS. MIMS: Yes, ma'am.

25 THE COURT: Just let me know. Give me a heads up. And

1 what else?

2 MR. CHISHOLM: Yes, Judge.

3 THE COURT: Would you like to have a curtain?

4 MR. CHISHOLM: I think I'm nearing the end here, Judge.

5 I would make I guess a blanket motion to exclude any reference
6 to any other crimes, wrongs, acts, pursuant to *State v. Lyle*,
7 which I don't think is going to be a concern at this point,
8 but I would --

9 THE COURT: From what I've heard from -- from my
10 discussions with you all, both of you expressed a lot of
11 sensitivity about that issue. Am I correct?

12 MS. MIMS: That's correct, Your Honor. We have no
13 intention of bringing up bad acts.

14 THE COURT: Okay. Got it.

15 MR. CHISHOLM: And my most successful motion, I would ask
16 that the witnesses be sequestered.

17 THE COURT: You're doing fine, Mr. Chisholm. Yes,
18 absolutely. As long as it's sauce for the goose, sauce for
19 the gander. Not the victim. You know, not the investigating
20 officer. Okay? Yes?

21 MS. MIMS: All right. Yes, ma'am.

22 THE COURT: And y'all help me with the relay, too.

23 MS. MIMS: Yes, ma'am.

24 THE COURT: Okay. Great. Anything else?

25 MR. CHISHOLM: Nothing further.

1 THE COURT: All right. Now, I mean since we are where we
2 are, does anybody need to take a quick comfort break?

3 MR. CHISHOLM: If I -- if I could grab a cup of coffee,
4 Judge?

5 THE COURT: Yeah.

6 MR. CHISHOLM: That would be great.

7 THE COURT: Is that okay?

8 MS. MIMS: Oh, yes, ma'am. I'll run to the restroom.

9 THE COURT: We will take five.

10 MS. MIMS: Yes, ma'am.

11 MR. CHISHOLM: Thank you.

12 THE COURT: Tell the jury we are going to be five
13 minutes.

14 THE BAILIFF: Yes, ma'am.

15 (WHEREUPON, there was a break in the proceedings from
16 11:11 a.m. until 11:19 a.m.)

17 THE COURT: All right. Are we ready? Ready?

18 MS. MIMS: Yes, ma'am.

19 THE COURT: Yes, yes?

20 MS. MIMS: Yes, ma'am.

21 THE COURT: Wonderful. Let's have the jury.

22 THE CLERK: I think you said one juror needed the
23 headphones?

24 THE COURT: The headphones. And I have to -- oh, I need
25 you all to remind me. Help me. We have a juror that needs

1 the headphones and wants the headphones. We're going to
2 provide the headphones. The problem is is that when we have
3 conferences here, it still feeds into the headphones. Please
4 help me remember to ask the juror to remove the headphones.

5 THE CLERK: I can also -- when I hit sidebar, it does
6 turn the --

7 THE COURT: It does turn it off? I heard it didn't.

8 THE CLERK: It does.

9 THE COURT: It does?

10 THE CLERK: We checked it this morning, but we can ask
11 them to take them off.

12 THE COURT: It doesn't matter. Forget it. It's
13 something I don't have to remember.. Okay. All right.

14 (WHEREUPON, the jury entered the courtroom at 11:20 a.m.)

15 THE COURT: Good morning.

16 THE JURY: Good morning..

17 THE COURT: I apologize for keeping you in your jury room
18 for -- for this long. And it's certainly my responsibility,
19 my fault, but I can promise you we have not been out here
20 telling jokes and having a good time. We have been preparing
21 for you and when we are able to do some work preliminarily,
22 often times -- most times and I certainly think this is so --
23 it just makes things move -- the trial itself move more
24 efficiently and so I appreciate your understanding that I know
25 you will be kind enough to give to me. I want you to know

1 that we are absolutely every tick of the clock aware that you
2 are cooling your heels, as they say.

3 Ladies and gentlemen, at this time, I'm going to ask you
4 to please stand and raise your right hand as you are sworn in
5 as the jury in this case.

6 (WHEREUPON, The jury complied.)

7 THE CLERK: Do you solemnly swear or affirm that you
8 shall well and truly and true deliverance make between the
9 State of South Carolina and the defendant at bar, whom you
10 shall have the charge, and a true verdict give according to
11 the law and evidence? If you accept this oath, please say I
12 do and be seated.

13 THE JURY: I do.

14 THE CLERK: Thank you.

15 THE COURT: Thank you so much.

16 (WHEREUPON, there was a pause in the proceedings to set
17 up headphones for a juror.)

18 THE COURT: Are you good? Can you hear?

19 THE JUROR: Uh-huh.

20 THE COURT: Wonderful. I'm going to ask you to do this
21 for me. We may from time to time have what are called sidebar
22 conferences when the lawyers approach, and those earphones are
23 trained to also turn off when counsel approaches. If for
24 whatever reason they do not, just let us know and pop them
25 off.

1 THE JUROR: I'll do it.

2 THE COURT: Okay.

3 THE JUROR: Thank you.

4 THE COURT: Thank you.

5 THE JUROR: I'll just pop them off when I see you guys.

6 THE COURT: Okay. Either way.

7 THE JUROR: I can do it.

8 THE COURT: All right. Ladies and gentlemen, you are now
9 the jury in this case and we are about to try the case of the
10 State of South Carolina versus James Crews.

11 Before we begin this trial, I want to tell you that this
12 trial probably will be different from what you might expect.
13 Many people -- I would venture to say most people do not have
14 the chance to attend actual court sessions as you are doing
15 now and may think from watching television or perhaps movies
16 that -- or even reading books that trials are always full of
17 high drama, intense action, and riveting circumstances.

18 I will tell you that while all of these things may be
19 true at times, obviously this trial is not for entertainment.
20 It is a fundamental part of our democracy, a search for the
21 truth in an effort to be sure that justice is done.

22 Ladies and gentlemen, I would share with you that the
23 search for the truth is often slow, deliberate, and
24 repetitive, the opposite of what you may have seen on
25 television or in movies or read in books. I want you to know

1 that this courtroom is a place of honor dedicated to the
2 protection and the preservation of citizens' rights through
3 what many have called and I submit to you the greatest system
4 of justice that people have ever created.

5 I want you to know that the attorneys who are appearing
6 before you are advocates for the parties that they represent,
7 but before any of these attorneys were allowed to represent
8 the first person, the first client, that they were sworn in as
9 officers of the court. Ladies and gentlemen, you should
10 expect them to be professional, competent, and ethical in the
11 representation of their clients' interests.

12 Remember, now you have taken an oath to try this case and
13 to reach a fair and just verdict and you are also expected to
14 be professional, reasonable, and ethical. I want to thank you
15 for accepting this most important responsibility in the jury
16 system and for your contributions to our justice system.

17 I'm now going to talk to you a little bit about how we're
18 going to be proceeding. The remarks that I'm going to make to
19 you are not going to be the concluding charge on the law in
20 this case. I'm going to give you the concluding charge on the
21 law applicable to this case at the end of the trial before you
22 retire to consider your verdict. I want to give you an
23 explanation of the procedure that we will be following in this
24 trial and the reason for that is so that you will understand
25 where we are in the process and hopefully that will assist you

1 in your task.

2 I want to talk first about your notepads. You have
3 notepads. You have a writing implement. I'm going to ask you
4 to do this. On your very first sheet, I'm going to ask you to
5 write your juror number or your name if you don't remember
6 your juror number. Just write on that sheet. And then I'm
7 going to ask you to turn that page over because you now have a
8 cover sheet for your notes.

9 Now, I want to tell you that there is an ongoing debate
10 about notetaking and it has been ongoing for every one of my
11 18 -- I'm beginning my 19th year of being a judge. So when I
12 give jurors notepads, I give them a little bit of an
13 instruction because of some of the concerns about jurors
14 taking notes.

15 One of the concerns is that if a juror is taking a note,
16 they can miss something as it's coming from the witness stand.
17 I just tell you don't miss anything if it's coming from the
18 witness stand.

19 Let me tell you that the reason that I'm giving you
20 notepads is because really for two reasons. Number one, if a
21 person takes notes -- takes a note or two, that can help that
22 juror refresh that juror's recollection before deliberation.
23 I will tell you -- and I will also tell you that there are
24 those folks for whom taking a note or two helps in their
25 concentration. It helps them in paying attention and

1 listening. That's the reason to give you the notepad.

2 I would also share with you that it is so much more
3 important that you listen to the witnesses, observe them and
4 listen to them. That is more important than taking a note.
5 It is so important that you not miss anything as it's coming
6 from the witness stand. So I'll just share that with you.

7 You don't have to take a note at all. It's completely up
8 to you whether it is something you wish to do or not. If
9 you're not a note-taker, don't take notes. Don't do that.
10 Listen. But if it is of assistance to you, it's there. Your
11 notepad is there for you if it helps.

12 Now, I will tell you that you will leave your notepads
13 here in the courtroom every time that you leave the courtroom.
14 So just leave it in your seat.

15 And yesterday we talked about seat assignments. You can
16 sit anywhere you want other than my alternates and my
17 presiding juror, but, alas, you have to get your notepad. So
18 what ends up happening is that jurors sort of tend to go back
19 to the same seat because that's where their notepad is.

20 If for whatever reason you change your seat, just
21 remember to get your notepad. Don't use the notepad that's in
22 your seat because that can get to be a little bit confusing.
23 Just be sure you get your notepad. That's the reason you put
24 your number on the front of your notepad.

25 I want to also finally share with you that your notes are

1 just for you. They're not to be shared with anybody else.
2 They're certainly not to be used to go I'm right during
3 deliberations because I got a note. They're there for you to
4 allow you to refresh your recollection if it's helpful.

5 I also want to share with you that at the conclusion of
6 the case, you are absolutely free to take your notes with you
7 if you choose. If you don't, I want to -- I just want to talk
8 to you about what happens to your notes. Once the trial is
9 completed and the deliberation of the jury is completed, if
10 there are notes that remain, they are immediately taken to my
11 chambers by our bailiffs and I myself destroy them.

12 The reason for that is because I think that preserves
13 your privacy as jurors and the sanctity of your deliberations.
14 So I wanted you to know that. If you were to finish the trial
15 and ponder, oh, I wonder what happens to those notes, that's
16 what happens to the notes. They come to me and I just -- I
17 tear them up. I get the paper cut for you.

18 So, ladies and gentlemen, that's just for your
19 information purposes, but again I will -- I will simply stress
20 please do not allow the taking of notes to keep you from being
21 able to listen and observe, of course, the witnesses as they
22 testify.

23 All right. Now, ladies and gentlemen, hold on one
24 second.

25 Ladies and gentlemen, if you hear me throughout the

1 instruction refer to defendant, when I say defendant I mean
2 James Archie Crews IV. And I may say Mr. Crews from time to
3 time. I just wanted to be clear that if I say defendant,
4 that's who I'm referring to.

5 Ladies and gentlemen, Mr. Crews is charged by an
6 indictment filed in this court with the crime of criminal
7 sexual conduct with a minor, victim under eleven years of age,
8 first degree. Ladies and gentlemen, I will explain the
9 elements of this offense to you later.

10 I want to remind you that an indictment is simply a piece
11 of paper that notifies a citizen that the State alleges that
12 that citizen has violated a criminal law in the State of South
13 Carolina. I want to hasten to tell you that to this
14 indictment that Mr. Crews has pled not guilty to each and
15 every allegation it contains.

16 The State -- the State, therefore, has the burden of
17 proving each of the elements of the indictment beyond a
18 reasonable doubt, and it will be your duty to decide whether
19 the State has met that burden. Your purpose as jurors is to
20 find and to determine the facts. You are the sole -- the only
21 finders of the facts. You are the only and sole judge of the
22 facts.

23 Ladies and gentlemen, if at any time I do anything, make
24 a comment or make a gesture, and you believe that that is a
25 comment on the facts, I'm going to ask you to please disregard

1 that. Maybe I ate too much lunch or something because I can
2 promise you that I have no opinion regarding these facts and I
3 have no intention to comment or gesture or do anything with
4 regards to the facts. That's within your purview. Our law
5 doesn't allow me to have an opinion regarding the facts. I
6 don't have an opinion regarding the facts.. That's a matter
7 solely for you to determine.

8 And you are to determine the facts from the testimony
9 that you hear and from other evidence which is introduced into
10 court.. Those are called exhibits.

11 Ladies and gentlemen, it is up to you to determine any
12 inferences which you feel may properly be drawn from the
13 evidence. It is especially important that you perform your
14 duty of determining the facts diligently and conscientiously
15 because you see under our system -- under our way of judicial
16 life, under our system of justice, there is ordinarily no way
17 to correct an erroneous determination of the facts by a trial
18 jury. The facts as determined by the jury, by you, are the
19 facts for all time.

20 Ladies and gentlemen, on the other hand and with equal
21 emphasis, the same law that makes you the judge of the facts
22 makes me the judge of the law. The law as given to you by the
23 Court is the only law that you may consider. Ladies and
24 gentlemen, by your oath you must accept the law and you must
25 follow the law even though you may disagree with it. For our

1 system to work correctly, you must accept and apply the law
2 exactly as I state it to you.

3 Your job is to take the law as I give it to you, apply it
4 to the facts as you have found them to be from the testimony
5 of the witnesses and the other evidence which is introduced.
6 You will make the findings of fact. You will then take the
7 law as I give it to you and apply it to those facts, and that
8 is how you will reach a verdict which will then be a true and
9 just verdict under the oath that you just took.

10 Now, until I advise you to begin your deliberations --
11 and that will be a specific instruction -- now, ladies and
12 gentlemen, you are to begin your deliberations. It will be
13 specific. And until I advise you to begin your deliberations,
14 you must not discuss this case with anyone, including your
15 fellow jurors, your family, your friends, and anyone involved
16 in the case. This includes discussions face to face, those by
17 telephone, email, text, blogs or any other method of
18 communication.

19 Ladies and gentlemen, you may not use a computer, cell
20 phone or other electronic device with communication
21 capabilities at any time while in the courtroom or during your
22 deliberations. During your breaks for meals or overnight, if
23 necessary, you may use these devices. However, you may not at
24 any time use these devices to get or send information about
25 the case. This includes information about a party, a witness,

1 an attorney, a court officer, any news accounts about the
2 case, research on any topics raised, research on any topics
3 that you may think would be helpful in deciding the case or
4 information regarding any testimony presented by any witness.

5 During the trial, do not read, listen to or watch any
6 news reports about this case. This includes anything that may
7 be in the newspapers, on the Internet, radio or television.
8 You must not consider anything you may have read or heard
9 about the case outside the courtroom, whether before or during
10 the trial.

11 And after the case is submitted to you, you must discuss
12 it only in the jury room with your fellow jurors. And again,
13 there will be no question in your minds when that time has
14 come because I will tell you the time has come.

15 Ladies and gentlemen, you know, lawyers are by their very
16 nature loquacious and gregarious, meaning they like to talk to
17 people. It happens to be part of their nature or they
18 wouldn't be trial lawyers. And because of that, the lawyers
19 ask that I explain to you that if you happen to see the
20 attorneys or anyone involved in the case coming and going from
21 the courthouse -- you know, St. George is real little and you
22 may see them at lunch. If they seem to shirk away from you,
23 please know they're not being rude. They just know that
24 they're not supposed to interact with you or talk to you.

25 So please know that if they shirk away from you, that's

1 what's going on. They're not being rude. They just know
2 they're not supposed to have interaction with you and a lot of
3 times the lawyers won't even speak with you because they
4 wouldn't want anyone to misconstrue just an innocent common
5 hello would mean more than that. So if they seem to really
6 recoil from you, they really are not being rude. They're just
7 being very, very cautious.

8 Ladies and gentlemen, it is your solemn responsibility to
9 determine whether Mr. Crews is guilty or not guilty, and your
10 verdict must be based solely on the evidence as it is
11 presented to you during this trial and on the law as I
12 instruct you during and at the close of the trial.

13 Now, ladies and gentlemen, in just a moment, you're going
14 to hear opening statements in this matter. The solicitor will
15 make what is an opening statement and I believe that you will
16 then hear from one of the attorneys for Mr. Crews in an
17 opening statement. Ladies and gentlemen, what the attorneys
18 tell you during their opening statements is not evidence in
19 this case. It is their contention regarding what the issues
20 are in this case.

21 Ladies and gentlemen, the evidence in this case will be
22 presented to you by the testimony of sworn witnesses from this
23 witness stand and from any exhibits which may be introduced
24 into evidence.

25 Now, ladies and gentlemen, I need to talk to you about a

1 couple of things. I am confident that from time to time
2 during the trial you are going to hear the attorneys say
3 objection, Your Honor, or Your Honor, may we approach or, Your
4 Honor, we have a question of law to discuss with you, and I
5 want you to understand what is happening.

6 You are learning that as in business or sports or any
7 other structured activity -- and you have learned now that a
8 trial is a structured activity. There are certain rules that
9 both sides must obey when presenting evidence. These rules
10 have a definite purpose. Their purpose is to ensure that the
11 information that you receive is the most trustworthy and
12 reliable information available.

13 Ladies and gentlemen, these rules are called the Rules of
14 Evidence and, pursuant to these rules, the attorneys are given
15 the responsibility of calling a possible violation of the
16 rules to my attention. They do that in one of the three ways
17 I've just explained to you: by saying objection, by saying may
18 we approach or by saying, Your Honor, we have a matter of law
19 to discuss.

20 Ladies and gentlemen, when you hear them say objection,
21 oftentimes I will be able to rule on that objection by hearing
22 just simply a word or two from the lawyers. It may be an
23 objection to hearsay. And I may be able with just a couple of
24 words from them rule on that objection.

25 Sometimes, I may ask the lawyers to approach and, when

1 the approach, you are going to hear this sound. I like to
2 think of it as the ocean at the beach. I'm going to send you
3 to the beach and, yes, I am asking what's being said at the
4 bench. Sometimes I may even need to ask you to step to your
5 jury room, although I'll do that -- if I do that, it's
6 necessary that I do that and I'll do it as little as
7 necessary.

8 I want to tell you exactly what's happening when the
9 lawyers approach or if you go to your jury room so you'll
10 know. When I do that, what is happening is that it allows me
11 the ability to have an interchange with the lawyers about what
12 I'm hearing to help me rule on a matter of evidence, the
13 admissibility of evidence, and the reason that I need to mask
14 that is because I wouldn't want anything that I might say in
15 ruling or formulating my decision on the admissibility of that
16 evidence to be perceived by you as a comment on the case -- on
17 the facts. That's the reason is to give me the space to do
18 the work that I must do.

19 Now, ladies and gentlemen, the way that that works is
20 this. Whether or not evidence is admissible at all or not is
21 a matter of law, but once evidence is admitted, whether you
22 believe it, the weight you give to it, and the inferences you
23 draw from it, those are matters solely for you to determine.
24 That's the way that our duties, if you will, work together.

25 Now, in deciding whether to believe a witness' testimony,

1 you have the right to consider the interest of any witness,
2 the bias of any witness, the prejudice of any witness, the
3 opportunity for the witness to have seen the matters and
4 things about which the witness may testify, and the way the
5 witness acts on the witness stand. You have a right to
6 consider anything that is in the record that will help you
7 evaluate the testimony of the witnesses.

8 Ladies and gentlemen, this means it is your duty to pay
9 close attention to the witnesses, observe them, listen to
10 them, and pay close attention to the attorneys and to the
11 Court. Please do not let your thoughts wander, but give the
12 strictest attention to the testimony in this case so that at
13 the end of all the testimony, after the arguments of counsel
14 and my charge on the law by -- and my charge on the law, you
15 will then be in a position to determine what the true facts
16 are and to apply the law to those facts and thus render a true
17 and just verdict.

18 Ladies and gentlemen, just to give you a brief overview
19 of the procedure, you'll first hear opening statements. You
20 will first hear from the State and then the defense. We will
21 then -- the State will then proceed and then the defendant may
22 proceed.

23 Understand that the burden is and remains on the State to
24 prove guilt beyond a reasonable doubt. No defendant has the
25 burden of proof. It is and remains on the State.

1 Once the evidence is received in this case, you will then
2 have the opportunity to listen to the closing arguments of the
3 attorneys and I'll talk a little bit more about that when the
4 time has come. After the arguments, the closing arguments, it
5 will then be my duty to explain the law to you and then you
6 will receive this case for your deliberation. That gives you
7 an overview.

8 I talked about the fact that the lawyers have the
9 responsibility to object under our rules of evidence because
10 that is their responsibility. You must not hold an attorney's
11 objection -- the objection or objecting against their client,
12 nor should you conclude from my ruling on the objection that I
13 favor one side or the other because I do not. Just keep that
14 in mind as well.

15 Ladies and gentlemen, I'm going to ask as a personal
16 preference of mine and a need that I have for me -- many
17 people concentrate with their eyes closed. Many people do
18 that. My mother used to concentrate like this. I used to
19 think she was sleeping when she was concentrating. As I've
20 gotten older, she might've been sleeping. But as a child, I
21 was concerned that she was contemplating whether I was
22 misbehaving or not. So it always brought me to attention.

23 I'm going to ask you to concentrate with your eyes open
24 so I will know that you're not sleeping because we don't know
25 each other that well and if I could have misconstrued what my

1 mama was doing, I might misconstrue -- and I knew her pretty
2 well. I might misconstrue what your intentions are, whether
3 you're sleeping or just concentrating. So I'm going to ask
4 you to please concentrate with your eyes open for me, if you'd
5 be so kind.

6 Ladies and gentlemen, in order to preserve everyone's
7 rights, I'm now going to turn and see if there are any
8 objections or additions to my comments to the jury from the
9 State.

10 MS. MIMS: None, Your Honor.

11 THE COURT: From the defense?

12 MR. CHISHOLM: None, Your Honor.

13 THE COURT: Ladies and gentlemen, I'm going to ask you to
14 please draw close as we listen to the opening statements.

15 MR. GIESE: May it please the Court, Your Honor.

16 THE COURT: Yes, sir, Mr. Giese.

17 OPENING STATEMENT ON BEHALF OF THE STATE

18 MR. GIESE: Good morning, ladies and gentlemen.

19 THE JURY: Good morning.

20 MR. GIESE: Or good afternoon I should say. Now, on
21 Monday Judge Goodstein -- she read you the indictment, the
22 allegations in the indictment of this case, and I'm going to
23 reread that for you guys right now.

24 It says that in Dorchester County, South Carolina,
25 between the dates of November 1st, 2011, through November 12th,

1 2013, the defendant, James Archie Crews IV, seated over there,
2 did engage in sexual battery upon a minor who was less than
3 eleven years of age and that the defendant did force the
4 victim, **Minor 1** [REDACTED], to engage in anal intercourse, perform
5 fellatio on the defendant, and the defendant did perform
6 fellatio upon the victim. This offense in violation of
7 Section 16-3-655 of the South Carolina Code of Laws as
8 amended.

9 Those are the allegations and that's why we're here. Mr.
10 Crews has pled not guilty, as the judge told you, and it has
11 become the State's burden, meaning myself and Ms. Mims, to
12 prove Mr. Crews' guilt beyond a reasonable doubt.

13 Now, the judge mentioned in her opening remarks that the
14 opening statement a lot of times is the opportunity for the
15 attorneys, meaning myself and Mr. Chisholm, to kind of go over
16 what we think the issues are in this case to kind of prepare
17 you for what you're about to hear. Well, ladies and
18 gentlemen, you heard those allegations. There's nothing I can
19 say. I believe Mr. Chisholm would agree there's nothing he
20 can say that would adequately prepare you for what you're
21 about to hear because what you're going to hear is from a now
22 ten-year-old boy who was eight at the time, how his
23 stepfather, James Crews, repeatedly raped him anally and
24 orally for a period of time whenever his mother wasn't in the
25 house.

1 And I'm going to touch on the facts a little bit later,
2 but before I do that I do kind of want to focus your attention
3 on one part of the law that the judge is going to instruct you
4 on at the end of this trial.

5 Now, she's the judge of the law; so anything -- whatever
6 she says, if it's different than what I say, you go with what
7 the judge says, but I'm fairly confident that she's going to
8 instruct you on this part. And that is that in South Carolina
9 a child witness' testimony need not be corroborated. Okay?
10 You can convict someone based on a child's testimony alone
11 and, in this case, that would be MI [REDACTED], Minor 1 [REDACTED]
12 [REDACTED] testimony alone against Mr. Crews. Now -- but I just
13 wanted y'all to keep that -- to keep that in mind as we go
14 throughout the day and throughout tomorrow and you hear from
15 various witnesses.

16 Now, let's go into a little bit of the facts of the case.
17 Back on the dates that I mentioned between the dates of
18 November of 2011 and November 12th of 2013, MI [REDACTED], eight
19 years old at the time, was living on Longleaf Drive in a
20 trailer, Carolina Mobile Home Park in Summerville. He lived
21 there with his mother, Tara Crews, his stepfather, Jim Crews,
22 and his sister, Minor 2 [REDACTED] She's a couple years older than
23 him.

24 On November 12th of 2013, MI [REDACTED] discloses to his
25 mother, Tara, that Mr. Crews repeatedly rapes him whenever his

1 mom isn't there, whether that be Tara going running errands or
2 whether that be she's at -- she's at work. Whenever she's not
3 there, he says that Mr. Crews rapes him and you're going to
4 hear that from him. You're going to hear that from him on the
5 -- on the witness stand. You're going to hear that from him
6 in what we call a forensic interview, which was an interview
7 taken back at the time of the allegations in 2013 when he was
8 eight where he's telling a forensic interviewer about all
9 these things.

10 And after hearing all of that, you're going to hear from
11 other witnesses as well that are privy to this -- this case.
12 But after hearing all that, as the judge said, she's going to
13 instruct you on the law at the end of this case. And if you
14 are firmly convinced that Mr. Crews did these things to MI
15 [REDACTED], MI [REDACTED], then it then becomes your duty to find
16 him guilty and that's what the State is going to ask you to do
17 at the end of this trial. Thank you.

18 THE COURT: Thank you, Mr. Giese. Mr. Chisholm?

19 MR. CHISHOLM: Thank you, Judge. May it please the
20 Court.

21 THE COURT: Yes sir.

22 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

23 MR. CHISHOLM: Good morning.

24 THE JURY: Good morning.

25 MR. CHISHOLM: Now, I'll tell you I do appreciate all of

1 you being here, but I'm not deluded enough to think that
2 you're here voluntarily. I know you pretty much got a summons
3 in the mail that said you've been cordially invited to court
4 and if you don't come there might be problems, and that's why
5 you're here and I get that.

6 And a lot of people, when they get jury duty, they're not
7 happy about it. Jury duty is extremely important. We can't
8 do any of this without you. But it's also extremely
9 inconvenient. I know some of you are probably missing work.
10 In certain fields you're probably missing money out of your
11 pocket by being here. You've had to, you know, probably
12 reschedule babysitters or what you had planned for the week.
13 All that kind of goes out the window and I can certainly
14 understand why you wouldn't want to be here. I get that.

15 On the other hand, some people are genuinely excited to
16 get summoned to court for jury duty. I know a lot of people
17 said I wish somebody would pick me because they want to see
18 how things work or maybe they have a job they hate and they
19 don't want to go to work and this is a pretty rock-solid
20 excuse not to go in.

21 At any rate, when Her Honor read the indictment in this
22 case, when she told you what kind of case you were going to be
23 sitting on this week, I was paying attention and you could
24 pretty much feel the air go out of the room because I don't
25 need a show of hands to realize that there's not anybody among

1 you that's excited to sit on this kind of case. I understand
2 that. I mean you'd rather be here for a car theft or a drug
3 case, even a murder, before a case involving sexual assault
4 with a child. I get that.

5 And that's a normal response because these are tough
6 cases. I mean they're emotional and they're tough, you know,
7 to prosecute. They're tough to defend. I mean it's tough to
8 listen to a witness take the stand and talk about this kind of
9 stuff. That's human nature. I get that.

10 And this is essentially the worst thing or one of the
11 worst things at any rate you can be charged with. I mean it's
12 absolutely heinous behavior, but what I want you to think
13 about right now and what I want you to continue to think
14 about during the course of this trial is as bad as it is to be
15 charged with something like this, how bad is it to be falsely
16 accused of something like this as Mr. Crews has and to sit and
17 wait for over two years for your day in court?

18 We've been waiting for you for over two years to come in
19 here as a clean slate, a group that comes in without any bias
20 or prejudice. You don't come in leaning one way or the other.
21 Someone to simply come in as a group, listen to the evidence,
22 and render a just verdict. So I know Mr. Crews certainly
23 appreciates you being there.

24 Mr. Giese just got up and gave the State's, you know,
25 kind of a roadmap, what they plan to introduce in this trial,

1 what they're going to prove and how they're going to prove it
2 in some detail, but I thought it was very telling that in the
3 State's opening statement what they're putting on your radar
4 is this. That in this kind of case the testimony of the
5 victim need not be corroborated. They made a big point to
6 tell you that, which essentially means if you believe the
7 victim, you don't have to worry about any other kind of proof.

8 And the reason they're making a point to tell you this is
9 there's not going to be any outside proof in this case.
10 There's not going to be any medical evidence that's going to
11 show any of this happened. There's not going to be any
12 forensic evidence, DNA or anything else. That's why they're
13 pointing that out on the front end.

14 Now, why are we here? Well, obviously Mr. Crews, as the
15 judge told you, has pled not guilty. He's maintained his
16 innocence from the very beginning and that's one reason we're
17 here.

18 The other reason we're here is because this is the case
19 that the State chose to call. Out of all of their cases, they
20 picked this one and, when they did that, they made you an
21 implicit promise that they are going to be able to prove their
22 case. They're going to be able to prove their case beyond any
23 and all reasonable doubt.

24 So you're here to essentially look at their table and
25 say, okay, you've got us all gathered here. Prove your case.

1 Show us what you've got. That's essentially why we're here.

2 As Her Honor pointed out, all the evidence in this case
3 is going to come from the witness stand. I mean what people
4 say they saw or what they heard. I mean the testimony is what
5 you're going to be basing your decision on ultimately.

6 You guys as the finders of fact will be acting as a
7 filter of sorts. You'll listen to all the evidence, you'll
8 take the good, discard the bad, and you'll ultimately decide
9 what's been proved and what hasn't and what's true and what's
10 not.

11 One thing I want to touch on is one of the bedrock
12 principles of our legal system and this is a fundamental right
13 that is afforded to every criminal defendant. It's the
14 presumption of innocence. And I mean it sounds simple enough.
15 You've probably all heard it. If you've ever seen any kind of
16 legal show or movie or anything else, you've probably heard
17 presumption of innocence. People talk about it and it's
18 pretty straightforward what it means. It simply means you
19 have to presume that the guy on trial is innocent.

20 I mean that's pretty straightforward. But it's not
21 really that straightforward because what we do in our day-to-
22 day lives is we do the opposite. We have the presumption of
23 guilt. I'm guilty of it myself and I'll give you a couple of
24 examples.

25 On my way to court this morning, I had my son. I've got

1 a five-year-old. I was on my way to drop him off at school.
2 We passed a policeman that had somebody pulled over, the blue
3 lights going and all that. My son says, daddy, what did that
4 guy do, what's going on? I said, well, he's probably just
5 speeding, you know. It's no big deal.

6 When you see somebody pulled over, you don't give them
7 the benefit of the doubt. You don't presume that they're
8 innocent and that maybe this guy flagged the officer down to
9 say have a good day or anything else. I mean you presume this
10 guy was speeding or he's up to something or they wouldn't have
11 stopped him.

12 Another example. When you watch the news and it comes
13 over, you know, armed robber caught for the burglary of the
14 First Citizens Bank on Main Street. When you see that report,
15 you don't go I wonder if they got the right guy. I wonder if
16 he truly matches the description that was given at the time of
17 the incident. We don't do that. You wonder -- I wonder how
18 much money he got. I wonder if anybody got hurt..

19 I mean that's where we go. That's where we naturally go.
20 As I said, I'm as guilty as anyone else. And when you're on
21 the street in the real world, it really doesn't matter. I
22 mean it's no harm, no foul because you see that and it's out
23 of your mind and has no real effect.

24 So with that being the mindset most people have, when you
25 come in here and you get to sit in the jury box and, you know,

1 as I said, you've been pulled out of your normal life and more
2 or less ordered to come in here, you sit down, you look across
3 the courtroom, and you do the same thing you normally would.
4 You say, well, the State is saying this guy did something bad
5 and he's sitting at the table. Obviously he must've done
6 something or he wouldn't be sitting there, which is exactly
7 what the presumption of innocence tells you you cannot do.

8 And, you know, Her Honor has instructed you on this and
9 it's not just because that's her personal take or mine. It's
10 because it's the law and it's because it's part of the oath
11 that you've taken is that you have to give that presumption of
12 innocence. It's critical.

13 And another way to think of it is imagine a trusted
14 friend or a family member that's charged with something this
15 heinous and when you hear it, you say, whoa, wait a minute,
16 no, they've got the wrong guy. There's got to be a mix up
17 here. That is the presumption of innocence. That initial
18 reaction that, wait a minute, no, this can't be right. That's
19 what you have to afford Mr. Crews.

20 Now, I'm not going to go into my case at this point. I
21 prefer to let you just hear from the witness stand and I'll
22 have another opportunity to speak to you at the end of the
23 trial. All I'm going to ask right now is that you keep an
24 open mind. Pay attention to what's said and what's not said.
25 Pay attention to what's presented, as well as what's not

Minor 1 - DIRECT BY MS. MIMS

1 presented. And again, I'll have another chance to address you
2 at the end of the trial. Thank you.

3 THE COURT: Thank you, Mr. Chisholm. All right. Our
4 first witness, please.

5 MS. MIMS: Yes, ma'am. The State calls Minor 1 .

6 (WHEREUPON, there was a pause the proceedings until the
7 witness entered the courtroom.)

8 THE CLERK: If you will, please raise your right hand.
9 State your full name for the record.

10 THE WITNESS: Minor 1 .

11 THE CLERK: Do you solemnly swear or affirm to tell the
12 truth, the whole truth, and nothing but the truth?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Thank you. Have a seat.

15 THE COURT: Your witness.

16 MS. MIMS: Thank you, Your Honor.

17 Minor 1 , being first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MIMS:

21 Q: Hi, Minor 1

22 A: Hey.

23 Q: Do you go by Minor 1

24 A: No, ma'am.

25 Q: Can you please tell me what you go by?

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

1 A: MI.
2 Q: Is it okay if I call you MI.
3 A: Yes, ma'am.
4 Q: How old are you, MI.
5 A: Eleven.
6 Q: And when is your birthday?
7 A: [REDACTED].
8 Q: What year?
9 A: [REDACTED].
10 Q: [REDACTED]?
11 MR. CHISHOLM: Judge, I'm sorry to interrupt. Can we
12 flip down the screen so we can see the witness?
13 THE COURT: I don't know that it -- see if that one
14 flips. I'm not sure it does, but it turns. All right.
15 BY MS. MIMS:
16 Q: And what grade are you in school?
17 A: Fifth.
18 Q: And what school do you go to?
19 A: I'm homeschooled as of now.
20 Q: So where do you -- where do you do your schoolwork?
21 A: Where I do it, it's a table by my kitchen.
22 Q: Do you do your schoolwork in your home?
23 A: Yes, ma'am.
24 Q: Okay. And who homeschools you?
25 A: My dad.

Minor 1 - DIRECT BY MS. MIMS

- 1 Q: And what's your favorite subject?
- 2 A: Science.
- 3 Q: Where do you live, MI
- 4 A: .
- 5 Q: Okay. And who do you live with?
- 6 A: My dad, my sister, my aunt, and my uncle.
- 7 Q: Okay. Are your parents married?
- 8 A: No, ma'am.
- 9 Q: Who lives -- so you live with your dad; is that right?
- 10 A: Yes, ma'am.
- 11 Q: Okay. And where does your mom live?
- 12 A: She lives in -- she lives in Maine with her boyfriend.
- 13 She came down here so she could do the court stuff.
- 14 Q: Okay. And, MI do you know James Crews?
- 15 A: Yes, ma'am.
- 16 Q: And how do you know him?
- 17 A: He is my stepdad.
- 18 Q: Okay. And what do you call him?
- 19 A: Jim.
- 20 Q: And how long has Jim been your stepdad?
- 21 A: I don't know.
- 22 Q: Okay. Was he your stepdad when you were eight?
- 23 A: He was my stepdad for as long as I can remember.
- 24 Q: Okay.
- 25 A: In my memory.

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

- 1 Q: Okay. And during the time that he was your stepdad,
2 where did you live then?
- 3 A: [REDACTED].
- 4 Q: Where is that at?
- 5 A: It's in a trailer park.
- 6 Q: What city?
- 7 A: I don't know.
- 8 Q: Okay. Is it near here?
- 9 A: No.
- 10 Q: Okay. Is it in South Carolina?
- 11 A: Yes.
- 12 Q: Okay. And when you -- when Jim was your stepfather and
13 living with you, who lived with you then?
- 14 A: My sister, my mom, Jim, and me.
- 15 Q: Okay. So when were -- were your parents ever married?
- 16 A: No.
- 17 Q: Okay. So when you were -- when Jim was your stepdad and
18 you were living with Jim and your mom and your sister, where
19 was your dad at that point?
- 20 A: He was at the house that I live in now.
- 21 Q: Would you still see your dad?
- 22 A: Yeah. We visited him on the weekends.
- 23 Q: Okay. And when Jim was your stepdad, did Jim work?
- 24 A: Not that I remember, no.
- 25 Q: Okay. Did your -- when Jim was your stepdad, did your

Minor 1

- DIRECT BY MS. MIMS

1 mom work?

2 A: Yes.

3 Q: Okay. And do you remember where she worked?

4 A: She took care of two old ladies.

5 Q: Okay. And when Jim was your stepdad and you all lived
6 together, what did your -- did your -- what did your family do
7 for fun back then? Do you remember?

8 A: There was a park near our house that we went to.

9 Q: Uh-huh.

10 A: You know, we had fun there and we had movie nights and --
11 yeah.

12 Q: Did you get along okay with Jim?

13 A: Yeah.

14 Q: Okay.

15 A: Yes.

16 Q: And when you would get in trouble, who would discipline
17 you?

18 A: My mom.

19 Q: And how would she discipline you?

20 A: Usually, she'd grab my hand and she'd, like, do like --
21 she'd, like, smack my hand and she'd -- I'd, like, have to go
22 to my room.

23 Q: Okay. And when Jim was living with you, who did -- who
24 did most of -- who did most of the grocery shopping?

25 A: My mom.

Minor 1 - DIRECT BY MS. MIMS

- 1 Q: Okay. So when your mom was at work or she was grocery
2 shopping, where would you be?
- 3 A: I would be in the house with Jim.
- 4 Q: Okay. Did you ever go with your mom sometimes?
- 5 A: Yes.
- 6 Q: Okay. Would you sometimes stay home?
- 7 A: Yes.
- 8 Q: Okay. When your mom was running an errand and you were
9 home with Jim, were you ever alone with Jim?
- 10 A: Yes.
- 11 Q: Okay. And when you were alone with Jim, what kind of
12 things would you do or would y'all do?
- 13 A: Sometimes we'd sit there and watch TV for a little bit
14 and then some bad stuff would happen.
- 15 Q: Okay. What kind of bad stuff, MI
- 16 A: He made me put my mouth on his wiener.
- 17 Q: What's a wiener?
- 18 A: The male private part.
- 19 Q: Okay. What's another word for that? Do you know?
- 20 A: Penis.
- 21 Q: Okay. Do you remember the first time Jim made you do
22 that?
- 23 A: Yes.
- 24 Q: What happened?
- 25 A: I was in my room on my PlayStation 2 that I had and he

Minor 1 - DIRECT BY MS. MIMS

1 told me to go in the living room and so I did that. And he
2 told -- he pulled his pants down and told me to -- first of
3 all, he told me to come in the living room and then I'm, like,
4 okay, because I didn't know what was going to happen. And
5 then he pulled down his pants and he made me put my mouth on
6 his penis.

7 Q: Okay. When he made you do that, MI can you describe to
8 the jury how you did that, what you were -- what position you
9 were in?

10 A: I was on my knees and he made me do, like, a rock-back-
11 and-forth motion with my head.

12 Q: How did he make you do a rock-back-and-forth motion with
13 your head?

14 A: He told me to.

15 Q: He told you to? Did he tell you to move your head?

16 A: Yes.

17 Q: Were your -- were all of your clothes on or off?

18 A: For the first time, on.

19 Q: Okay. Were his clothes on?

20 A: His pants were off.

21 Q: Okay. And how old were you the first time?

22 A: I don't know.

23 Q: Okay. What else happened that day after -- once you were
24 doing that to him, did anything else happen?

25 A: Yes.

Minor I - DIRECT BY MS. MIMS

- 1 Q: What happened?
- 2 A: He told me to go in my sister's room and take off my
- 3 clothes and I did that and then he came in the room with all
- 4 of his clothes off and then he put his penis in my butt.
- 5 Q: Okay. Was he dressed? Were all of his clothes off when
- 6 he came in the room?
- 7 A: He came in the room and then took the clothes off.
- 8 Q: Okay. And can you tell the jury exactly where you were
- 9 in the room?
- 10 A: I was on my sister's bed.
- 11 Q: Okay. And how -- what position were you in on your
- 12 sister's bed?
- 13 A: I was on my hands and knees because he told me to do
- 14 that.
- 15 Q: Okay. And what happened next?
- 16 A: After that, he put his penis in my butt.
- 17 Q: Okay. Did he do anything before he put his penis in your
- 18 butt?
- 19 A: No. Not that I remember.
- 20 Q: Okay. What did that feel like?
- 21 A: It hurt.
- 22 Q: What did it hurt?
- 23 A: My butt.
- 24 Q: And when he put his penis in your butt, what happened
- 25 next?

Minor 1 - DIRECT BY MS. MIMS

- 1 A: He did a rock-back-and-forth motion.
- 2 Q: Okay. And what did you do? Did you move or just did you
- 3 stay still?
- 4 A: I moved because it hurt. I just moved a little bit and
- 5 then it just continued.
- 6 Q: Okay. And what happened next?
- 7 A: After that, he just did that and then my mom got back and
- 8 then he stopped.
- 9 Q: Okay. I want to take you back just a minute though.
- 10 Once he was finished putting his penis in your butt, what did
- 11 he do right after that?
- 12 A: After that, he laid back on his back and some white stuff
- 13 came out of his penis.
- 14 Q: Where did the white stuff go?
- 15 A: It went on his stomach.
- 16 Q: And what did he do then?
- 17 A: After that, he wiped it off with some of my sister's
- 18 blankets and then we just got our clothes back on and went on
- 19 with our day.
- 20 Q: Okay. Did he say anything about that?
- 21 A: He told me to keep it a secret. Since I was young, I
- 22 thought I was supposed to keep secrets. I knew that; so I
- 23 kept that a secret.
- 24 Q: Okay. MI I know you said you don't remember your age,
- 25 but do you remember if you were in school? Were you in school

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

- 1 when that happened?
- 2 A: Yes.
- 3 Q: Okay. What grade were you in?
- 4 A: I don't know.
- 5 Q: Okay. What happened when your mom got home?
- 6 A: Nothing.
- 7 Q: Okay. Did you tell your mom?
- 8 A: Not at that moment, no.
- 9 Q: Okay. And once that happened, was that the last time?
- 10 A: No.
- 11 Q: Okay. Did it happen again?
- 12 A: Yes.
- 13 Q: Okay. Do you remember the second time?
- 14 A: No.
- 15 Q: Okay. Do you remember another time?
- 16 A: Yes.
- 17 Q: Can you describe that time?
- 18 A: There was one time when my nephew -- his name is Landon.
- 19 He was there and back in the day I had -- I used to suck my
- 20 thumb. I don't know why. I just did. And then he told me if
- 21 I sucked my thumb again, the bad stuff would happen, and I
- 22 said okay and then I tried to keep that in my brain and just
- 23 keep it there. And then I just forgot and then I did that
- 24 again and then the bad stuff happened.
- 25 Q: Okay. How old was Landon?

Minor 1 - DIRECT BY MS. MIMS

1 A: I don't know. He was young though.

2 Q: Was he younger than three?

3 A: I don't know. All I know is he was young, younger than
4 me. So --

5 Q: Okay. How old is Landon now?

6 A: Eight. His birthday was March 4th.

7 Q: Okay. So when he said if you suck your thumb again, bad
8 things will happen to you, did you know what he meant?

9 A: Yes.

10 Q: What did he mean?

11 A: It meant that he made me put my mouth on his penis and
12 then we'd go in my sister's -- well, it would happen in my
13 sister's room so Landon wouldn't see it and then he put his
14 penis in my butt.

15 Q: Did you like it when that happened?

16 A: No. Not at all.

17 Q: Why didn't you like that, MI?

18 A: Because it hurts...

19 Q: And so when you sucked your thumb again, did he catch
20 you?

21 A: Yes.

22 Q: Okay. And what did he do at that point?

23 A: He told me to go in my sister's room and then take my
24 clothes off and then the bad stuff happened.

25 Q: Okay. The bad stuff? What would that be?

Minor 1. [REDACTED] - DIRECT BY MS. MIMS

- 1 A: Him putting his penis in my butt and my mouth on his
2 penis.
- 3 Q: Okay. MI did he ever put anything on his penis before
4 he put it in your butt?
- 5 A: Yes.
- 6 Q: What did he put on it?
- 7 A: I don't know. All I remember is seeing him put something
8 on it.
- 9 Q: Where did he get it?
- 10 A: I don't know.
- 11 Q: What did it look like?
- 12 A: It was a tube. It was like some kind of -- it was a tube
13 that had stuff in it.
- 14 Q: And what did he do with it?
- 15 A: He put some on his hands and rubbed it on his penis.
- 16 Q: And then what did he do?
- 17 A: He put his penis in my butt.
- 18 Q: Okay. Where did this usually happen, MI
- 19 A: In my sister's room.
- 20 Q: Okay. And was that the only place?
- 21 A: No.
- 22 Q: Where else in the trailer did it happen, MI
- 23 A: It happened on the -- on the couch in my living room and
24 one time it -- yeah, one time he didn't put his penis in my
25 butt, but he was in the bathtub. But he made me put my mouth

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

1 on his penis.

2 Q: Okay. In the bathtub?

3 A: Yes.

4 Q: Okay. He was in the bathtub?

5 A: Yeah. I wasn't.

6 Q: Okay. What happened then? Tell me about that time?

7 A: I just put my mouth on his penis and he made me do the
8 rock-back-and-forth motion and then he told me to stop and I
9 stopped and then I just went back out and went on with my day.

10 Q: Did he call you in the bathroom?

11 A: Yes.

12 Q: Was he already in the bathtub?

13 A: Yes.

14 Q: Okay.

15 MS. MIMS: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MS. MIMS:

18 Q: MI I'd like to show you what's been marked as State's
19 Exhibit Number 1, 2, 3, 5, and 6, and ask you if you could
20 look through those and tell me if you recognize them.

21 A: Yes. I recognize all of them.

22 Q: Okay. What are those a picture of, MI

23 A: These are a picture of my trailer and the shed.

24 Q: Okay. Was that the trailer that you lived in when Jim
25 was your stepdad?

Minor 1 - DIRECT BY MS. MIMS

1 A: Yes.

2 Q: Okay. And does that accurate -- does that picture
3 accurately show what that trailer looked like when you lived
4 in it?

5 A: Yes.

6 Q: Okay.

7 MS. MIMS: Your Honor, at this --

8 A: Except for there wasn't that many stains on the walls
9 that I remember.

10 Q: Okay. Are you sure that that looks exactly like that is
11 the trailer that you lived in with your stepdad, Jim?

12 A: Yes.

13 Q: Okay.

14 MS. MIMS: Your Honor, at this time, I'd ask to introduce
15 Numbers 1, 2, 3, 5, and 6 into evidence:

16 MR. CHISHOLM: Without objection.

17 THE COURT: No objection. You've seen them? Very well.
18 So admitted.

19 MS. MIMS: Thank you, Your Honor.

20 THE COURT: Uh-huh.

21 (WHEREUPON, State's Exhibits Number 1, 2, 3, 5, and 6,
22 color photographs, were admitted into evidence.)

23 BY MS. MIMS:

24 Q: MI, I'm going to show you a picture up on the big screen
25 here. MI what is this? Let's do it this way. What is this

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

- 1 a picture of?
- 2 A: That's a picture of the trailer.
- 3 Q: Okay. And can you tell the jurors -- the window that we
- 4 see right here in the front, where is that facing?
- 5 A: That's my sister's room. That's her window.
- 6 Q: Okay. That's your sister's room?
- 7 A: Yes.
- 8 Q: Okay. And would Jim ever do the bad stuff to you in that
- 9 room?
- 10 A: Yes, ma'am.
- 11 Q: Okay. Where does this window face?
- 12 A: It faces out to the road.
- 13 Q: Okay. And I'll show you what's been marked as State's
- 14 Exhibit Number 3. What is this a picture of?
- 15 A: That's the picture of the trailer again.
- 16 Q: Okay. And what is this window? What room is that window
- 17 from?
- 18 A: That's the bathroom window.
- 19 Q: Okay. What is this right here, M1
- 20 A: That's the living room window.
- 21 Q: Okay. And those stairs -- where do they lead?
- 22 A: Into the living room.
- 23 Q: Okay. Now, M1 where again would Jim do the bad stuff to
- 24 you? What rooms?
- 25 A: In the living room and in the -- in the -- Minor 2 [REDACTED] room.

Minor 1 - DIRECT BY MS. MIMS

- 1 Q: Okay. And when he would do those things to you, why --
2 why were y'all in those rooms?
- 3 A: Because there were windows where he could see that my
4 mom's car was coming in the driveway.
- 5 Q: Okay. I'll show you --
- 6 A: That's what I think.
- 7 Q: I'll show you again what's been marked as State's Exhibit
8 Number 5. If your mom's car came in the driveway, where would
9 it go?
- 10 A: It would go in --
- 11 Q: You can kind of circle it with your finger on that
12 screen.
- 13 A: Oh. It would come, like, around right here.
- 14 Q: Okay.
- 15 A: Around there.
- 16 Q: Would you have been able to see your mother's car from
17 the living room window?
- 18 A: Yes.
- 19 Q: Okay. And where was the other place that Jim would do
20 these things to you?
- 21 A: In Minor 2 room.
- 22 Q: And where is Minor 2 window again?
- 23 A: Right here.
- 24 Q: And where does Minor 2 room face?
- 25 A: It faces out to the road where you can also see the

Minor 1 - DIRECT BY MS. MIMS

1 driveway.

2 Q: Okay. MI did -- did Jim ever do this to you more than
3 those few times that you just mentioned to us?

4 A: Yes.

5 Q: Okay.

6 A: Many more times.

7 Q: How often did he do it?

8 A: A couple times a week, like three, maybe four times a
9 week.

10 Q: Okay. When would he do it?

11 A: Whenever my mom and my sister were gone.

12 Q: Okay. Did there come a point when he stopped doing it?

13 A: Yes.

14 Q: When was that?

15 A: Do you mean altogether at all or just at -- just at times
16 when he would stop?

17 Q: I guess would -- did it ever stop until the -- until the
18 end or did it keep happening?

19 A: It went on usually until my mom got home, but sometimes
20 he would just stop.

21 Q: Okay. Were there ever any other places that he did bad
22 things to you?

23 A: Yes.

24 Q: Where?

25 A: In the shed.

Minor 1 - DIRECT BY MS. MIMS

1 Q: In the shed? Okay. I'd like to show you --
2 MS. MIMS: May I approach the witness, Your Honor?
3 THE COURT: You may.
4 BY MS. MIMS:
5 Q: -- what's been marked as State's Exhibit Number 2. What
6 is that a picture of?
7 A: That's the shed.
8 Q: Okay.
9 MS. MIMS: May I publish, Your Honor?
10 THE COURT: You may. Any objection? Well, hold on.
11 MR. CHISHOLM: I have no objection..
12 THE COURT: No objection?
13 MR. CHISHOLM: No, ma'am.
14 BY MS. MIMS:
15 Q: Okay. MI what are we looking at here?
16 A: A picture of the shed.
17 Q: And what is this beside the shed?
18 A: That's the trailer.
19 Q: Is that the trailer where you lived?
20 A: Yes.
21 Q: Okay. And what was in that shed?
22 A: There were his tools and then there were magazines in
23 there.
24 Q: Can you tell me about the time that it happened in the
25 shed?

Minor 1 - DIRECT BY MS. MIMS

1 A: It happened more than once in the shed, but usually he
2 had a -- he had, like, his own chair in the shed.

3 Q: Uh-huh.

4 A: And there was another chair. So one time I was looking
5 at all of the tools he had because they were pretty cool tools
6 and then one time he made -- he was in the chair and he told
7 me to put his -- my mouth on his penis. So I did that and
8 then that's -- that's all that happened in the shed.

9 Q: Okay. When you were in the shed, did you say there was a
10 chair?

11 A: Yeah. There was two chairs..

12 Q: Okay. Can you back us up and tell us first of all were
13 you in the shed alone when you first got there? When you
14 first went into the shed, did he ask you to come to the shed
15 or did you go there on your own?

16 A: No. I just went in there and looked at the tools and
17 stuff.

18 Q: Did he come in there while you were there?

19 A: No. He was in there already.

20 Q: Okay. And what happened next when you were in there with
21 Jim?

22 A: A couple minutes after, he told me to put my mouth on his
23 penis.

24 Q: What was he wearing? Was he wearing clothes?

25 A: Yes.

Minor 1 - DIRECT BY MS. MIMS

- 1 Q: Okay. Were his pants up or down?
- 2 A: Whenever he made me put my mouth on his penis? Well, he
- 3 pulled them down. So yeah, he pulled them down, but they were
- 4 up.
- 5 Q: Okay. And how were you positioned when he told you to
- 6 put your mouth on his penis?
- 7 A: I was standing up looking at the tools and then he made
- 8 me get on my knees and do that.
- 9 Q: Okay. Did that happen more than once?
- 10 A: Yes.
- 11 Q: Okay. What else would he do with you in the shed?
- 12 A: Make me look at magazines.
- 13 Q: What type of magazines?
- 14 A: Not good ones.
- 15 Q: Can you describe them?
- 16 A: They were naked pictures of people.
- 17 Q: Okay. What type of people? Men or women?
- 18 A: Both.
- 19 Q: Okay. What were they doing?
- 20 A: Doing the things that he would make me do -- that he
- 21 would do to me.
- 22 Q: Okay. Did you see anything unusual in those pictures?
- 23 A: Yes.
- 24 Q: What did you see?
- 25 A: I saw a picture of a girl with a penis.

Minor 1

- DIRECT BY MS. MIMS

1 Q: Okay. Did those pictures show any -- were there any
2 pictures of that white stuff that you explained that you saw
3 Jim --

4 A: No.

5 Q: -- to come out of Jim's penis? Did you see any pictures
6 of that?

7 A: No.

8 Q: Okay. Did you see any pictures of the tube that Jim said
9 -- that you said Jim used --

10 A: No.

11 Q: -- that stuff came out and he put on his penis? Okay.
12 Did you look at those often?

13 A: No.

14 Q: Did you want to look at those?

15 A: No.

16 Q: Who showed you those magazines?

17 A: Jim.

18 Q: Whose magazines were they?

19 A: Jim's.

20 Q: When you were in the house and the bad things happened
21 that you didn't like, what would Jim usually wear?

22 A: He'd usually wear his clothes, but a couple times he wore
23 this -- it was like a cheetah-looking short dress. It was --
24 it was tiny. It was, like, a cheetah dress, super tiny.

25 Q: Was it like -- it was like a dress? Was it a dress?

Minor 1 [REDACTED] - DIRECT BY MS. MIMS

1 A: It wasn't, like, a dress. It was -- no, it wasn't like a
2 dress.

3 Q: Was it for a man?

4 A: No.

5 Q: Okay. MI did you tell your mom after the shed incident?

6 A: No.

7 Q: Okay. Did your mom ever end up finding out what
8 happened?

9 A: I told her.

10 Q: Can you tell the jury about the day that you told your
11 mom what Jim was doing?

12 A: Okay. So they got into a little argument and then Jim
13 was -- he was going to college at that time. So he was going
14 off to the college after they got in a little fight and then
15 my mom said should I give him another chance and I said no,
16 no, no. And then she was like why, and then I told her a
17 couple of lies and then eventually she said she knew that I
18 was telling a lie because apparently there was something up
19 with my face that she knew I was telling a lie. And then I
20 told her about the stuff that Jim was doing.

21 Q: What did you tell her exactly? Do you remember?

22 A: I told her that he was -- he was making me put my mouth
23 on his penis and he was putting his penis in my butt.

24 Q: And what happened next?

25 A: She started to cry and called the police.

Minor 1 - DIRECT BY MS. MIMS

- 1 Q: Okay. Did you talk to the police, MI
- 2 A: Yes, ma'am.
- 3 Q: Okay. Who else did you talk to about that? Did you --
- 4 A: I don't remember.
- 5 Q: Okay. Did you go to a doctor?
- 6 A: Yes, ma'am.
- 7 Q: Okay. Do you remember -- did you ever have to go talk to
- 8 anyone at the Dorchester County Children's -- Dorchester
- 9 County Children's Center?
- 10 A: Yes, ma'am.
- 11 Q: Okay. Do you remember who you talked to there?
- 12 A: I don't remember her name, but I know I talked to a girl.
- 13 Q: Okay. Do you remember sitting in a room and talking to a
- 14 lady?
- 15 A: Yes, ma'am.
- 16 Q: Okay. Did you ever see Jim after that again?
- 17 A: No.
- 18 Q: Okay. MI do you see Jim in the courtroom today?
- 19 A: Yes, ma'am.
- 20 Q: Can you please point to him?
- 21 A: (Indicating.)
- 22 MS. MIMS: Please let the record reflect that he's
- 23 identified the defendant as Jim. I beg the Court's
- 24 indulgence, Your Honor.
- 25 THE COURT: Very well.

Minor 1 - DIRECT BY MS. MIMS

1 MS. MIMS: MI, I'm sorry. I just have a couple more
2 questions, Your Honor.

3 THE COURT: All right.

4 BY MS. MIMS:

5 Q: I forgot to ask you this. I want to be very specific.
6 When Jim was doing these things to you, can you please
7 describe for the jury what did his penis look like?

8 A: It was dark colored, like a -- like a dark brown. Not a
9 black, but like a dark brown.

10 Q: Okay. And when he was doing this to you, what did it
11 feel like?

12 A: It hurt.

13 Q: Okay. Was -- was his penis soft or hard?

14 A: Hard.

15 Q: Okay. Is there anything else that you remember about it?

16 A: No, ma'am.

17 Q: Okay.

18 A: Well, it was hairy.

19 Q: Okay.

20 MS. MIMS: No further questions, Your Honor.

21 THE COURT: Cross-examination?

22 MR. CHISHOLM: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. CHISHOLM:

25 Q: Good afternoon, MI

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

1 A: Good afternoon.

2 Q: And we've had a chance to speak before?

3 A: Uh-huh.

4 Q: And I don't know if you remember my name is Ash and I've
5 got to ask you some questions just like Ms. Mims did. Okay?

6 A: Okay.

7 Q: And just like last time I spoke to you, you know, you
8 need to understand I'm not trying to be mean. I'm not trying
9 to embarrass you. I'm definitely not trying to get you in
10 trouble for anything you say or anything else like that.

11 Okay?

12 A: I know.

13 Q: And if I talk too fast or if I ask you a question that
14 doesn't make sense, which is probably going to happen, at any
15 point you can just say, hey, Ash, I didn't hear you or I
16 didn't understand you. Okay? And if you have any problems
17 and you need to take a break, I feel pretty sure that the
18 judge would accommodate you if you need to. Okay?

19 A: Okay.

20 Q: Now, I'm going to ask you some questions about some of
21 the things you've said today, but I'm also going to ask you
22 some questions about things you said back in 2013 when all
23 this originally came out and you spoke to the police. Okay?

24 A: Okay.

25 Q: And also, do you remember in October I had an

Minor 1 - CROSS BY MR. CHISHOLM

1 opportunity, along with Ms. Mims, to ask you some questions
2 and you came in in kind of a similar situation and you were
3 put under oath by swearing to tell the truth, the whole truth,
4 and you remember all that. So I'll ask you some questions
5 about October as well. Okay?

6 A: Yes.

7 Q: Okay. Now, MI I think your testimony was that back in
8 2013 you lived with your mom, Jim, and your sister, Minor 2 is
9 that correct?

10 A: Yes.

11 Q: Okay. And y'all lived on Longleaf Drive?

12 A: Yes.

13 Q: And at that time, you said you visited your dad, Travis.
14 He's Travis as well; right?

15 A: Yes.

16 Q: And you visited him on the weekends; is that right?

17 A: Yes.

18 Q: Every weekend? Every other weekend? How often?

19 A: Every weekend.

20 Q: Every weekend? Okay. And you now live with your dad
21 full-time?

22 A: Yes.

23 Q: You still see your mother, but she's in Maine so probably
24 a little less; is that right?

25 A: Yes. I call her and everything, yeah.

Minor 1 - CROSS BY MR. CHISHOLM

1 Q: I gotcha. And your dad homeschools you?

2 A: Yes.

3 Q: And that's going pretty well?

4 A: Yes.

5 Q: Okay. Good. Does your sister, Minor 2 still live with
6 you?

7 A: Yes.

8 Q: How old is she now?

9 A: Thirteen.

10 Q: Thirteen? And you are eleven; is that right?

11 A: Yes.

12 Q: You were nine back in 2013?

13 A: Yes.

14 Q: Okay. Okay. And you enjoy living with your dad?

15 A: Yes.

16 Q: I mean do you do all the typical fun stuff? Go to the
17 movies, go out to eat?

18 A: Yes.

19 Q: Watch movies, go to the park? You do all those kind of
20 things?

21 A: Yes.

22 Q: Okay. And who all lives with you again?

23 A: My uncle, my aunt, me, Minor 2 and my dad. And we have two
24 pet dogs and a pet rat.

25 Q: And a pet rat?

Minor 1 - CROSS BY MR. CHISHOLM

- 1 A: Yes.
- 2 Q: Okay. And is everybody at the house -- I mean is
- 3 everybody pretty friendly? You all get along?
- 4 A: Yes.
- 5 Q: Okay. No drama there? And what's your house like at
- 6 your -- where you're living now?
- 7 A: It's a cool house definitely. My room is -- yeah, it's a
- 8 two-story house. It's gray and it's a great house. Yeah.
- 9 Q: Okay. Is it a better neighborhood?
- 10 A: We don't live in a neighborhood. We live in the woods.
- 11 Q: Oh, okay. That could be pretty good in itself?
- 12 A: Yeah.
- 13 Q: Okay. But I'd like to talk to you a little bit about
- 14 your relationship with Jim. I mean is it safe to say that I
- 15 mean at times he did yell at you? He did ground you and stuff
- 16 like that and you didn't really get along that well outside of
- 17 all this stuff; is that fair to say?
- 18 A: We got along. We got along. We got along pretty well
- 19 outside of all the stuff that happened, yes.
- 20 Q: I see. And --
- 21 A: I mean, of course, I got mad at him when he grounded me.
- 22 Q: Sure. I understand. Now, you said you live with your
- 23 dad and it's in a two-story house. Do you have TVs and
- 24 computers and all that kind of thing?
- 25 A: Yes.

Minor 1

- CROSS BY MR. CHISHOLM

1 Q: Did you have that stuff back in 2013 when you lived with
2 your mother? Did you have computers?

3 A: We had a TV. I don't remember a computer, no. We had a
4 TV. I had my, you know, PlayStation 2 and my sister has it
5 still and the original PlayStation.

6 Q: And I think you might have testified -- did you have a
7 tablet back then or something along those lines?

8 A: No.

9 Q: I see. But you have all that stuff now?

10 A: I have a phone, yes.

11 Q: I gotcha. And outside -- obviously, I understand you
12 miss your mother, y'all got along well, and she's in Maine
13 now. Outside of that, do you have a better living arrangement
14 now? I mean your house and everything, how it's set up. I
15 mean is it a more comfortable lifestyle outside of your mother
16 being away?

17 A: It's as comfortable as it was when I lived in the trailer
18 except for the bad stuff.

19 Q: Right. I understand. Now, I'm going to ask you some
20 questions about October. And like I said, you were under oath
21 then just as you are today; right?

22 A: Uh-huh.

23 Q: And you said you didn't think Jim worked; is that right?

24 A: Not that I remember, no.

25 Q: You don't remember him working construction or anything

Minor 1 - CROSS BY MR. CHISHOLM

1 like that?

2 A: No.

3 Q: Okay. Now, when I had a chance to talk to you before,
4 you told me that this stuff had been going on -- the bad stuff
5 I mean -- since your earliest memories, which I think we
6 settled was probably around four or five years old. Do you
7 remember that?

8 A: I remember that, but no, I don't remember being four or
9 five. I think I might have said that, but no. I don't
10 remember exactly.

11 Q: You mean you don't think that's right or you don't --

12 A: I said that, but I don't know the exact time. I just
13 guessed.

14 Q: I see. So do you think it's a different time now or
15 could that still be? I mean I'm trying to figure out --

16 A: It could still be the time, but I don't exactly know.

17 Q: Okay. You told me this had been going on for quite a
18 while though. I mean this wasn't something that happened for
19 six months; right?

20 A: Yeah. Yes.

21 Q: And you said it pretty much went back to your earliest
22 memories. I mean you pretty much always remember the bad
23 stuff; right?

24 A: Yes.

25 Q: Okay. And I think that's how we probably arrived at that

Minor 1

- CROSS BY MR. CHISHOLM

1 age was you said you remember things from when you were that
2 age, probably nothing before that; is that right?

3 A: Yes.

4 Q: Okay. And you told me back then that pretty much when
5 the bad stuff happened, he did the same thing most of the
6 time, and what you told me back then that he did -- now tell
7 me if I'm wrong here; okay? -- was that he would make you
8 suck his wiener -- I'll use your words -- that he would suck
9 your wiener; right?

10 A: Yes.

11 Q: He would stick his -- I'll call it penis -- his penis in
12 your butt?

13 A: Yes.

14 Q: And he would make you stick your penis in his butt?

15 A: Yes.

16 Q: And you told me that most of the time these things
17 happened, that's how it went; is that correct?

18 A: It happened -- most of the time, it happened when he put
19 his -- it didn't usually happen whenever I put my penis in his
20 butt and he put his mouth on my penis, but it usually -- yeah,
21 most of the time he put -- I put my mouth on his penis and he
22 put his penis in my butt.

23 Q: So you're saying -- I think what you told me back then is
24 that that's how it happened most of the time that all of those
25 things would happen. Is that your testimony today or --

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

- 1 A: No.
- 2 Q: No?
- 3 A: I don't remember saying that, no.
- 4 Q: You don't remember? I'll come back to that here in a
- 5 minute. Let's talk about where this happened. I think I've
- 6 heard you say -- back then you told me it happened in Minor 2.
- 7 room?
- 8 A: Yes.
- 9 Q: And your room?
- 10 A: Yes.
- 11 Q: In the living room?
- 12 A: Yes.
- 13 Q: And Jim and your mom's room?
- 14 A: No. I didn't say that. No.
- 15 Q: You don't remember that at all?
- 16 A: No. I don't remember saying that at all.
- 17 Q: Okay. What do you remember telling me back then?
- 18 A: I remember telling you that it happened in -- in my
- 19 sister's room, in the living room, and I'm pretty sure I told
- 20 you that it happened in the shed.
- 21 Q: Would you be surprised to learn that you didn't say that?
- 22 A: Yes, I would be surprised.
- 23 Q: Do you remember telling the police when you originally
- 24 talked to them that it happened in the shed?
- 25 A: No. I don't originally remember telling them that, no.

Minor 1

- CROSS BY MR. CHISHOLM

- 1 Q: And when you spoke to Millicent Walker that gave you a
2 forensic interview that put you in a room and said this is all
3 being recorded, you know what I'm talking about?
- 4 A: Yes.
- 5 Q: That was back in November of 2013. Do you remember she
6 asked you a bunch of these questions and recorded it?
- 7 A: Yes.
- 8 Q: Do you remember telling her anything about the shed?
- 9 A: No, not that I -- wait.
- 10 Q: I'm sorry?
- 11 A: I'm thinking. No, not that I remember. I don't remember
12 telling her anything about the shed.
- 13 Q: I gotcha. So you think you remember telling me that back
14 in October, but do you remember saying it to anyone before
15 then, any of the police or the medical doctor or anyone else
16 you spoke to?
- 17 A: No, sir.
- 18 Q: Okay. So this is something that's come out fairly
19 recently?
- 20 A: Yes.
- 21 Q: Okay. And a little out of order here right now, but the
22 solicitor just asked you a question. She asked you to kind of
23 describe Jim's penis; right?
- 24 A: Yes.
- 25 Q: And I think your description was it was hairy; right?

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

- 1 A: Yes.
- 2 Q: And I think you also said that -- I don't know if I heard
3 you correctly. It's dark brown, like not quite black, but
4 dark brown?
- 5 A: Yes.
- 6 Q: Like this color? Like the color of the bench here? Or
7 darker?
- 8 A: Maybe a little bit lighter than that color. It was kind
9 of like a dark brown though, yes.
- 10 Q: Roughly this color?
- 11 A: Roughly. A little lighter.
- 12 Q: Okay. And that's his entire penis is like that?
- 13 A: Yes.
- 14 Q: Is that right? Okay. And when this stuff would happen,
15 you said it would happen when your mom was -- I guess if you
16 had a half day at school and things like that? Or if she went
17 on an errand, sometimes you didn't go with her and you would
18 be left behind?
- 19 A: Yes.
- 20 Q: And would this be during the daytime pretty much?
- 21 A: Yes.
- 22 Q: And does that also include the times you say this
23 happened in the shed?
- 24 A: Yes.
- 25 Q: Okay. And how many times again did you say this happened

Minor 1

- CROSS BY MR. CHISHOLM

1 in the shed?

2 A: I don't remember. I don't know how many times it
3 happened in the shed.

4 Q: Are we talking, like, twice or 20 or a hundred or can you
5 ballpark it?

6 A: No. I don't know.

7 Q: Is it something that happened every week in the shed?

8 A: No.

9 Q: Like once a month?

10 A: I don't know.

11 Q: Okay.

12 A: All I remember is it happened more than once, but I don't
13 remember exactly when.

14 Q: Okay. And this was all during the daytime; right?

15 A: Yes.

16 Q: Okay. And let's make sure we're talking about the same
17 shed here, which I'm pretty sure we are. Okay. So this is
18 your home back then. It's a white mobile home; is that right?

19 A: Yes.

20 Q: And this is the shed?

21 A: The red thing?

22 Q: Right here.

23 A: The red house? Yes.

24 Q: Okay. And I think you said the road would be somewhere
25 over here where I am in front of the --

Minor 1

- CROSS BY MR. CHISHOLM

- 1 A: Yes.
- 2 Q: And the road is pretty close to the home; right?
- 3 A: Yes.
- 4 Q: I mean you could easily throw a rock. I mean maybe from
- 5 me to Ms. Mims over there, if that far; right?
- 6 A: Yes.
- 7 Q: And how far is your nearest neighbor from this area?
- 8 They're pretty much right over here, are they not?
- 9 A: Yes. They were very close.
- 10 Q: I mean are they as close to me as Ms. Mims?
- 11 A: My closest neighbor is right on the other side.
- 12 Q: Uh-huh.
- 13 A: And it's his front yard and our backyard.
- 14 Q: If --
- 15 A: We share that yard on that side.
- 16 Q: What about on this side?
- 17 A: On that side? I don't exactly remember what was on that
- 18 side. I kind of forgot since it's been such a long time.
- 19 Q: You don't remember there being a neighbor right here?
- 20 A: Yes. There was definitely a neighbor. I don't remember
- 21 what was in front of our house and their house.
- 22 Q: Do you remember how close that neighbor was?
- 23 A: No, sir.
- 24 Q: And your testimony is this would happen during the
- 25 daytime; is that right?

Minor 1

- CROSS BY MR. CHISHOLM

1 A: Yes, sir.

2 Q: In the shed that we just saw?

3 A: Yes. In the shed.

4 Q: Okay. Now, is it your testimony today that this never
5 happened in your mom and Jim's room?

6 A: Yes.

7 Q: Okay. But you did say it happened in Minor 2 room?

8 A: Yes.

9 Q: And it happened in your room?

10 A: Yes.

11 Q: And it happened in the living room?

12 A: Yes.

13 Q: And it happened in the shed?

14 A: Yes.

15 Q: And I think you said one time in the bathroom?

16 A: Yes.

17 Q: Was that just once?

18 A: Yes.

19 Q: And can you describe again what it was that happened in
20 the bathroom for me?

21 A: He told me to come in. He was already in the bathtub.

22 He told me to come in the bathtub. I came in because I

23 thought he was going to tell me to hand him some, like -- I

24 thought he was, like, going to ask me to hand him a washcloth

25 or something. So I went in there and he told me to put my

Minor 1 - CROSS BY MR. CHISHOLM

- 1 mouth on his penis. He told me to get down on my knees and
2 put my mouth on his penis and I did that.
- 3 Q: So he was in the bathtub?
- 4 A: Yes.
- 5 Q: So he made you get into the bathtub?
- 6 A: No, not in the bathtub. Like, over the side of the
7 bathtub.
- 8 Q: And he was sitting in the bathtub?
- 9 A: He was laying down in the bathtub.
- 10 Q: So he's laying down in the bathtub?
- 11 A: Yes.
- 12 Q: And you leaned over the bathtub?
- 13 A: Yes.
- 14 Q: To put your mouth on his penis?
- 15 A: Yes.
- 16 Q: Okay. Now, when this stuff would happen, I mean I think
17 you've pretty much told you me that it was kind of -- it went
18 the same way each time. He would -- would he say, like, all
19 right, let's go, **MI** it's time to go or what would he say?
- 20 A: He would say go in **Minor 2** room.
- 21 Q: Go in **Minor 2** room?
- 22 A: I usually knew what that meant.
- 23 Q: Okay.
- 24 A: The only reason that I ever did this stuff was if I
25 thought -- I thought if I didn't do it, I thought he would,

Minor 1 - CROSS BY MR. CHISHOLM

1 like, maybe, like, hurt me or something. So I always did it.

2 Q: Sure, sure. So he would say go in Minor 2 room and you
3 knew what he meant by that?

4 A: Yes.

5 Q: And you would go in there?

6 A: Yes.

7 Q: Because you said you didn't want to get hurt. He would
8 come into the room. Would he have his clothes on? Or would
9 he --

10 A: He would have his clothes on when he came in the room,
11 but he would take them off when he -- the door was closed as
12 well. So as soon as he came in and closed the door, he'd take
13 his clothes off.

14 Q: Okay.

15 A: He'd tell me to take mine off.

16 Q: Okay. And he would tell you to take your clothes off?

17 A: Yes.

18 Q: Did he take them off for you?

19 A: No.

20 Q: Okay. I guess you would probably remember that if he
21 did?

22 A: Yes.

23 Q: Even two years later; right?

24 A: Yeah.

25 Q: Okay. And what would he say during these incidents? I

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

- 1 mean I think you said --
- 2 A: He would just be quiet.
- 3 Q: Like --
- 4 A: He wouldn't really say anything.
- 5 Q: I might have misheard you, but did you say that he would
- 6 say put your mouth on my penis?
- 7 A: Yes.
- 8 Q: And is that what he would say?
- 9 A: That's not exactly what he would say. That's what I
- 10 said.
- 11 Q: Okay. What would he say?
- 12 A: He would say suck my penis.
- 13 Q: I see. Suck my penis? Okay. Okay. And when we talked
- 14 before and I think you just --
- 15 A: But he didn't say penis either.
- 16 Q: What did he say?
- 17 A: He said -- he said -- yeah, I think he said cock.
- 18 Q: Oh, I see. And you told me and I think you just told Ms.
- 19 Mims that this happened three or four times a week?
- 20 A: Yes, sir. Yeah.
- 21 Q: And you told me before that this happened sometimes more
- 22 than once in a day; right?
- 23 A: Yes. I do remember telling you that.
- 24 Q: Okay. And I think we've kind of agreed that this had
- 25 been happening for as long back as you can remember?

Minor I - CROSS BY MR. CHISHOLM

1 A: Yes.

2 Q: And I asked you back then is this something that happened
3 once every six months or is it something that went on
4 continuously, and I believe you told me that there wasn't
5 really a break from this. I mean this is something that's
6 been happening --

7 A: Yes. There wasn't a break.

8 Q: I mean it's been nonstop since you were four or five
9 years old or however; right?

10 A: However long, yes. It's been happening.

11 Q: Okay. And -- and if I could just have one moment, MI
12 And I apologize. This has taken me a little while to find
13 this; so I apologize for that. I thought I had it marked.

14 A: It's okay.

15 MR. CHISHOLM: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. CHISHOLM:

18 Q: And, MI before I approach, you're certain that you've
19 never told me, the police, forensic interviewers or anyone
20 else that this ever happened in your mom and Jim's room;
21 right?

22 A: Yes, I'm positive.

23 Q: Okay.

24 A: Or at least -- I wouldn't say positive, but yes, I'm
25 pretty sure. Yes.

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

- 1 Q: Okay. Do you deny saying this in October that this
2 happened in your mom and Jim's room?
- 3 A: Yes.
- 4 Q: Okay. M1 do you read and write okay?
- 5 A: Yes.
- 6 Q: Okay. What I have here is a transcript.
- 7 A: Uh-huh.
- 8 Q: It's got Q and A. This is a question from Ms. Mims that
9 she asked you back in October and the A would be your answer.
- 10 A: Yes.
- 11 Q: Does that make sense?
- 12 A: Uh-huh.
- 13 Q: And I'm going to read along and, if you could, just
14 correct me if I read something that's not right. Okay? Or if
15 I'm reading something that's not on there. I want to make
16 sure that I'm getting this out correctly. Okay?
- 17 A: Yes.
- 18 Q: The question from Ms. Mims was -- and, M1 you said that
19 this happened in Minor 2 room. Was it always in Minor 2 room?
20 Is that right?
- 21 A: Yes.
- 22 Q: And the answer was, no, ma'am.
- 23 A: Uh-huh.
- 24 Q: And then the next question was where else was it?
- 25 A: Uh-huh.

Minor 1

- CROSS BY MR. CHISHOLM

1 Q: And your answer was on the living room, in the living
2 room floor?

3 A: Yes.

4 Q: In their room, in, like, Jim and my mom's room. Is that
5 not what it says?

6 A: That is what it says, but it never happened in Jim and my
7 mom's room.

8 Q: Do you disagree that this is what you said back then?

9 A: It might have been what I said. I might have not been
10 thinking clearly, but that definitely never happened in their
11 room.

12 Q: And it doesn't -- it doesn't mention the shed; right?

13 A: I remember telling you all -- I remember telling you that
14 it was in the shed.

15 Q: I mean in this part anyway. You agree with me what I
16 just read it doesn't mention the shed; right?

17 A: It doesn't mention the shed.

18 Q: And this was just in October. It doesn't mention the
19 bathtub; right?

20 A: Yeah. That came to me super recently, like maybe last
21 week that came to me about the bathtub.

22 Q: Really?

23 A: Uh-huh.

24 Q: What brought it on?

25 A: I don't know. I was -- I was in, like -- I was in -- I

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

- 1 was in my room watching my phone and it just came to me. I
2 don't know why. It just came to me.
- 3 Q: Okay. I mean. --
- 4 A: I thought I need to tell this to the people.
- 5 Q: I see. And I think when I asked you about all this
6 before, you told me that when he was finished he would lay on
7 his back --
- 8 A: Yes.
- 9 Q: -- and spray stuff on his stomach out of his penis?
- 10 A: Yes.
- 11 Q: What would you be doing when he was doing this? Would he
12 tell you to get away or what happened there?
- 13 A: I was still on the bed.
- 14 Q: And he would get down on the floor or on the -- would he
15 do it on the floor or the bed or both?
- 16 A: Both.
- 17 Q: And you --
- 18 A: Usually on the bed, but sometimes on the floor.
- 19 Q: So he would push you away more or less?
- 20 A: Yeah. No, he wouldn't push me away. No.
- 21 Q: Okay.
- 22 A: I would just get away because it was just -- it was
23 gross. I don't like it.
- 24 Q: I gotcha.
- 25 A: I just didn't want it to touch me or anything.

Minor 1

- CROSS BY MR. CHISHOLM

1 Q: And I think what you told me then was that the white
2 stuff got on your sister's blanket?

3 A: Yes.

4 Q: Probably on her bed?

5 A: Probably, yeah, I guess.

6 Q: The couch? The living room floor?

7 A: Yes.

8 Q: I'm guessing -- I mean this happened --

9 A: Yeah, it happened. Yeah. It definitely went on that
10 stuff because he was laying on that stuff. So --

11 Q: I don't mean to be gross, but I mean it pretty much went
12 everywhere wherever you were; right?

13 A: Yes. Wherever he was, wherever he was laying down, it
14 would usually get on that general area.

15 Q: Uh-huh.

16 A: I mean not all over the place, but usually a little bit
17 would come out on the -- on the -- around the area where he
18 was.

19 Q: Uh-huh. And this would have happened -- you said that
20 typically when he did this bad stuff that the white stuff
21 would come out; right?

22 A: Yes.

23 Q: Pretty much every time?

24 A: Yes.

25 Q: And so this would happen in all the different rooms we've

Minor 1 - CROSS BY MR. CHISHOLM

- 1 been talking about, in the shed and everywhere else; right?
- 2 A: Yes.
- 3 Q: Okay. And did this happen anywhere else? I just want to
- 4 make sure we've got everywhere listed.
- 5 A: Yes, that's everywhere listed.
- 6 Q: Did it happen in the kitchen anywhere?
- 7 A: No.
- 8 Q: It didn't happen in the neighbor's house, in the
- 9 neighbor's yard?
- 10 A: No.
- 11 Q: At the park?
- 12 A: No.
- 13 Q: Anywhere else?
- 14 A: No.
- 15 Q: Are you sure about that?
- 16 A: Positive.
- 17 Q: Okay. All right. And you told me when I asked you some
- 18 questions in October that this happened a couple times when
- 19 other people were around, did you not?
- 20 A: Yes. I told you that.
- 21 Q: You just mentioned your nephew?
- 22 A: My nephew, yes.
- 23 Q: Landon; right?
- 24 A: Yes.
- 25 Q: And you told me he's eight now?

Minor 1

- CROSS BY MR. CHISHOLM

- 1 A: Yes.
- 2 Q: So he was probably six or so then; right?
- 3 A: This happened a while back before I told my mom, like a
- 4 while back.
- 5 Q: Oh, it wasn't -- okay. I understand.
- 6 A: It wasn't like a couple weeks before. It was a couple
- 7 years before.
- 8 Q: Okay. I understand. So he was fairly young. Who was
- 9 watching him when all this happened?
- 10 A: Jim. It was me, him, and Jim.
- 11 Q: Okay. And did he do this in the living room where Landon
- 12 was?
- 13 A: No. He told us -- he told me to -- we went in Minor 2
- 14 room and did it.
- 15 Q: Where was Landon?
- 16 A: He was in the living room playing with his toys.
- 17 Q: I see.
- 18 A: And Jim told him to stay in the living room. So he was a
- 19 good kid; so he stayed in the living room.
- 20 Q: Okay. You also told me that your sister, Minor 2 was
- 21 around several times when this happened; is that right?
- 22 A: Yes.
- 23 Q: That --
- 24 A: Yes.
- 25 Q: I'm sorry. Go ahead.

Minor I

- CROSS BY MR. CHISHOLM

- 1 A: Yeah.
- 2 Q: And you told me that she was in the room and she saw this
- 3 happening to you?
- 4 A: Yes. Not all the time, but sometimes.
- 5 Q: Not every time, but you told me --
- 6 A: Not all the time.
- 7 Q: -- several times, not just once; right?
- 8 A: Yes, not just once.
- 9 Q: And I think you told me then that she saw you put your
- 10 private in Jim's butt?
- 11 A: Yes.
- 12 Q: And saw him put his private in your butt?
- 13 A: Yes.
- 14 Q: And saw you put your penis in his mouth?
- 15 A: Yes.
- 16 Q: And saw him put his penis in your mouth?
- 17 A: Yes.
- 18 Q: She basically saw everything you've been talking about
- 19 here? Not every time, but --
- 20 A: Yes. Not every time.
- 21 Q: But she saw the bad stuff?
- 22 A: Yes.
- 23 Q: Okay. And you only have this one sister; is that right?
- 24 A: Yes.
- 25 Q: And how old is she now?

Minor 1 - CROSS BY MR. CHISHOLM

1 A: Thirteen.

2 Q: Okay. Now, some of these questions are a little bit out
3 of order, but I want to ask you about a movie called *Animals*
4 *United*. Do you remember that movie at all?

5 A: No.

6 Q: I asked you about this back in October if you remembered
7 watching this movie when this bad stuff would happen, like
8 something that triggered this to happen, and you told me that
9 you might have been watching it one time when it happened, but
10 usually what happened is you were playing -- I think you said
11 -- hold on one second.

12 A: No. It didn't usually happen when I was playing my
13 system, no.

14 Q: You said --

15 A: I said it usually happened -- whenever my mom and her
16 would leave, we were usually in the room watching TV.

17 Q: Okay.

18 A: And then when they -- and when they usually left, I got
19 scared because it was pretty much going to happen, yes.

20 Q: So you wouldn't be in your room watching movies for
21 example?

22 A: Sometimes, yes, I would be in my room. Yes, I do
23 remember *Animals United*. Yes.

24 Q: Okay. And I think you told me back then you think you
25 might remember watching that movie one time when it happened;

Minor 1

- CROSS BY MR. CHISHOLM

- 1 is that right?
- 2 A: Yes.
- 3 Q: And usually you were playing video games or watching TV?
- 4 A: Yes.
- 5 Q: Okay. And that's still the case?
- 6 A: Excuse me?
- 7 Q: Is that -- is that accurate? Is that still true?
- 8 A: Yes.
- 9 Q: Okay. And you told me that Jim had magazines?
- 10 A: Yes.
- 11 Q: That he showed you with dirty pictures?
- 12 A: Yes.
- 13 Q: How many magazines did he have?
- 14 A: I don't know. It was more than one.
- 15 Q: I mean was it, like, 20? I mean was it a stack like that
- 16 high?
- 17 A: No, it wasn't a stack. There was a little shelf under
- 18 this little -- under this little thing that he had right next
- 19 to his chair. There was, like, a little shelf under there
- 20 where he had a little bit of magazines and my mom didn't find
- 21 out because he told her that there was spiders under there and
- 22 she was scared of spiders; so she didn't look under there at
- 23 all. So she wouldn't find them.
- 24 Q: He told her not to look under -- not to look in the shed
- 25 because there's spiders?

Minor 1

- CROSS BY MR. CHISHOLM

1 A: He told her there were spiders under there. So he
2 thought she wouldn't look and she didn't look.

3 Q: Okay. And how many times did you look at these
4 magazines?

5 A: More than once. I don't know the exact number.

6 Q: I mean a lot?

7 A: No, not a lot.

8 Q: Okay. Because I think what you told me in October was
9 that you said one time Jim made you go there and look at the
10 magazines together --

11 A: Yes.

12 Q: -- when you were done?

13 A: Yes. Yeah, that happened. Yeah.

14 Q: One time?

15 A: No, more than once. I think I might have said one time,
16 but that's not what I meant. It was more than once that
17 happened.

18 Q: Okay. We're just talking about from October. So you
19 said in October it was once. You're saying that's not
20 accurate now?

21 A: Yeah. That's not accurate, no.

22 Q: Okay.

23 A: I might have said that, but no. More than once.

24 Q: Okay. Some -- some of the things you've said are a
25 little different than in October. Would you agree with me?

Minor 1 - CROSS BY MR. CHISHOLM

- 1 A: Yes.
- 2 Q: The stuff I just showed you?
- 3 A: Yes.
- 4 Q: Have you talked to anyone about this case, about your
- 5 testimony since October?
- 6 A: I mean, no, I didn't. When we got here, I told my dad I
- 7 was nervous. He said don't be nervous. If that's what you
- 8 mean by talk about the case, then I talked to my dad. I
- 9 didn't talk about any of this stuff though. I didn't talk
- 10 about any of the bad things that would happen, no.
- 11 Q: Because I think last time you were here you testified
- 12 that your dad had helped you remember one of the last times
- 13 that this happened. Do you remember that?
- 14 A: No.
- 15 Q: You don't remember that?
- 16 A: I don't remember that.
- 17 Q: Okay. Now, you've talked to a lot of people about this
- 18 case; right?
- 19 A: Yes.
- 20 Q: I mean you've talked to the police, you've talked to
- 21 lawyers, you've talked to --
- 22 A: Yes.
- 23 Q: -- medical doctors?
- 24 A: Yes.
- 25 Q: The forensic interviewer?

Minor 1 - CROSS BY MR. CHISHOLM

1 A: Yes.

2 Q: I mean you've been talking about this case for a while at
3 this point?

4 A: Yes.

5 Q: And would you agree with me you didn't tell the police
6 officers a lot of the stuff you're saying here today, such as
7 Jim wearing a cheetah -- was it a shirt?

8 A: No. It was kind of -- it wasn't a dress, but it was --
9 like, you could say it was super short, super short.

10 Q: But you didn't mention that to any of -- any of the
11 police?

12 A: Yeah. I was super shy back then. But now that I've
13 talked to all the people I've talked to, I'm kind of not that
14 shy anymore. I can talk about it.

15 Q: But -- well, I understand being shy, but I mean I'm
16 talking about when you were telling them about all the gross
17 stuff.

18 A: Yes.

19 Q: Even then, you didn't tell them that; right?

20 A: Yes.

21 Q: Okay. And you didn't tell them anything about having
22 these magazines back then either, did you?

23 A: Yeah. I was super shy back then. I don't think I told
24 them that.

25 Q: Or the shed?

Minor 1

- CROSS BY MR. CHISHOLM

1 A: No. I don't think I told them about that either.

2 Q: Okay.

3 A: Yeah, a lot of stuff has come out since I'm not that shy
4 anymore.

5 Q: I'm sorry?

6 A: I said a lot of the stuff that happened has started to
7 come out since I -- since I'm not shy anymore.

8 Q: Right. I mean it's kind of stuff we've never heard
9 before starting to come out; right?

10 A: Yes.

11 Q: Okay. And --

12 THE COURT: When you get to -- Mr. Chisholm, when you get
13 to a stopping place, we need to take a break.

14 MR. CHISHOLM: Okay. That's fine.

15 THE COURT: Since I've stopped you --

16 MR. CHISHOLM: Yeah, I can do that now. That's fine.

17 THE COURT: Very well.

18 MR. CHISHOLM: Thank you.

19 THE COURT: All right. Ladies and gentlemen, I
20 understand that our jury needs a break. What we'll do at this
21 point is we will take our lunch break. It's one o'clock. We
22 will start back at 2:15 -- 2:15.

23 And let me just tell you that over the lunch break you
24 must not discuss this matter or allow anyone to discuss it
25 with you. No Columbo. No investigation. Don't communicate

Minor I - CROSS BY MR. CHISHOLM

1 question before, just to refresh the jury --

2 MR. CHISHOLM: Thank you, Judge.

3 THE COURT: -- and then I stopped you, that might help
4 both of you.

5 MR. CHISHOLM: Thank you, Judge.

6 THE COURT: You may proceed.

7 CONTINUED CROSS EXAMINATION

8 BY MR. CHISHOLM:

9 Q: I think I roughly remember where we were, MI when we
10 left off or close to it anyway. One of the things I asked you
11 about was whether you had discussed this case with your
12 mother, with your father, with anyone in the Solicitor's
13 Office, anything like that. Did anyone help you to remember
14 the things you're saying here today or to remember the timing
15 of when these things happened?

16 A: No, sir.

17 Q: You're sure about that?

18 A: Not that I remember, no.

19 Q: Okay. And, you know, obviously we've been talking about
20 you were under oath back in October and I had a chance to ask
21 you some questions, as well as Ms. Mims. Do you recall Ms.
22 Mims asking you a question about something to the effect of
23 when all this started and telling her that you thought it was
24 when you were around five and basically your dad had helped
25 you to do remember that? Do you remember that?

Minor 1 [REDACTED] - CROSS BY MR. CHISHOLM

1 A: My dad had helped me remember what?

2 Q: When all this started happening, all the bad stuff that
3 you've talked about.

4 A: No. I don't remember him helping me remember what
5 happened.

6 Q: Do you remember saying that in October?

7 A: Saying that my dad helped me?

8 Q: Yes.

9 A: I might have, but not that I remember, no.

10 Q: Okay.

11 MR. CHISHOLM: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. CHISHOLM:

14 Q: This might clear it up a little bit and, MI it's the
15 same thing we talked about before with the questions and
16 answers.

17 A: Okay.

18 Q: And this is Ms. Mims. Her question to you was how old
19 were you when this was happening to you and your answer was I
20 think it was around when I was five because we went over it I
21 guess one day at my house and daddy said it was, like, three
22 years at least that it was happening. Is that correct?

23 A: Yes. I do remember that.

24 Q: So would you agree with me that you have discussed some
25 of these things with your mom and dad?

Minor 1 - CROSS BY MR. CHISHOLM

1 A: Yes.

2 Q: Okay. What all have you discussed?

3 A: I've discussed --

4 Q: Did they -- put it this way. Did they help you to
5 remember the things you're saying here today of what happened
6 to you?

7 A: No. That was all in my memory about the thing where he
8 put his penis in my mouth and stuff like that. No, that's in
9 my brain. That's just me.

10 Q: I see. Are you sure about that?

11 A: Yes.

12 Q: Okay.

13 A: A couple times -- it was one time my dad told me to one
14 day just think very, very hard about the stuff -- the bad
15 stuff and then I remembered that one time when Landon was
16 there. That's what -- so I guess you could say he helped me
17 remember that by telling me to think really hard. So I guess
18 you could say that, yes.

19 Q: And he might have helped you with the timing of when this
20 stuff started and whatnot; right?

21 A: Maybe, yeah.

22 Q: Okay. And I want to go back in time a little bit to --
23 to the incident that you described in the bathtub. Do you
24 know what I'm talking about?

25 A: Yes, sir.

Minor 1

- CROSS BY MR. CHISHOLM

1 Q: And you said that was a one-time incident; right?

2 A: Yeah.

3 Q: And I think your testimony was that a lot of the things
4 that -- I think we agreed that you're saying some things now
5 that you haven't said before in October or back in 2013;
6 right?

7 A: Yes.

8 Q: And you said some of these things you've just remembered
9 since then. That's why you didn't mention it before; right?

10 A: Yes.

11 Q: And I believe your testimony was that the bathtub
12 incident that you were looking at your phone one day and
13 that's when you remembered. Is that -- is that the case?

14 A: Yes.

15 Q: Okay. And I just want to ask you a couple questions
16 about that. That's been since October; right?

17 A: Yes.

18 Q: Okay. Were you looking at your phone when you remembered
19 the stuff about Mr. Crews wearing a cheetah outfit?

20 A: Yes.

21 Q: You were? Were you looking at your phone when you
22 remembered the stuff about the shed?

23 A: No. That just came to me.

24 Q: Okay.

25 A: Well, I knew about the shed all along, but I was just

Minor 1 - CROSS BY MR. CHISHOLM

1 super shy to tell people about the shed.

2 Q: Okay. Were you looking at your phone when you remembered
3 this stuff about the magazines having pictures of women with
4 penises I think you said?

5 A: Yes.

6 Q: Were you looking at your phone when you remembered that?

7 A: No. That also just came to me.

8 Q: That just came to you? Okay. Now, one of the dates
9 that's mentioned in this case is October 31st of 2013, and
10 October 31st is Halloween; right?

11 A: Yes.

12 Q: But it also has more significance to you, does it not?

13 A: Yes.

14 Q: What is that?

15 A: It's my mom's birthday.

16 Q: It's your mom's birthday? So it's a day that sticks out
17 every year; right?

18 A: Yes.

19 Q: Okay. And in October I had a chance to question you
20 about whether you remembered anything -- all this bad stuff
21 we've been talking about, whether you remember it happening on
22 October 31st, and I believe what you told me is that you didn't
23 remember anything happening on that date; is that right?

24 A: Yes.

25 Q: And I believe what you told me was that the last date you

Minor 1 - CROSS BY MR. CHISHOLM

1 remember the bad stuff happening was November 11th of 2013, and
2 that was the day before you went to the police; is that right?

3 A: Yes.

4 Q: Okay. That's the day before you went to the police
5 station and all this came out; right?

6 A: Uh-huh. Yes.

7 Q: So the day before was the last time it happened? I'm
8 probably wording that badly.

9 A: Yes.

10 Q: Right? Okay. And did anyone help you to remember that
11 or is that just something you kind of thought about and
12 cleared up?

13 A: Helped me to remember?

14 Q: That date.

15 A: That date?

16 Q: Or did you just remember it because you said, well, I
17 remember the last time he did it was the day before we went to
18 the police? Is that why you remember it?

19 A: Yes.

20 Q: Okay.

21 Q: I remember telling my mom and then I remember the day
22 before was the last time I remember.

23 Q: Okay. And I'm going to ask you a couple questions from
24 back in 2013. Okay?

25 A: Uh-huh.

Minor 1 - CROSS BY MR. CHISHOLM

- 1 Q: Do you remember meeting with Officer Driscoll? Detective
2 Driscoll now I believe. He's probably the first policeman
3 that you spoke to at the police station.
4 A: The DSS agent?
5 Q: No. He would be someone at -- he's actually a police
6 officer at the police station and he -- I think --
7 A: The guy that asked me all the questions?
8 Q: He probably was the first one that asked --
9 A: Yes, I do remember us talking to him.
10 Q: Okay. And that was on November 12th of 2013. Okay?
11 A: Uh-huh.
12 Q: The day after -- well, this was the day you reported to
13 the police.
14 A: Okay.
15 Q: And do you remember telling him that Jim made you have
16 sex with him 34 times?
17 A: I might have said that, yes.
18 Q: Well, I mean I want you to think about it.
19 A: It was more than 34 times though.
20 Q: Well, I mean do you agree with me that that's what you
21 told him back then was it happened 34 times?
22 A: I don't know. I might have.
23 Q: Do you know why you might've picked that number out?
24 A: No. I don't know why I would have picked that number.
25 It's just an out-of-the-blue number. It happened way more

Minor 1

- CROSS BY MR. CHISHOLM

1 than that many.

2 Q: Okay. What about when you met with Nurse -- I believe
3 her name is Ashleigh Benda. She's a nurse at MUSC and she did
4 a physical examination and looked at you and your private
5 parts and everything else. Do you remember that?

6 A: Yes.

7 Q: Okay. And this was on November 14th of 2013; right?

8 Well, you may not remember that, but --

9 A: Yeah. I don't remember the date.

10 Q: It was probably two days after you spoke to the police
11 initially. You know who I'm talking about; right?

12 A: Yes.

13 Q: And do you remember telling her that you had to touch
14 Jim's privates for about ten minutes?

15 A: Yes. I do think I remember telling her that.

16 Q: You do remember that?

17 A: Uh-huh.

18 Q: And do you remember her asking you how many times it
19 happened and you said a couple?

20 A: A couple times that -- a couple times --

21 Q: That it happened a couple times?

22 A: That the bad stuff happened?

23 Q: Uh-huh.

24 A: No, I don't remember telling her that.

25 Q: Okay. And you remember the forensic interview? I think

Minor I - CROSS BY MR. CHISHOLM

1 I asked you a couple questions about that earlier.

2 A: Yes.

3 Q: Where it's all videotaped and the lady's name is
4 Millicent Walker and that would have been November 14th of that
5 year as well. And she asked you some questions?

6 A: Yes, she did.

7 Q: And she had a flipchart that she pointed out the body
8 parts and all that?

9 A: Yes.

10 Q: Do you remember telling her that the last time Jim did
11 this stuff with you, the bad stuff, was on your mom's
12 birthday, October 31st?

13 A: No, I don't remember telling her that because I don't
14 remember anything happening on that date.

15 Q: Okay. And are you aware that in that interview you never
16 mentioned anything about Jim having you put your penis into
17 his butt or him putting your penis in his mouth. Are you
18 aware that you didn't mention that at all during that
19 interview?

20 A: Yes, I am aware.

21 Q: Okay. Do you remember telling Ms. Walker that your mom
22 was going to divorce Jim and that when you found out she was
23 going to give him another chance that you got mad and told her
24 what happened and then he went to jail?

25 A: Can you repeat that again?

Minor I - CROSS BY MR. CHISHOLM

1 Q: Sure. Do you remember telling Ms. Walker -- that's the
2 lady that did the interview.

3 A: Yes.

4 Q: Do you remember telling her that your mom was going to
5 divorce Jim, that you found out she was going to give him
6 another chance, and you got mad and told her what happened and
7 that he then went to jail?

8 A: Then she said divorce? When she said should I give him
9 another chance, that's what I meant by divorce. That's what I
10 thought.

11 Q: Sure.

12 A: And that when she said should I give him another chance
13 and then I said no, no, no, no, no.

14 Q: Sure.

15 A: I did.

16 Q: You think you did tell her that?

17 A: Yes, I did.

18 Q: Okay.

19 MR. CHISHOLM: If I could have one moment, please?

20 THE COURT: All right.

21 MR. CHISHOLM: Thank you. I have no further questions.

22 THE COURT: Redirect?

23 MS. MIMS: Thank you. Your Honor, may we approach very
24 quickly?

25 THE COURT: Sure.

Minor 1 - REDIRECT BY MS. MIMS

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

4 REDIRECT EXAMINATION

5 BY MS. MIMS:

6 Q: Okay. MI I just have a couple more questions for you.
7 First of all, are you telling the truth today?

8 A: Yes, ma'am.

9 Q: Do you understand the difference between a truth and a
10 lie?

11 A: Yes, ma'am.

12 Q: Okay. And when you were living at the trailer with Jim
13 and your mom and your sister, were you happy there?

14 A: Yes.

15 Q: Did you have friends there?

16 A: Yes. Many.

17 Q: Did you want to go live with your dad?

18 A: Whenever the bad stuff was happening, yes.

19 Q: Okay. If the bad stuff wasn't happening, were you happy?

20 A: Yes.

21 Q: Okay. And why did it take you so long to tell your mom?

22 A: I always thought that whenever I told my mom -- I always
23 thought that -- since he told me to keep it a secret, I always
24 thought that if I told my mom, he would hurt her or stuff like
25 that or he would maybe hurt me or my sister, and then I

Minor 1 - REDIRECT BY MS. MIMS

1 realized that that's a bad secret to keep and I told because
2 he was gone so he couldn't do any of that stuff.

3 Q: Okay.

4 A: So I thought that would be a good time.

5 Q: (Okay. Have you had to tell this story since you told
6 your mom that day? Have you had to tell this story a lot of
7 times?

8 A: Yes.

9 Q: Okay. And how old were you when you started telling the
10 story when you told your mom?

11 A: The first time I told my mom, that was -- I guess that
12 was the first time I started to tell the story.

13 Q: Right. How old were you?

14 A: I think I was, like, nine around that time. Yes.

15 Q: Okay. So after you told your mom, did things happen
16 pretty quickly?

17 A: Yes.

18 Q: Okay. Did you have to go tell your story again very
19 quickly?

20 A: Yes.

21 Q: Did you have to go tell a police officer?

22 A: Yes.

23 Q: Did you know that police officer?

24 A: No.

25 Q: Did you want to tell that police officer those things?

Minor 1

- REDIRECT BY MS. MIMS

1 MR. CHISHOLM: Objection, Your Honor. This is leading.

2 THE COURT: You mean the last question?

3 MR. CHISHOLM: Yes, and the ones prior were leading.

4 THE COURT: Well, those are done.

5 MR. CHISHOLM: Right.

6 THE COURT: Overruled.

7 MS. MIMS: Thank you, Your Honor.

8 BY MS. MIMS:

9 Q: Did you want to tell the police officer those stories?

10 A: Not really. I was super shy back then.

11 Q: Okay.

12 A: Well, I was super shy about the story. I wasn't very
13 shy.

14 Q: And why were you shy about it?

15 A: Because it was just an uncomfortable story to tell.

16 Q: After you talked to the police officer, who else did you
17 talk to?

18 A: I talked to my counselor. I talked to my dad about it.
19 I talked to you about it. And I talked to my sister, my mom
20 about it.

21 Q: And when you talked to people about your story, did
22 anybody tell you what to say?

23 A: No, ma'am.

24 Q: Has your story been just your story?

25 A: Yes, ma'am.

Minor 1 - REDIRECT BY MS. MIMS

- 1 Q: Is it a true story?
- 2 A: Yes, ma'am.
- 3 Q: When you've talked to people before, has anybody asked
- 4 you what Jim was wearing before?
- 5 A: No, ma'am.
- 6 Q: Did anyone ever ask you if you were assaulted in the shed
- 7 before?
- 8 A: No, ma'am. Wait. What do you mean by assaulted? Like
- 9 hit?
- 10 Q: I'm sorry. No. I'm sorry, sweetie. Did anyone ever ask
- 11 you if the bad things had happened in the shed before?
- 12 A: No, ma'am.
- 13 Q: Okay. I'm sorry. And, MI did -- did Jim Crews put his
- 14 penis in your butt?
- 15 A: Yes, ma'am.
- 16 Q: Did he do it one time?
- 17 A: No, ma'am. Many.
- 18 Q: And did Jim Crews make you put your mouth on his penis?
- 19 A: Yes, ma'am.
- 20 Q: Did he do it one time?
- 21 A: No, ma'am. Many.
- 22 MS. MIMS: I have no further questions, Your Honor.
- 23 THE COURT: Okay. Recross?
- 24 MR. CHISHOLM: No further questions.
- 25 THE COURT: All right. You may come down. All right.

KENDRA TWITTY - DIRECT BY MR. GIESE

1 THE WITNESS: Sure. It's Kendra Twitty.

2 THE CLERK: Do you solemnly swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. Have a seat, please.

6 THE COURT: Your witness.

7 MR. GIESE: May it please the Court.

8 THE COURT: Yes.

9 KENDRA TWITTY, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GIESE:

13 Q: Ms. Twitty, where do you work?

14 A: I work at Hope Haven of the Low Country.

15 Q: And how long have you worked there?

16 A: I've been -- I started at Hope Haven in 2000 and left to
17 go into the school system. I came back in 2012 and I'm
18 currently there.

19 Q: And what is Hope Haven?

20 A: Hope Haven is a children's advocacy center and a rape
21 crisis center combined.

22 Q: Okay. And what do you do there?

23 A: I am a forensic interviewer and a therapist there.

24 Q: What is your educational background?

25 A: I have a Master's in Counseling and I'm a licensed

KENDRA TWITTY - DIRECT BY MR. GIESE

1 counselor in South Carolina.

2 Q: Okay. Is that a professional license?

3 A: It is.

4 Q: Okay. And are you a member of any professional
5 organizations?

6 A: I am. I'm a member of the American Professional Society
7 on Abuse of Children.

8 Q: And what is that?

9 A: Basically, it provides us with updated peer reviews and
10 research for child abuse, sexual abuse, physical abuse, things
11 like that.

12 Q: How long have you been a member?

13 A: Probably since I've been a licensed counselor. I really
14 can't remember.

15 Q: Okay. And when were you licensed?

16 A: I was licensed in 2004.

17 Q: Okay. So approximately how long have you been counseling
18 child victims of sexual assault?

19 A: Since 2000.

20 Q: Okay. What are your estimated number of patients in that
21 regard?

22 A: As far as counseling, I would say -- I'm sorry I didn't
23 do the math, but may be approximately over, like, 4,000
24 clients from 2000 and until now.

25 Q: Okay. And those are all children?

KENDRA TWITTY - DIRECT BY MR. GIESE

1 A: Yeah, under 18. Yes.

2 Q: Under 18? Okay. What is the age range?

3 A: I'm sorry. It's three to 18 years old -- or seventeen
4 years old. I'm sorry.

5 Q: Okay. What -- what kind of specialized training have you
6 done?

7 A: So I am nationally certified as a trauma-focused
8 therapist. I completed the National Children's Alliance
9 Academy in investigative interviewing in Huntsville, Alabama,
10 in 2002, and then continued on to train with the Children's
11 Law Center in Columbia for the Finding Words trainings, Level
12 I and Level II, and now I believe they call it Child First
13 training. And so I went back in 2014 to become advanced
14 certified in the Child First training for forensic
15 interviewing of children.

16 Q: Okay. And approximately how many -- approximately how
17 many training hours have you done or how many -- how many
18 seminars have you done?

19 A: I would say over 3,000 hours of training.

20 Q: Okay. Have you ever testified in court before?

21 A: I have.

22 Q: About how many times?

23 A: A dozen or more.

24 Q: Have you ever been qualified as an expert witness?

25 A: I have.

KENDRA TWITTY - DIRECT BY MR. GIESE

1 Q: About how many times?

2 A: The same, probably a dozen or more.

3 Q: Okay. When was the last time you were qualified?

4 A: I was qualified I believe the last time I was here in
5 October.

6 Q: Okay.

7 MR. GIESE: Your Honor, at this time, the State would
8 offer Kendra Twitty as an expert in child-abuse dynamics and
9 disclosure.

10 THE COURT: Very well. Is there any voir dire or any
11 objection?

12 MR. LOY: There is not, Your Honor. Thank you.

13 THE COURT: Very well. Ladies and gentlemen, let me
14 explain to you what has just occurred.

15 Normally under our rules of evidence, witnesses are not
16 allowed to testify regarding their opinions or the reasons for
17 those opinions. There is an exception and that is when by
18 reason of someone's knowledge or experience, training or
19 profession they have become an expert in some field and those
20 individuals are allowed to testify regarding their opinions
21 and the reasons for those opinions within their expertise.

22 And, ladies and gentlemen, I will give you some
23 additional instruction when I give you the concluding
24 instructions at the end of the trial before you deliberate,
25 but at this time I would share with you that expert testimony

KENDRA TWITTY - DIRECT BY MR. GIESE

1 is given for the purpose of helping you understand the
2 evidence and not for controlling your judgment.

3 Ladies and gentlemen, this witness is -- Ms. Twitty is
4 qualified as an expert in the field of child-abuse dynamics.

5 MR. GIESE: Yes, ma'am.

6 THE COURT: Very well.

7 MR. GIESE: Thank you.

8 THE COURT: Thank you. You may proceed.

9 MR. GIESE: Thank you, Your Honor.

10 BY MR. GIESE:

11 Q: Ms. Twitty, let's kind of -- let's start here. When a
12 child has been abused in your experience, how do they normally
13 recall info -- information?

14 A: Okay. So in my experience, when a child has either
15 experienced some sort of trauma or scary event or witnessed a
16 violent crime or a scary event, often times their memory does
17 not remember things in, like, a linear fashion, like what
18 happened next or like a time sequence. They remember, like,
19 flashbulbs or kind of a snapshot of a memory to recall their
20 traumatic experience.

21 Q: Okay. And is there always an order?

22 A: There's not. Often times in my experience when children
23 are traumatized, they'll remember the most scary memory or
24 they'll remember a central -- they'll remember what was maybe
25 happening to them at the time and they may not remember all

KENDRA TWITTY - DIRECT BY MR. GIESE

1 the details of what was going on around them or maybe, like,
2 details that on a normal non-traumatic event that somebody
3 would be able to describe.

4 Q: Okay. What is -- what is a delayed disclosure?

5 A: Okay. Delayed disclosure is often common that I find in
6 child abuse. A lot of times children do not tell right away.
7 They do not tell until they're adults. Research states that
8 60 to 80 percent of children never tell until they're adult --
9 until they're adults.

10 The reasons for delayed disclosure are, number one, fear
11 of being believed or ashamed to tell, embarrassed to tell,
12 scared of what might happen when they tell, and especially if
13 the alleged offender or perpetrator is a family member or
14 lives in the household, those children are most likely more
15 reluctant to tell or never tell until their adulthood.

16 Often times, children delay disclosure as well because
17 sometimes it's normal. They're not really sure that what was
18 happening was wrong. The alleged perpetrator sort of
19 normalizes the behavior and makes it kind of okay. So the
20 child feels really guilty feeling like, well, I should have
21 stopped it. I didn't stop it. I'm embarrassed to tell now.
22 And they're just confused. So they -- they don't tell.

23 And sometimes the perpetrator or alleged offender --
24 alleged perpetrator will threaten them to not tell. If you
25 tell, I'll hurt your family or I'll hurt your animal or your

KENDRA TWITTY - DIRECT BY MR. GIESE

1 pet, things like that.

2 Q: Is it -- would you say it's more or less likely to see a
3 delayed disclosure if it involves a family member?

4 A: That is correct.

5 Q: Is it more likely or less likely?

6 A: It's more likely for a delayed disclosure if it's someone
7 that the child is close to, especially if it's a person in the
8 household.

9 Q: Okay. Based on your experience, what are some different
10 -- I mean what are some different time spans you've seen in
11 disclosing?

12 A: Every child is different. Every experience is different.
13 So children -- you know, disclosure is not an all or nothing
14 event. It's a process. So sometimes in my experience I've
15 had kids come to us that had been to school and there was a
16 presentation on abuse and the child was like, oh, now they're
17 bringing it up; so now it's safe for me to talk about. And so
18 the child may disclose a little bit of information then or the
19 child may -- especially younger children may disclose by
20 accident. They didn't realize that they weren't supposed to
21 talk about it, maybe during bath time or something like that.

22 When children disclose a very little bit of information
23 at the beginning, we call that a tentative or a piecemeal
24 disclosure, like they are testing the waters to see what will
25 happen if they maybe tell more information. So the disclosure

KENDRA TWITTY - DIRECT BY MR. GIESE

1 process I say starts -- begins with the telling a little bit
2 of information and then seeing if they're going to be
3 supported and believed. If they are supported and believed,
4 then they move into an active disclosure process where they
5 may tell more information, maybe not all of it.

6 And then often times we see when children tell all the
7 information or a lot of the information, they will recant,
8 which means they retract that statement due to their world
9 falling apart, maybe their family falling apart. Their -- the
10 breadwinner of the family might be removed. Mom might, you
11 know, ask them to say that was a lie or for many reasons the
12 child feels pressured into saying, oh, wait, that didn't
13 happen and they feel like they can take that statement back
14 and make their world the same way it was before they told.

15 Q: Do you know -- is it common to expect a complete
16 disclosure?

17 A: It is uncommon to expect a complete disclosure. I find
18 that most sexual abuse cases are chronic, meaning they happen
19 over and over again. So when a child talks about an abuse
20 situation, for example during an interview process, they may
21 be talking about one incident and there might be 50 incidents.

22 So each time somebody asks them about it, either when
23 they enter therapy or when they're talking to their parents or
24 whomever, they may be talking about a different scenario or
25 situation because the experience happened more than one time.

KENDRA TWITTY - DIRECT BY MR. GIESE

1 It would be like us as adults talking about I guess our sex
2 life and every time we had intimate details. It's going to
3 probably be different each time.

4 Q: Okay. What factors may encourage a child to report past
5 sexual abuse?

6 A: What factors? Well, if there is -- for younger children,
7 again it's -- they may tell because it's by accident that they
8 tell or, like I said, they might go to school and hear a
9 presentation or somebody may ask them. Sometimes if somebody
10 has a strange feeling or they don't like the way they see an
11 interaction between an adult and a child or something or an
12 older child, they may ask the child has anyone ever done
13 anything to you, and when the child is actually asked, the
14 child may disclose.

15 Older children or teenagers I find that in my experience
16 tell sometimes during conflict, family conflict, either a
17 family fight or a divorce or they're angry and it comes out in
18 rage and anger, and then often times that disclosure is maybe
19 looked at maybe not as credible because it's a teenager and
20 they're, you know, in an argument and they're now putting out
21 this information.

22 So kids -- children are -- everyone is different. All
23 experiences are different. So it really depends on the child
24 and the environment for them to talk about their abuse.

25 Q: And you mentioned a child cooperating with an abuser.

KENDRA TWITTY - DIRECT BY MR. GIESE

1 What generally makes a child cooperate with the -- with the
2 abuser?

3 A: In my experience, the number one reason why children
4 cooperate with an abuser is because they love them or the fact
5 that we teach our children to listen to grown-ups, we teach
6 our children to respect adults, to listen to adults, and so
7 when an adult tells a child to do something, if you're a
8 child, you do it.

9 Q: Okay. And in your opinion, is that common or uncommon?

10 A: It's very common.

11 Q: Okay.

12 MR. GIESE: Just a moment, Your Honor.

13 THE COURT: All right.

14 BY MR. GIESE:

15 Q: I have just a few more questions, Ms. Twitty.

16 A: Uh-huh.

17 Q: Have you ever met MI [REDACTED]?

18 A: I have not.

19 Q: Are you familiar with the facts of this case?

20 A: I am not.

21 MR. GIESE: Nothing further, Your Honor. Thank you.

22 THE COURT: All right. Cross-examination?

23 MR. LOY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. LOY:

KENDRA TWITTY - CROSS BY MR. LOY

1 Q: Good afternoon, Ms. Twitty.

2 A: Good afternoon.

3 Q: Ms. Twitty, I was listening to the examination and it
4 sounds as though your work has been and perhaps still is
5 divided between two areas, that is providing counseling itself
6 to some children and as a forensic interviewer in situations
7 where you're not actively a counselor. Is that fair to say?

8 A: That's correct.

9 Q: And today we're not so much talking about your forensic
10 interviewing perspective as what you have learned or your
11 experience through counseling; is that right?

12 A: That's correct.

13 Q: Okay. And one thing I noticed in listening to your
14 testimony is the human psyche I guess operates along a
15 spectrum in just about every -- every aspect and that may be
16 poorly phrased, but does that make sense to you?

17 A: I'm not sure I'm following you.

18 Q: Well, I'm listening. The solicitor is asking you about
19 child sexual abuse dynamics.

20 A: Uh-huh.

21 Q: And I was trying to keep count and it looks to me like
22 what you say is often times when this happens, they remember
23 like this, and then often times when it happens, it's more
24 like this. Often times they don't report because of this and
25 often times they do report because of that. And what I'm

KENDRA TWITTY - CROSS BY MR. LOY

1 saying is it's not like you can just put things in a box in
2 your field and say I'll check these three boxes, the abuse
3 must have occurred. If I don't check them, it must not. Does
4 that make sense?

5 A: That's correct.

6 Q: Okay. So as I was listening, you stated that often times
7 a person who ends up reporting or who reports sexual abuse
8 delays for a while before they do that; is that right?

9 A: That's correct.

10 Q: Okay. And a person who does that, you don't discount
11 their version? That's not some way inconsistent with actually
12 having been abused, is it? A delayed report is not
13 inconsistent with abuse, is it?

14 A: That's correct. Yes.

15 Q: Okay. And I think you said often times children will
16 report immediately. Is that your experience?

17 A: Not often times. They do not report immediately. In my
18 experience, children that report immediately have an acute --
19 like a one-time experience that happens and they tell their
20 parent right away.

21 Q: Well, you would agree with me that if they report
22 immediately and it is dealt with in a responsible fashion,
23 there's not an opportunity for the incident to be repeated;
24 correct?

25 A: It depends on the situation and the child.

KENDRA TWITTY - CROSS BY MR. LOY

1 Q: If the child reports immediately I was abused by Uncle
2 Dan and the situation is dealt with responsibly either by law
3 enforcement or by the family, Uncle Dan probably doesn't have
4 an opportunity to repeat the problem. Is that not fair to
5 say?

6 A: But there might be more people that might do that to the
7 child besides Uncle Dan.

8 Q: I understand. What I'm asking --

9 A: Correct.

10 Q: What I'm asking is if a child were to report immediately,
11 if a child were to report when I was at Uncle Dan's house, bad
12 things happened to me this weekend, you would not discount
13 that based on the fact that they reported immediately, would
14 you?

15 A: I would not discount that.

16 Q: Okay. So reporting immediately is not inconsistent with
17 a child abuse scenario, is it?

18 A: I'm kind of confused on what you're asking me. Can you
19 ask it a different way, please?

20 Q: I can try. You would agree with me that if you received
21 a report that a child said I have been sexually abused and
22 reported the very first chance I got, you would not discount
23 that report based solely on the fact that there was no delay?

24 A: That's correct.

25 Q: If you would not discount the fact based on the fact --

KENDRA TWITTY - CROSS BY MR. LOY

1 solely on the fact that there was no delay, then you would
2 agree with me that no delay is not inconsistent with abuse?
3 If it were inconsistent with abuse, you would tend to discount
4 it or look with a little more askance at the report. Does
5 that make sense?

6 A: That makes sense.

7 Q: Okay. So reporting immediately is not inconsistent and
8 some degree of delay is not inconsistent?

9 A: That's correct.

10 Q: Okay.

11 A: And --

12 Q: And -- I'm sorry. I didn't mean to cut you off.

13 A: Well, I was going to say in my experience I've had kids
14 tell immediately, but their caregivers did not believe or help
15 or respond to their telling. So in that case the child
16 continued to not tell and then delayed the disclosure later on
17 when they got older, if that makes sense.

18 Q: It doesn't, but it's not really the question that I'm
19 asking.

20 A: Okay.

21 Q: To me it doesn't. I didn't -- I didn't follow it.

22 A: Okay.

23 Q: But my question was simple enough. If a child comes
24 forward and says this happened at Uncle Dan's house, you
25 wouldn't say he reported it within twelve hours, then no way.

KENDRA TWITTY - CROSS BY MR. LOY

- 1 A: I wouldn't do that, no.
- 2 Q: Okay. And if the child waited a week and reported it,
- 3 you wouldn't say a week's not long enough?
- 4 A: That's correct.
- 5 Q: And if a child waited six months?
- 6 A: Uh-huh.
- 7 Q: And I won't go through the timeframe, but right up to --
- 8 you talked about people reporting as adults?
- 9 A: That's correct.
- 10 Q: Okay. So along the entire spectrum, all of those time
- 11 frames are not inconsistent. They don't tend to contra-
- 12 indicate child abuse; is that right?
- 13 A: That's correct.
- 14 Q: Okay. Thank you. And then you talked about a lot of
- 15 reasons why a child might delay, short-term, long-term, et
- 16 cetera, and you also talked briefly about situations of
- 17 recantation. Just a few moments ago --
- 18 A: That's correct.
- 19 Q: -- with Mr. Giese. Do you recall that? And I believe
- 20 Mr. Giese asked you are there any other reasons or asked you
- 21 about the reasons a child might recant. Do you recall that?
- 22 A: I do. I don't believe I stated all the reasons, but I'm
- 23 sure there's many, many reasons why children recant.
- 24 Q: Well, he gave it to you open-ended and my understanding
- 25 was you gave a pretty direct answer. It sounded like you did.

KENDRA TWITTY - CROSS BY MR. LOY

- 1 A: Uh-huh.
- 2 Q: And you said a child might have pressure from family to
3 recant?
- 4 A: Uh-huh.
- 5 Q: Or a child might feel threatened or a child's world has
6 fallen apart or things have changed, all reasons why a child
7 might come forward and say, you know what, I wasn't completely
8 candid before. Do you recall that?
- 9 A: I do.
- 10 Q: Okay. And I was trying -- again, trying to keep up. It
11 was relatively brief. I noticed you didn't say a child might
12 recant because it really didn't happen. You would agree
13 that's another possibility?
- 14 A: I would agree, absolutely.
- 15 Q: Okay. And you talked about the training --
- 16 A: Uh-huh.
- 17 Q: -- that you've received and it certainly sounds like it's
18 extensive and over a great deal of time. You've appeared in
19 court several times or a lot of times in the past and you've
20 testified and been qualified as an expert; is that correct?
- 21 A: That's correct.
- 22 Q: During all of that time, how many times have you appeared
23 and testified on the part of the defense?
- 24 A: I've never been asked.
- 25 Q: Okay.

KENDRA TWITTY - CROSS BY MR. LOY

1 A: Zero.

2 Q: Thank you. And would you agree with me that the training
3 that you've had, the classes that you've attended, and the
4 workshops that you have gone to have been basically presented
5 from a prosecutorial standpoint, a prosecutorial perspective?

6 A: That's correct.

7 Q: Okay. And you stated that -- and I didn't get all of
8 this, but 60 to 80 percent of child abuse victims don't report
9 until they're adults?

10 A: That's correct.

11 Q: Is that what you stated?

12 A: Uh-huh. Yes.

13 Q: I don't understand how if you've got a certain number of
14 folks who never report -- and you would agree there's a
15 certain number of folks who never report?

16 A: Uh-huh.

17 Q: Yes?

18 A: Yes.

19 Q: And that number is an unknown. The fact that they never
20 report means we don't know who they are or how many of them
21 there is. Yes?

22 A: That's correct.

23 Q: It seems difficult then to extrapolate a percentage from
24 the unknown number, that as you say 60 to 80 percent, without
25 ever knowing what the hundred percent is. Do you --

KENDRA TWITTY - CROSS BY MR. LOY

1 A: May I clarify on those numbers?

2 Q: Yeah. That's what I'm asking for.

3 A: Okay. Well, the 60 to 80 percent came from a research
4 study that was researched on adults that went back and said --
5 they did an evaluation and assessment based on when they were
6 children. So that -- of that 60 to 80 percent, those were
7 adults that were the known abused and were disclosing sexual
8 abuse as children.

9 Q: My understanding was that 60 to 80 percent -- and if I'm
10 wrong -- was that you said 60 to 80 percent of children who
11 are abused or people who are abused as children do not report
12 until they're adults?

13 A: That's correct.

14 Q: And then you said but we don't know how many are actually
15 abused?

16 A: That's correct.

17 Q: But somehow were going to give you a percentage of the
18 unknown quantity?

19 A: I'm not a researcher. I just know that this crime feeds
20 on secrecy; so it's really hard to measure.

21 Q: Okay. So you're reading someone else's statistics and
22 you don't know how they took a percentage of the unknown
23 number?

24 A: I'm reading what the -- the journals send out to the
25 professionals. So --

KENDRA TWITTY - CROSS BY MR. LOY

1 Q: Do you today -- are you able to tell me how they
2 extrapolate from an unknown number what 60 to 80 percent would
3 be?

4 A: I am not able to tell you that, no.

5 Q: Okay. But in the training that you've received, the
6 literature that you get, which what you concede is from a
7 prosecutorial standpoint --

8 A: Uh-huh. Yes.

9 Q: -- this is the information that you've received?

10 A: That's correct.

11 MR. LOY: If I could have just one moment, Your Honor?

12 THE COURT: Certainly.

13 MR. LOY: Just one more moment, please.

14 BY MR. LOY:

15 Q: A lot of times in your work, children present with
16 knowledge of adult sexual -- sexuality, situations,
17 circumstances, things that they shouldn't know or ideally
18 would not be aware of at the age that they are; is that right?

19 A: That's correct.

20 Q: Okay. And as a therapist, I mean you inquire as to where
21 this information could have come from, both as to whether or
22 not it's consistent or seems to indicate abuse or whether or
23 not it may have come from some other source?

24 A: That's correct.

25 Q: Such as video, Internet, et cetera?

KENDRA TWITTY - CROSS BY MR. LOY

1 A: Uh-huh. Yes.

2 Q: We talked in a prior -- you recall we've met once before,
3 yes?

4 A: Yes..

5 Q: Okay. Do you recall telling me during the prior
6 proceeding that part of the -- or a problem that we've got now
7 is we live in an age where pornography is available on the
8 telephone to just about everybody?

9 A: That's correct.

10 Q: Okay. Thank you, ma'am. I don't have any more
11 questions.

12 THE COURT: All right. Redirect?

13 MR. GIESE: No, Your Honor. Thank you.

14 THE COURT: Very well. Is this witness free to leave?

15 MR. GIESE: Yes, ma'am.

16 THE COURT: Any objection?

17 MR. LOY: No, ma'am.

18 THE COURT: Very well. Thank you. You are free to go.
19 Call your next witness, please..

20 MR. GIESE: Could we have just one moment, Your Honor?

21 THE COURT: Yes.

22 MR. GIESE: The State calls Tara Crews.

23 (WHEREUPON, there was a pause in the proceedings until
24 the witness entered the courtroom.)

25 THE CLERK: If you will, please raise your right hand and

TARA CREWS - DIRECT BY MR. GIESE

1 state your full name for the record.

2 THE WITNESS: Tara Anias [phonetic] Crews.

3 THE CLERK: Do you solemnly swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth?

5 THE WITNESS: I do.

6 THE CLERK: Thank you. You can have a seat.

7 MR. GIESE: May it please the Court, Your Honor.

8 THE COURT: Yes. Thank you.

9 TARA CREWS, being first duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. GIESE:

13 Q: Ms. Crews, where do you currently live?

14 A: In Summerville.

15 Q: And how long have you lived there?

16 A: About a year.

17 Q: Okay. Where did you live from November 2011 until
18 November 2013?

19 A: At [REDACTED].

20 Q: And approximately how long did you live there? I gave
21 you -- I gave you some dates, but how long do you think you
22 lived there?

23 A: Seven years.

24 Q: And was that a house?

25 A: A trailer.

TARA CREWS - DIRECT BY MR. GIESE

- 1 Q: Did you own that trailer?
- 2 A: Yes.
- 3 Q: You said it was on Longleaf Drive?
- 4 A: Uh-huh.
- 5 Q: Is that in Dorchester County?
- 6 A: Yes.
- 7 Q: Who lived there with you?
- 8 A: Me and my daughter, my son, and James Crews.
- 9 Q: Okay. Who is James Crews to you?
- 10 A: My husband.
- 11 Q: Okay. And what's your son's name?
- 12 A: Minor 1 [REDACTED].
- 13 Q: Does he have a nickname?
- 14 A: MI [REDACTED].
- 15 Q: Okay. And when was he born?
- 16 A: [REDACTED].
- 17 Q: So approximately how old is he?
- 18 A: Eleven.
- 19 Q: Okay. What's your daughter's name?
- 20 A: Minor 2 [REDACTED].
- 21 Q: And when was she born?
- 22 A: [REDACTED].
- 23 Q: Okay. So approximately how old is she?
- 24 A: She's thirteen.
- 25 Q: Okay. Who is their father? Is Jim their father?

TARA CREWS - DIRECT BY MR. GIESE

1 A: No.

2 Q: Who is their father?

3 A: Travis Barwick.

4 Q: Is he -- he's MI father?

5 A: Yeah.

6 Q: Is he also Minor 2 father?

7 A: Yes.

8 Q: Okay. Were you and Travis ever married?

9 A: No.

10 Q: Back in that time period when you were living in that

11 trailer, what was the -- the living situation in regards to

12 Travis? Did they see him often?

13 A: All the time.

14 Q: Okay. Explain that.

15 A: Any time he was off of work or something, he would pick

16 them up. It was a -- we never had -- like, we didn't go to

17 court or anything. We had a joint --

18 Q: Okay.

19 A: -- agreement. So he spent a lot of time with them.

20 Q: But who did they primarily stay with?

21 A: With me.

22 Q: Okay. Were they in school then?

23 A: Yes.

24 Q: What school did they go to?

25 A: Harbor Lake Christian Academy.

TARA CREWS - DIRECT BY MR. GIESE

1 Q: Okay. Who -- you mentioned James Crews is your husband.
2 What do you -- what do you know James as? What's his -- do
3 you call him James?
4 A: Jim.
5 Q: Okay. How long approximately have y'all been married?
6 A: Seven -- seven years.
7 Q: Seven years? Okay. Back in that time -- in that time
8 frame when you were living in the trailer on Longleaf, did you
9 work?
10 A: Yes.
11 Q: Where?
12 A: I took care of two elderly ladies.
13 Q: Okay. And where was that? Do you remember?
14 A: On Myers Road near Goose Creek.
15 Q: Okay. At that time, were your kids in school?
16 A: Yes.
17 Q: Okay. If your kids weren't in school, who watched them?
18 A: Jim did.
19 Q: Who watched them if you ran errands?
20 A: He did.
21 Q: And unless they were -- was this unless they were with
22 Travis?
23 A: Right.
24 Q: Okay. Did Jim work back then?
25 A: Sometimes.

TARA CREWS - DIRECT BY MR. GIESE

1 Q: What do you mean? I mean what do you mean by that?

2 A: He'd get a job here and there.

3 Q: Okay. Was he in school back then?

4 A: He was starting. So he had just started going.

5 Q: Okay. Do you know what school that was?

6 A: Miller-Motte.

7 Q: Okay.

8 MR. GIESE: If I could have just one moment, Your Honor?

9 BY MR. GIESE:

10 Q: Tara, I'm showing you what's been entered into evidence
11 as State's Exhibit 5. Just one second and it will pop up on
12 the screen right there. Do you recognize that?

13 A: Yes.

14 Q: What is that?

15 A: That's the trailer we lived in.

16 Q: Is that on Longleaf Drive?

17 A: Yes.

18 Q: What's that window on the backside there?

19 A: That's **Minor 2** window.

20 Q: Okay. That was her bedroom?

21 A: Uh-huh.

22 Q: What -- if you're looking out --

23 THE COURT: Excuse me.

24 THE WITNESS: Yes.

25 BY MR. GIESE:

TARA CREWS - DIRECT BY MR. GIESE

1 Q: If you're looking out **Minor 2** window --

2 THE COURT: Rather than an uh-huh or an huh-uh, could you
3 articulate an answer?

4 THE WITNESS: Yes.

5 BY MR. GIESE:

6 A: It was my daughter's bedroom window.

7 MR. GIESE: I apologize, Your Honor. I didn't mean to
8 talk over you.

9 THE COURT: That's all right. I just --

10 MR. GIESE: Yes, ma'am. Just answer yes or no when the
11 question is asked.

12 THE WITNESS: Okay..

13 BY MR. GIESE:

14 Q: What is that facing if you're in **Minor 2** bedroom?

15 A: The road.

16 Q: The road? Okay. Longleaf Drive?

17 A: Yes.

18 Q: Okay. What about -- what does that stairway lead to?

19 A: The living room.

20 Q: The living room?

21 THE COURT: You all talked at the same time. What is the
22 -- could you repeat your answer?

23 A: The living room.

24 THE COURT: Okay.

25 MR. GIESE: Thank you.

TARA CREWS - DIRECT BY MR. GIESE

1 BY MR. GIESE:

2 Q: Now I'm showing you what's been entered into evidence as

3 State's Exhibit 3. What is that?

4 A: The trailer on Longleaf.

5 Q: Is that just from a different angle?

6 A: Yes.

7 Q: What is the window that I'm pointing to right here?

8 A: The bathroom.

9 Q: Okay. What about -- can you see these two windows in the

10 back here?

11 A: The living room.

12 Q: Okay. And then what about the one next to it?

13 A: The little laundry area.

14 Q: Okay. And what is this red building right here?

15 A: The shed.

16 Q: Did that belong to you guys as well?

17 A: Yes.

18 Q: Do you know what was in that shed?

19 A: All kinds of tools.

20 Q: Okay. Did you go in there that often?

21 A: Yeah. When I went to get tools and stuff that we needed

22 out of there.

23 Q: Okay. I'm showing you now what's been entered in as

24 State's Exhibit 2. Do you recognize that?

25 A: That's the shed.

TARA CREWS - DIRECT BY MR. GIESE

1 Q: Okay. Is that a fair and accurate representation of what
2 the shed used to look like back when you lived there?
3 A: Oh, yes.
4 Q: All right. Ms. Crews, how did you get to work?
5 A: In my car.
6 Q: What kind of car did you have?
7 A: A Mercury Sable.
8 Q: Okay. Do you remember approximately what year that was?
9 A: 2000.
10 Q: Okay. I'm going to show you State's Exhibit 5 again.
11 Where would you park your vehicle?
12 A: Right next to the -- a little bit further than where this
13 trashcan is beside the trailer.
14 Q: Okay. Did Jim have a vehicle back then?
15 A: Yes.
16 Q: What did he have?
17 A: A van.
18 Q: And where did he park his car?
19 A: The other side.
20 Q: Okay. Let me go back to State's Exhibit 3. Tara, can
21 you kind of tell the jury what the layout is once you go in
22 through that front door?
23 A: When you go through the front door, you're looking right
24 at the living room and, if you take a right, on the left would
25 be **M1** room and then the bathroom and **Minor 2** room was on the

TARA CREWS - DIRECT BY MR. GIESE

1 left also, but it was more at the front of the trailer. And
2 then if you go directly left, you're in the kitchen and the
3 little laundry area and then our bedroom.

4 Q: Okay.

5 MR. GIESE: Your Honor, may we approach briefly?

6 THE COURT: You may.

7 (WHEREUPON, a bench conference was held in the presence
8 of the jury but out of the hearing of the jury off the
9 record.)

10 THE COURT: You may proceed.

11 MR. GIESE: Thank you, Your Honor.

12 BY MR. GIESE:

13 Q: Tara, let me turn your attention to November 12th of 2013.
14 Do you remember that day?

15 A: Yes.

16 Q: What were you doing that day?

17 A: I was -- I think -- I don't remember if I even worked or
18 not that day, but I know that I was sitting in my chair
19 watching TV.

20 Q: Okay. Well, let me ask you this. Were you and Jim
21 fighting that day?

22 A: Yes.

23 Q: What were you fighting about?

24 A: Him dressing like a woman.

25 Q: Okay. Were your kids home at this point?

TARA CREWS - DIRECT BY MR. GIESE

1 A: Yes.

2 Q: Where were they in relation to you? Well, where were you
3 and Jim while you were fighting?

4 A: Well, he -- we weren't fighting that day. He had -- we
5 were kind of in separate areas because I couldn't handle him
6 --

7 Q: Uh-huh.

8 A: -- doing that, but right before --

9 Q: What do you mean separate areas? Like inside the
10 trailer?

11 A: Right. He was in the bedroom and I was in the living
12 room.

13 Q: He was in y'all's bedroom?

14 A: Right.

15 Q: Okay. So where were MI and Minor 2 at that point?

16 A: They were in the kitchen.

17 Q: Okay. What happened -- what happened after the fight?

18 A: Well, he came in because he was getting ready to go to
19 school.

20 Q: Okay.

21 A: That's when he asked the kids to go outside because he
22 needed to talk to me and said I think we can make this work.
23 My name is Jim. And he left.

24 Q: Did the kids go outside when he asked them to?

25 A: Yes.

TARA CREWS - DIRECT BY MR. GIESE

- 1 Q: You said he left. He drove off?
- 2 A: Right.
- 3 Q: Okay. Had y'all fought about that before?
- 4 A: Yeah.
- 5 Q: How long had that fight been going on?
- 6 A: Since August.
- 7 Q: After Jim left, what happened at that point?
- 8 A: That's when MI came in the house and said are you going
- 9 to try to make this work and I -- just the look on his face.
- 10 I said what is the matter with you, tell me what's going on,
- 11 and he sat beside me and he told me.. He said can I tell you
- 12 in your ear and I said, of course.
- 13 Q: Okay. What was the look on his face?
- 14 A: Like, totally white.
- 15 Q: Okay.
- 16 A: Just fear.
- 17 Q: What room was that in?
- 18 A: The living room.
- 19 Q: And where -- after he told you that, what did you do? Or
- 20 what did he tell you?
- 21 A: He said he rapes me.
- 22 Q: Okay. After he told you that, what did you do?
- 23 A: I started freaking out. I couldn't even talk anymore. I
- 24 said get in the car.
- 25 Q: Okay. And what did y'all do? Where did y'all go?

TARA CREWS - DIRECT BY MR. GIESE

1 A: The police station.
2 Q: Did you call anybody?
3 A: I called their dad.
4 Q: Who is their dad?
5 A: Minor [REDACTED]
6 Q: Okay. Do you remember what police station you went to?
7 A: Summerville.
8 Q: Okay. Did you cooperate with the investigation?
9 A: Oh, yes.
10 MR. GIESE: May I have just a moment, Your Honor?
11 THE COURT: All right.
12 MR. GIESE: Nothing further, Your Honor. Thank you.
13 THE COURT: Okay. Cross-examination?
14 MR. CHISHOLM: Thank you, Judge.

CROSS-EXAMINATION

15 BY MR. CHISHOLM:
16 Q: Good afternoon.
17 A: Good afternoon.
18 Q: Now, Ms. Crews, we've had a chance to speak before;
19 right?
20 A: Yes.
21 Q: And I've had a chance to ask you some of these questions.
22 Are you still currently married to Mr. Crews?
23 A: Yes.
24 Q: And how long have you been married at this point?
25

TARA CREWS - CROSS BY MR. CHISHOLM

- 1 A: At this point?
- 2 Q: Uh-huh.
- 3 A: It would be going on ten years in August.
- 4 Q: You've been married for ten years? Okay. And how long
- 5 did you say that you lived at that Longleaf -- excuse me --
- 6 Longleaf Drive address with Mr. Crews?
- 7 A: About seven -- around seven years.
- 8 Q: Around seven years? And are you guys co-owners of this
- 9 residence?
- 10 A: Yes.
- 11 Q: Okay. And you never sold it?
- 12 A: I just left it.
- 13 Q: So technically you're still the owner; right?
- 14 A: I guess. I don't care about it though.
- 15 Q: Right. But I mean you never got rid of it? I mean it's
- 16 still in your name as far as you know; right?
- 17 A: As far as I know.
- 18 Q: Okay. And you were working as a caretaker back in 2013
- 19 when you went to the police originally. How long had you been
- 20 doing that?
- 21 A: About eight -- nine months.
- 22 Q: Did you work previously to that?
- 23 A: Yeah. I cleaned houses with a friend of mine here and
- 24 there, but it wasn't constant until I originally went there to
- 25 clean the house.

TARA CREWS - CROSS BY MR. CHISHOLM

- 1 Q: I gotcha. Well, outside of, like, a job here and there,
2 when was the last time you had steady employment before that
3 period where you were out of the house, like, during the day
4 like you're describing?
- 5 A: I don't remember.
- 6 Q: Had it been a long time? Is that why you don't remember?
- 7 A: It had been a little bit, yeah.
- 8 Q: Years?
- 9 A: (No verbal response.)
- 10 Q: Okay. I'm going to show you what's been marked as
11 State's Exhibit 3. Ms. Crews, if you were to look at this
12 picture, what is off to the left? Is it a neighbor? I'm
13 sorry.
- 14 A: Yes.
- 15 Q: It was a neighbor?
- 16 A: Uh-huh.
- 17 Q: And it's pretty close --
- 18 A: Yes.
- 19 Q: -- to this trailer; is that right?
- 20 A: Uh-huh.
- 21 Q: I mean how far would you say? I think you might have
22 testified previously ten feet; is that right?
- 23 A: Yes. Something like that.
- 24 Q: So pretty much just out of sight here?
- 25 A: Yes.

TARA CREWS - CROSS BY MR. CHISHOLM

1 Q: And the road in front of the trailer?

2 A: Uh-huh.

3 Q: How far would you say the trailer is from the road?

4 A: Four feet maybe. It's right there.

5 Q: You're right there on it? Now, in this neighborhood, I
6 mean if you look out that rear window of the trailer, I mean
7 you're not seeing a country mile down the road?

8 A: Yes.

9 Q: I mean it's right around the bend; right?

10 A: Right.

11 Q: So you pretty much can see right before you get to the
12 house; right?

13 A: (No verbal response.)

14 Q: Okay.

15 THE COURT: And your response is?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 BY MR. CHISHOLM:

19 Q: Ms. Crews, I'm going to show you what's been marked as
20 State's Exhibit Number 2 and this is a picture of the shed;
21 right?

22 A: Yes.

23 Q: And the state of the construction of this shed -- is it
24 patched together? I mean that's how it appears.

25 A: Yes. That's how it was.

TARA CREWS - CROSS BY MR. CHISHOLM

- 1 Q: Was it like it is in this picture back in 2013?
- 2 A: Yes.
- 3 Q: I mean are there gaps that you can pretty much look
- 4 inside the trailer from outside? That's how it looks.
- 5 A: Right.
- 6 Q: You could look in? If you were inside, you could look
- 7 out without opening the door; is that fair to say? Through
- 8 the cracks?
- 9 A: No. If I was in the house, I could see in the shed?
- 10 Q: No, ma'am. I'm sorry.
- 11 A: I'm sorry.
- 12 Q: Like, for example, this area right here?
- 13 A: Right.
- 14 Q: If you were inside the shed, could you look out and see
- 15 the road?
- 16 A: Yes.
- 17 Q: Okay. So it's fairly open. You could see in and see
- 18 out. Would you agree with me?
- 19 A: Yes.
- 20 Q: Okay. And do you live in Maine right now or do you live
- 21 in Summerville?
- 22 A: I'm visiting Maine right now for a little while.
- 23 Q: Okay. Okay. But you intend to return to Summerville; is
- 24 that right?
- 25 A: Right.

TARA CREWS - CROSS BY MR. CHISHOLM

1 Q: Okay. That makes sense. And November 12th -- that's the
2 day this incident was reported; right?

3 A: Yes.

4 Q: And you went to the Summerville Police Department?

5 A: Yes.

6 Q: And you met with Detective Driscoll and do you remember
7 telling him -- basically I think what you've just testified to
8 -- that you had been fighting with Mr. Crews for a few days at
9 that point?

10 A: Right. Yes.

11 Q: And I believe you told him the night before you'd
12 basically told Mr. Crews this is over, I want you out?

13 A: Right.

14 Q: And he wasn't overly receptive of that. He wanted you to
15 give him another chance?

16 A: Yes.

17 Q: Is that right?

18 A: Yes.

19 Q: And then pretty much at this point this is when you talk
20 to MI and you go to the police?

21 A: Yes.

22 Q: Is that right? And you guys are married?

23 A: Uh-huh.

24 Q: And you are at least --

25 THE COURT: And the answer is --

TARA CREWS - CROSS BY MR. CHISHOLM

1 THE WITNESS: Yes.

2 THE COURT: -- yes?

3 MR. CHISHOLM: I'm sorry.

4 BY MR. CHISHOLM:

5 Q: You are at least joint property owners of this trailer
6 and maybe other items; is that right?

7 A: Yes.

8 Q: And you're in a situation where if you want to get rid of
9 Mr. Crews, you can't simply tell him to leave and that's --
10 call it a day; right?

11 A: Right.

12 Q: I mean you've got to go through the whole Family Court
13 and all that; right?

14 A: Yes.

15 Q: Okay. Now, let's talk about the scheduling. I believe
16 you told me in October that Mr. Crews typically didn't watch
17 the kids after school. It wasn't an everyday thing or
18 anything like that. It was more or less if they had a half-
19 day at school, things like that, he would watch them. If they
20 had a teacher holiday, a workday or something like that; is
21 that right?

22 A: Yes.

23 Q: Okay. And at this point, are you aware of the testimony
24 that Mr. Crews had ejaculated during these bad things we've
25 been talking about?

TARA CREWS - CROSS BY MR. CHISHOLM

1 A: Yes.

2 Q: Inside the house?

3 A: Yes.

4 Q: Did anyone from law enforcement ever ask you if they
5 could come search your house?

6 A: No.

7 Q: No one ever did?

8 A: No.

9 Q: Was your house open to investigators if they had asked
10 you?

11 A: Of course.

12 Q: If they would have come out and they would have said do
13 you mind if we take this bedding or these sheets or these
14 blankets or whatever, you would have let them?

15 A: Yes.

16 Q: If they said can we take the covering on this couch,
17 would you have let them?

18 A: Yes.

19 Q: If they said can we rip up your entire carpet and take it
20 in for testing, would you have let them?

21 A: Yes.

22 Q: Okay. But no one ever came out to the house as far as
23 you're aware?

24 A: No.

25 Q: Or asked you to rather?

TARA CREWS - CROSS BY MR. CHISHOLM

1 A: No.

2 Q: Okay. And you left the house back in 2013; is that

3 right?

4 A: Yes.

5 Q: But as far as you know, you're still the owner?

6 A: I don't know.

7 Q: So the house very well could be exactly as it was when

8 you left it?

9 A: Yes.

10 Q: You didn't take all the carpet and the bedding and --

11 A: Right. No.

12 Q: You left all that in there; right?

13 A: (No verbal response.)

14 Q: Okay. Now, I want to ask you a couple questions about

15 October 31st of 2013. This was a couple weeks before you went

16 to the police; correct?

17 A: Yes.

18 Q: And this was a day that you talked about previously going

19 to Little Caesars that day. DO you remember?

20 A: Yes.

21 Q: And you said that you had left Mr. Crews alone with MI on

22 that day; is that right?

23 A: No. MI was at the neighbor's house.

24 Q: Okay. So when you left -- I mean are you sure about

25 that? He wasn't -- you didn't leave them at the house with

TARA CREWS - CROSS BY MR. CHISHOLM

1 Mr. Crews?

2 A: No, I did not.

3 Q: But you went to go to Little Caesars and MI was at the
4 neighbor's?

5 A: Right.

6 Q: Are you certain of that?

7 A: Yes.

8 Q: Okay. But at any rate, at some point during the day you
9 left and I think you said this was around 5:30 to go get pizza
10 at Little Caesars?

11 A: Yes.

12 Q: And that you were gone for a maximum I think you told me
13 of about 20 minutes?

14 A: Yes.

15 Q: Because it's right down the road; right?

16 A: Yes.

17 Q: And this is when what you thought at the time was the
18 last incident when this happened; is that right?

19 A: Yeah.

20 Q: Okay. And you're sure that when you left MI was at the
21 neighbor's house?

22 A: Right.

23 MR. CHISHOLM: Can I have one moment? Thank you. I have
24 no further questions.

25 THE COURT: Redirect?

TARA CREWS - REDIRECT BY MR. GIESE

1 MR. GIESE: Yes, please, Your Honor. Briefly.

2 REDIRECT EXAMINATION

3 BY MR. GIESE:

4 Q: Ms. Crews, let me show you State's Exhibit 5 one more
5 time. You mentioned this window is **Minor 2** room?

6 A: Yes.

7 Q: And you said you could see the street from that window?

8 A: Yes.

9 Q: If that window was open, could you hear the street?

10 A: Yes.

11 Q: What if it was closed?

12 A: Yeah.

13 Q: Could you hear cars outside is what I mean?

14 A: Yes.

15 Q: Okay. Ms. Crews, when was the last time you saw Jim
16 Crews, approximately?

17 A: You mean --

18 Q: With the exception of in the courtroom, when was the last
19 time you saw Jim Crews?

20 A: I don't remember the date.

21 Q: Was it before or after **M1** disclosed these things to you?

22 A: Before.

23 Q: Before? Okay. So after **M1** -- after November 12th is it
24 fair to say you didn't see Mr. Crews other than in courtroom
25 appearances?

TARA CREWS - REDIRECT BY MR. GIESE

1 A: Right.

2 Q: Okay. I believe Mr. Chisholm asked you -- you're still
3 married to Mr. Crews; is that correct?

4 A: Yes.

5 Q: Why are you still married to him?

6 A: Because DSS told me to go ahead and get, you know,
7 everything done so it's not everything on me at once and then

8 --

9 Q: By everything, what do you mean?

10 A: This.

11 Q: The criminal matter?

12 A: The criminal matter.

13 Q: Is that fair to say?

14 A: (No verbal response.)

15 MR. GIESE: Thank you, Your Honor.

16 THE COURT: All right. Recross?

17 MR. CHISHOLM: No, Judge.

18 THE COURT: All right. You're free to come down.

19 THE WITNESS: Thank you.

20 THE COURT: All right. Call your next witness, please.

21 MR. GIESE: May we approach?

22 (WHEREUPON, a bench conference was held in the presence
23 of the jury but out of the hearing of the jury off the
24 record.)

25 THE COURT: All right. Ladies and gentlemen, I'm about

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 time, we will continue with the State's case.

2 MS. MIMS: Thank you, Your Honor. May it please --

3 THE COURT: Call your next witness, please.

4 MS. MIMS: Yes, ma'am. The State calls Ashleigh Benda.

5 THE CLERK: Please raise your right hand. State your
6 full name for the record.

7 THE WITNESS: Ashleigh Benda.

8 THE CLERK: Do you solemnly swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth?

10 THE WITNESS: Yes.

11 THE CLERK: You may have a seat.

12 MS. MIMS: Thank you, Your Honor.

13 THE COURT: Your witness.

14 ASHLEIGH BENDA, being first duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MS. MIMS:

18 Q: Good morning, Ms. Benda.

19 A: Good morning.

20 Q: Can you please tell the jury where you are currently
21 employed?

22 A: I work at the MUSC Children's Hospital in the division of
23 child abuse pediatrics.

24 Q: And can you tell the jury a little bit about what
25 childhood pediatrics actually is?

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 A: So the division of childhood pediatrics is a division
2 that the American Academy of Pediatrics made in 2009. It's
3 kind of like neurology and dermatology. They said it's its
4 own specialty. So now we have our own, for the physicians,
5 board-certified pediatricians. They go through a fellowship.
6 Like dermatology and cardiology, it's its own specialty and we
7 have a division at MUSC.

8 Q: Are you a registered nurse?

9 A: Yes.

10 Q: So are you a registered nurse who has specialized in
11 pediatrics?

12 A: Yes. I'm a registered nurse in pediatrics and then I'm
13 also a nurse practitioner in pediatrics that also specialized
14 in child abuse.

15 Q: Can you tell us a little bit about your educational
16 background to get to this point where you are today?

17 A: I started at the College of Charleston and then graduated
18 from MUSC with my Bachelor's in Science and Nursing. Then I
19 continued and got my Master's from MUSC and my doctorate
20 degree as a pediatric nurse practitioner, which is where --
21 how I currently work.

22 Q: Okay. And can you explain a little bit to the jury about
23 what your job duties are?

24 A: So as a pediatric nurse practitioner in this division, we
25 see children with any kind of concern of abuse or neglect. We

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 see them in the hospital and on the outpatient setting. We do
2 medical exams on them. We help rule in or rule out sexual
3 abuse, physical abuse, exposure to substance abuse, any kind
4 of the typologies of child abuse.

5 THE COURT: You will have to slow down just a little bit.

6 THE WITNESS: Sorry.

7 BY MS. MIMS:

8 Q: Okay. And what about professional certifications to have
9 your job? What type of professional certifications do you
10 have?

11 A: So you have to be a registered nurse practitioner. Also
12 as far as professional certifications, I took the
13 International Association of Forensic Nurses board exam, which
14 certifies me to be a pediatric sexual assault nurse, and hold
15 that certification, as well as a ton of trainings for this
16 specialty.

17 Q: Okay. And this special training that you've kind of gone
18 through, that's essentially what you're telling us right now?
19 You've already gone through all -- have you explained the
20 special training? I'm sorry.

21 A: So when I started in the clinic to train you on the
22 dynamics of sexual abuse, physical abuse, all the different
23 typologies of abuse, I spent a week in Cincinnati with their
24 Children's Hospital Division of Child Abuse Pediatrics. I
25 went to the University of Florida and spent a week there.

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 South Carolina has a statewide child abuse medical response
2 system. They have trainings. We meet quarterly.

3 There are certain things that you have to -- I mean the
4 first 150 children that I saw all had to be seen by a child
5 abuse pediatrician as well. So there's a lot of ongoing
6 training and requirements to meet in order to be recognized as
7 a child abuse specialist.

8 Q: So in your job and in your expertise, do you only handle
9 cases involving abuse and neglect?

10 A: We do. We also will see children that are emergently put
11 into foster care.

12 Q: Uh-huh.

13 A: If needed. But mainly child abuse and neglect.

14 Q: Okay. Through your -- how long have you been doing this?
15 How long have you been specialized in this area?

16 A: I've been in pediatrics since 2009 and been dealing with
17 sexual abuse since -- for four-and-a-half years roughly.

18 Q: Okay. And over that -- over the course of that time, how
19 many of these types of examinations or forensic examinations
20 have you conducted?

21 A: Total, I've done about 740 children I've seen.

22 Q: Okay.

23 MS. MIMS: Your Honor, at this time, I would ask to
24 qualify Ms. Benda as an expert in her field of child abuse
25 pediatrics.

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 MR. CHISHOLM: No objection.

2 THE COURT: Voir dire? No objection? She is so,
3 qualified as an expert.

4 MS. MIMS: Thank you very much, Your Honor.

5 BY MS. MIMS:

6 Q: Ms. Benda, in your capacity as a nurse practitioner for
7 MUSC's Division of child abuse pediatrics, at some point did
8 you become familiar with Minor I [REDACTED] or MI [REDACTED]

9 A: Yes.

10 Q: Okay. Can you tell the jury how it came about that you
11 came in contact with him?

12 A: I was working at the Dorchester Children's Center. So as
13 part of our division, we work out of the Low Country
14 Children's Center and Dorchester Children's Center up in
15 Summerville since MUSC is mainly downtown. So I was working
16 at that clinic that day that he came in for a medical
17 evaluation.

18 Q: And how do patients get to you? I mean do parents just
19 know that you exist there if they think their child has been
20 abused or how do they -- how do cases usually come to you?

21 A: They can get to us many different ways. A lot of our
22 referrals come from schools, law enforcement, DSS, primary
23 care doctors. They can come from parents, relatives. Anybody
24 can refer a child for a forensic evaluation.

25 Q: And do you know how MI was referred to you?

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 A: I believe he was referred by law enforcement.

2 Q: Okay. And how old was he when you met him?

3 A: Nine.

4 Q: Can you explain your meeting with him and what happened
5 on that day and what you were looking for?

6 A: So when I met with MI initially when I -- when I meet
7 with the children, I refer -- I review the referral
8 allegations, who sent them there and why. If the person who
9 referred them there is there, I try to meet with them and kind
10 of get some information, and then I meet with whoever brought
11 the child and has knowledge of their medical background.

12 Q: And why are you trying to get that information?

13 A: So there are some conditions that mimic sexual abuse that
14 are not actually sexual abuse. There are -- I need to know if
15 a child is autistic, has cerebral palsy, kind of how to tailor
16 the exam towards them. So we try to get a full medical
17 history to know what we're kind of going into and what our
18 differentials can be.

19 Q: Uh-huh.

20 A: So after I meet with the caregiver, then I meet with the
21 child. We do a -- we call it a comprehensive evaluation
22 versus just an exam, assessing their developmental level,
23 their eyes, ears, nose, throat, kind of like a well-child
24 physical. It's not they just come back and we look directly
25 at the body part that's a concern. We do a full head to toe

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 and then I meet back briefly with the caregiver and any
2 immediate concerns or treatment that needs to be done, we do
3 them.

4 Q: Okay. So when you met with MI who was with him that
5 day?

6 A: His father..

7 Q: Okay. And what was kind of the first thing that happened
8 at that point?

9 A: So I met with his father and got the medical history. We
10 get legal consent and then we kind of get just a basic of why
11 he's here, what he knows about the situation, and then kind of
12 the father's understanding of his medical background,
13 hospitalizations, surgeries, any procedures, things like that.

14 Q: Okay. And after you discussed that with his father, did
15 you end up talking to MI?

16 A: Yes.

17 Q: Okay. And how did that go?

18 A: Well, I brought him back. We kind of build a little bit
19 of rapport and then we start the evaluation. I ask certain
20 questions throughout the exam. We kind of go over body safety
21 and make sure we have the child's permission for me to look at
22 his private areas. Once you get permission, we typically ask
23 several questions to try and guide what kind of testing or
24 treatment needs to be done. I don't necessarily interview the
25 children for investigative purposes. It's just kind of what

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 do I need to test you for.

2 I started talking to MI He was cooperative with the
3 exam. He was very timid and shy, very conscientious of his
4 body. He wanted to keep himself covered. He didn't really
5 like talking and naming certain body parts. About the third
6 time -- I asked him kind of during the evaluation -- at the
7 very end, I was swabbing his mouth and I was asking him about
8 concerns he had and then at the very end he started to open up
9 a little bit more about what happened.

10 Q: Okay. And was he eager to talk to you about what
11 happened?

12 A: No.

13 Q: Okay. Did he finally -- was he finally able to discuss
14 the sexual abuse?

15 A: Yes. I believe -- you know, from my understanding and my
16 standpoint, he was referred the day before. I'm not sure he
17 knew why he was coming to see me. It might have been the
18 first couple times somebody has ever in his life asked him
19 questions about his throat and things. He was very nervous
20 and didn't want to really talk about things.

21 Q: Uh-huh.

22 A: The more that we interacted, the more that he opened up.
23 He did tell me he didn't want to talk about this ever again.
24 He just wanted to get it out and get done with it.

25 Q: Why did you ask him questions about his throat?

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 A: I asked him questions about his throat because you can
2 transmit sexually-transmitted diseases through different kinds
3 of abuse or through the mouth.

4 Q: Okay. And was it your understanding that there had been
5 abuse through the mouth?

6 A: Yes.

7 Q: Okay. And was that based on what he told you?

8 A: Yes.

9 Q: Okay. Did you have to look at other parts of his body as
10 well?

11 A: Yes.

12 Q: Okay. And what other parts of the body did you check
13 out?

14 A: I looked at the entire body, including the penis and the
15 anus.

16 Q: Okay. And did you see any signs of sexual abuse on the
17 anus?

18 A: No.

19 Q: Okay. Was that unusual to you that you didn't see any
20 signs based on what he told you had happened?

21 A: No.

22 Q: Okay. Had he made any statements to you that would make
23 you want to check out his anus?

24 A: Yes. He -- I can't remember the exact dialogue, but he
25 had disclosed I think inappropriate touching and then

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 throughout the examination, maybe after the examination, he
2 disclosed penile and anal contact.

3 Q: Penile and anal contact?

4 A: Uh-huh.

5 Q: Okay. You mentioned that you had done approximately 740
6 different interviews on children?

7 A: Exams.

8 Q: Exams?

9 A: Uh-huh.

10 Q: Okay. Approximately how many of those exams were for
11 sexual abuse victims?

12 A: I would say about half of them.

13 Q: Okay. So would that be over 300?

14 A: Yeah. About 300 or more.

15 Q: Okay. And out of that 300, about how many have you ever
16 seen signs of sexual abuse on?

17 A: So finding the sexual abuse is extremely, extremely rare.

18 I mean I can give you more information if you need, but to

19 answer the question, I have only seen in males two to three,

20 and those were in the emergency room, very acute injuries.

21 Q: What does --

22 A: I have not seen any outpatient.

23 Q: Okay. Was **MI** outpatient?

24 A: Yes.

25 Q: He was not acute?

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 A: No.

2 Q: Could you explain to the jury what acute means?

3 A: So based on all the studies and literature out there and
4 our state protocol, if a child that has not hit puberty yet
5 discloses any kind of sexual abuse contact, if they have not
6 hit puberty, within 36 hours of the last sexual contact, we
7 see them in the emergency room. We will go up to 72 hours
8 depending on the type of abuse and if they have any kind of
9 complaints. After 72 hours, the yield of finding evidence,
10 finding injury, getting any kind of information or diagnostic
11 findings is so low that we won't see them after 72 hours.
12 We'll just see them outpatient. So there's not a rush to get
13 them to the emergency room.

14 Q: Why is it so low?

15 A: So there's many different reasons why you can not have
16 physical findings of sexual abuse. I like to think that
17 there's three main reasons why you don't.

18 The first is the timing, which goes back to our State
19 protocol, the 36 -- 72-hour rule. The type of skin in your
20 mouth and your anus and in females the vagina is very well
21 profused. It's got a lot of vasculature; so it heals
22 extremely fast. If you bite the inside of your lip, you're
23 going to feel fine the next two to three days. If you burn
24 the roof of your mouth with pizza, it's going to kind of get
25 better in a couple of days. So these injuries heal extremely

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 fast in these body parts.

2 The second is the type of sexual abuse. For example, in
3 this case he reported fondling. If I touch your arm, I'm not
4 going to leave a lasting physical finding. Oral/penile
5 contact -- typically that does not leave physical findings.

6 The possibilities would be bruising on the posterior
7 pharynx or on the tip of the penis, which I've never seen.
8 Anal/penile contact -- you can get lacerations or tears around
9 the external part of the anus. Again, those are extremely,
10 extremely rare. Anal findings out of all of them are the most
11 rare to find it. The anus is prepared and ready to pass stool
12 through daily; so it is meant to stretch and to pass a mass
13 through. So having an injury is very uncommon.

14 Q: Okay. So you saw MI on what date?

15 A: Let me look at my notes?

16 A: Sure.

17 A: I saw him on November the 14th.

18 Q: And again, how old was he?

19 A: He was nine.

20 Q: And would that be considered prepubescent?

21 A: Yes.

22 Q: So would he fall within that 36-hour window?

23 A: Yes.

24 Q: Okay. So if he had made these allegations or talked to
25 the police on November the 12th, would it have been over 36

ASHLEIGH BENDA - DIRECT BY MS. MIMS

1 hours before he had seen you on the 14th?

2 A: Yes.

3 Q: Okay.

4 MS. MIMS: I beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 MS. MIMS: No further questions.

7 THE COURT: All right. Cross-examination?

8 MR. CHISHOLM: Yes. Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. CHISHOLM:

11 Q: Good morning.

12 A: Good morning.

13 Q: I've got a few questions to go over with you and I was
14 trying to pay attention, but I tend to get sidetracked. I
15 want to make sure I heard you correctly on a couple of these
16 things. Did you say that you'd found findings of -- or
17 injuries, sexual abuse indicators -- was it two times you
18 said?

19 A: Two to three times on males.

20 Q: Okay. And -- hold on one second. Because we've had a
21 chance to speak previously?

22 A: Uh-huh.

23 Q: And I questioned you under oath as you are today and do
24 you recall that I asked you if you done any examinations that
25 resulted in physical injury and you said if you had to guess

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 probably under 20?

2 A: Do you know the context of that?

3 Q: Yes. Hold on a second. Basically I asked you -- you'd
4 done 658 of these exams at that time?

5 A: Uh-huh.

6 Q: You said uh-huh. And I said have you seen any that did
7 result in physical injury and you said I have seen if I had to
8 guess probably under 20.

9 A: Uh-huh. That could have been --

10 THE COURT: That's a yes? When you go uh-huh or huh-uh,
11 that court reporter has to interpret.

12 THE WITNESS: Oh.

13 THE COURT: And if you would be so kind as to answer the
14 yes or no --

15 THE WITNESS: Yes.

16 THE COURT: -- that would just make our record better.

17 THE WITNESS: Okay.

18 THE COURT: Thank you.

19 BY MR. CHISHOLM:

20 A: Did I specify female and male?

21 Q: No.

22 A: That could have included female. There are more injuries
23 in females with the hymen.

24 Q: I see. I gotcha. Now, on your CV, you list yourself and
25 I think you've testified you're a pediatric nurse

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 practitioner; is that right?

2 A: Yes.

3 Q: Okay. And how long have you been doing that?

4 A: I have been a pediatric nurse practitioner since I
5 graduated in May 2013.

6 Q: May of 2013? And the 700 exams you're talking about,
7 you've done that since 2013; is that right?

8 A: Since I started doing pediatric acute sexual assault,
9 which was October 2011. I started part-time and then went
10 full-time.

11 Q: Okay. And you said that around half of those exams were
12 for sexual abuse. What were the other ones for?

13 A: Physical abuse, exposure to domestic violence, substance
14 abuse, neglect.

15 Q: I gotcha. And on your CV it says one of your stated
16 goals is to coordinate and communicate with local child
17 protective services, law enforcement, and solicitors regarding
18 cases and regional consults; is that right?

19 A: Uh-huh.

20 Q: Okay.

21 THE COURT: That's a yes?

22 THE WITNESS: Yes. Sorry.

23 THE COURT: Thank you.

24 BY MR. CHISHOLM:

25 Q: And some of these cases such as this one, law enforcement

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 will direct cases to you if there's a claim of abuse; is that
2 right?

3 A: Correct.

4 Q: And basically, the point of that is you're looking to see
5 if there's any evidence of injury?

6 A: Correct.

7 Q: Okay. And in this -- when you do these examinations, is
8 law-enforcement present? Was Detective Santana present for
9 this exam; do you recall?

10 A: I believe he was present at the center. He wasn't
11 present during the actual exam.

12 Q: I gotcha. But he was there that day?

13 A: Yes. I believe I spoke to him right afterwards.

14 Q: Okay. And you did this exam on November 13th, 2013; is
15 that right?

16 A: The 14th.

17 Q: The 14th?

18 A: I believe. The 14th.

19 Q: Okay. And do you remember when this was reported?

20 A: My referral that I got from the computer system was
21 November 13th.

22 Q: The day before?

23 A: The day before.

24 Q: All right. And when you get these exams, like a law-
25 enforcement referral and they send someone to you to basically

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 look for evidence, who pays for this?

2 A: It completely varies on if the family has insurance. If
3 law-enforcement refers and the family has no insurance, then
4 sometimes SOVA will cover it. If the family has no insurance,
5 law enforcement doesn't refer, typically MUSC will waive a
6 provider's fee, but the family has to pay out-of-pocket for
7 any lab work or other assessments done.

8 Q: So the victim of -- the alleged victim of a sexual abuse
9 goes in for an exam and they have to pay for it?

10 A: Depending on -- there's a lot of different ways that it
11 can go, but sometimes yes.

12 Q: Okay. All right. And you said 740 exams, around half of
13 them were for sexual abuse; right?

14 A: Yes.

15 Q: Now, so we'll call it -- what? 350 for easy math?

16 A: Sure.

17 Q: Is that probably somewhere in the ballpark? Out of that
18 350, does that include solely allegations of intercourse or if
19 someone says basically there might have been something sexual
20 that happened to this person, I'd like you to check them out?
21 I mean from inappropriate touching on to intercourse, does it
22 cover everything or is it anything specific?

23 A: It covers everything.

24 Q: So if someone says I was -- a child was inappropriately
25 touched, like on their chest for example, would you get that

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 case as well?

2 A: I could.

3 Q: You could? And you can get a case where there's no
4 direct I guess skin-to-skin contact; is that right?

5 A: Yes.

6 Q: Okay. And some of these cases -- I mean something like
7 that you probably wouldn't expect to find physical injury
8 based on what's being reported; right?

9 A: Correct.

10 Q: And of the total number of examinations you've performed
11 in sexual abuse cases, which is 350 or whatever it is, is it
12 safe to say it's a much smaller percentage of that group that
13 actually involves allegations of intercourse or oral sex?

14 A: I wouldn't want to commit to that. Often -- often times,
15 they may be referred for touching outside of clothing and then
16 through treatment they may disclose more, which is why we kind
17 of do a full exam kind of regardless of what is in the
18 referral allegations. Sometimes a lot of what happened
19 doesn't come out until later.

20 Q: Well, of the 350, could you ballpark how many cases
21 involve an adult male having anal sex with a child?

22 A: I couldn't ballpark that.

23 Q: I mean is that most of your cases or is that relatively a
24 few? I mean --

25 A: I would think that that's probably maybe a quarter.

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

- 1 Q: Maybe a quarter?
- 2 A: Uh-huh.
- 3 Q: So were talking about a much smaller --
- 4 A: Uh-huh.
- 5 Q: -- section. And do you get cases where the allegation is
- 6 that there was an adult male that had anal sex with a child
- 7 that didn't involve oral sex?
- 8 A: It's possible. I mean we can get a referral of all three
- 9 typologies of sexual abuse, just one, or we also see threat of
- 10 harm sometimes.
- 11 Q: One or the other?
- 12 A: Yes.
- 13 Q: Sometimes?
- 14 A: Sometimes.
- 15 Q: So amongst this still smaller segment, allegations that
- 16 involve both would be smaller still? Is that safe to say?
- 17 A: Yes.
- 18 Q: Of the total exams you've done? And of this group, the
- 19 smaller subsection -- I'm sorry. I'm trying not to confuse
- 20 you.
- 21 A: That's fine.
- 22 Q: I'm trying to keep it straight myself, but of this group,
- 23 how many -- and I know this is a ballpark question, but what
- 24 percentage of that involves someone -- an alleged victim
- 25 saying that this happened to me once, twice, three times

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 versus them saying this happened to me hundreds of times?

2 A: Again, that's really difficult to ballpark. Mainly
3 because -- I mean I could take a rough estimate, but a lot of
4 times also with children, especially when you get younger into
5 the toddler ages who don't understand frequency and numbers,
6 they may say this happened 500 million times and don't
7 understand, so I'm not sure I would be able to make an
8 accurate guess on what has been reported to me based on their
9 developmental age. But I would -- I would guess that half of
10 the time the sexual abuse I see is a one occurrence and the
11 other half of the time it's chronic abuse.

12 Q: So of the 350, I think we landed on a quarter involved an
13 allegation of oral sex or anal sex; right?

14 A: I believe so.

15 Q: A smaller subsection of that would be both and then a
16 much smaller subsection of that would be an incident where the
17 allegation is that it happened multiple -- many times. Is
18 that fair?

19 A: Yeah. It's difficult for me to see it that way, but I
20 suppose that could be correct.

21 Q: I mean essentially what I'm getting at is the solicitor
22 just asked you how many of these exams you've done, 740, and
23 you found two incidents of injury or that you had a finding of
24 sexual abuse. You're not saying you found two incidents of
25 injury out of 740?

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 A: Right.

2 Q: In a situation as the case that was presented to you

3 here?

4 A: Correct.

5 Q: Right?

6 A: Uh-huh.

7 Q: I mean we're talking about a much smaller number; right?

8 A: Right.

9 Q: Is there a difference in a finding of sexual abuse based

10 on your physical examination and an injury or is that hand in

11 hand?

12 A: I don't think I understand the question.

13 Q: Is it your testimony that you've only seen an injury in a

14 case involving sexual abuse two times?

15 A: In males, yes.

16 Q: In a male child?

17 A: In a male child.

18 Q: Okay. And that's present injuries, past injuries or

19 anything else?

20 A: Present acute injuries in the emergency room.

21 Q: Okay. So what other kind of injuries are there? I'm

22 sorry. I didn't --

23 A: So I haven't seen other injuries in an outpatient

24 setting. The only injuries I've seen is in the emergency

25 room.

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 Q: In these cases, you mentioned the 72-hour kind of magic
2 window?

3 A: Uh-huh.

4 Q: If you get a case where someone is presenting with an
5 injury, would they -- probably at that point, would you kind
6 of step back and refer them to the hospital or how does that
7 work?

8 A: So when we're triaging the cases, if they're complaining
9 of blood loss, lots of injuries, and it's past the 72-hour
10 mark, we'll still send them to the ER, but if it's not
11 something that sounds emergent, we'll still see them
12 outpatient because if there are injuries sustained, if it's --
13 if it's to the point where they're losing a lot of blood, then
14 we'll refer them to the emergency room to get sutured or
15 stapled. If not, the treatment is just supportive.

16 Q: I gotcha. And do some cases of sexual abuse -- if there
17 are injuries present, do they kind of bypass you and go
18 straight to that -- go straight on that avenue to begin with?

19 A: To the emergency room?

20 Q: Uh-huh.

21 A: They do, but then we're called in.

22 Q: I gotcha.

23 A: So then we go and see them in the emergency room.

24 Q: I gotcha. And the group we were talking about, the 350
25 down to a quarter down -- it keeps shrinking --

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

- 1 A: Uh-huh.
- 2 Q: Within that percentage we have left, how many report
3 sexual abuse within the last 72 hours?
- 4 A: Not a significant number at all. Children do not often
5 disclose what's happened to them for a while. And if you
6 think about 36 hours, if it happens in the evening, you've got
7 twelve hours of sleeping, then school the next day. So
8 there's a lot lower yield because children just don't disclose
9 as fast as say an adult would.
- 10 Q: That makes sense. So do you recall the times you have
11 seen injuries in these cases?
- 12 A: Uh-huh.
- 13 Q: Do you remember if they were within that 72-hour window?
- 14 A: Yeah. The injuries I have seen were within the
15 timeframe.
- 16 Q: So that's more likely a time when you would expect to see
17 an injury?
- 18 A: Yes.
- 19 Q: Is that safe to say? Okay. And you met with **MI** prior to
20 performing the physical examination; right?
- 21 A: Kind of. I walked him back, get his height and weight,
22 talk to him.
- 23 Q: Sure. Well, I mean you met with him. You asked him some
24 questions I think you were telling the solicitor?
- 25 A: Right.

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 Q: Okay. And what the patients tell you, you memorialize
2 it? You've got notes you take; right?

3 A: Uh-huh.

4 Q: Okay. And stuff that's in your notes I would imagine
5 it's correct. You don't make things up and put them in there?

6 A: Correct..

7 Q: And what you put in there is what's been reported to you?

8 A: Correct.

9 Q: Okay. And do you review the notes and make sure they're
10 accurate before you do a final report on it?

11 A: Correct. Yes.

12 Q: Okay.

13 A: We also have the notes reviewed by a physician.

14 Q: I see. And from looking at your notes, it looks like M1
15 initially disclosed to you that he had had to touch Mr. Crews
16 on his privates for ten minutes; is that right?

17 A: If I can review the narrative?

18 Q: Absolutely.

19 A: Okay. So initially he referred that he had to touch
20 inside his clothes and then we continued and he reported he
21 made me touch his privates and then after the exam is when he
22 disclosed the about ten minutes.

23 Q: He touched his privates for about ten minutes?

24 A: Let me find the exact sentence. Patient asked how long
25 he touched his privates and he stated for about ten minutes.

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 Q: Okay. So during your conversation with him, I mean
2 pretty much the allegation evolved. Is that fair to say?

3 A: Yes.

4 Q: Okay. And you asked him -- I am assuming you asked him
5 if this happened once or more than once?

6 A: Yes.

7 Q: And what did he tell you?

8 A: I believe he said a couple.

9 Q: A couple times? So based on your information in this
10 case, what you had at the time you gave the examination, is
11 that pretty much what you were restricted to that this was a
12 case involving a couple of incidents?

13 A: When I started the evaluation, then I knew there was some
14 sexual abuse concerns. And then when I got the history and
15 then met with the patient, at the end of the exam was when I
16 was able to determine more specific referral concerns when he
17 disclosed them to me.

18 Q: Okay. And is that -- as far as the frequency of the
19 abuse, is that the only information you got is it happened a
20 couple times or did you have other information?

21 A: As far as the frequency, just a couple.

22 Q: Okay.

23 A: And then the duration for ten minutes.

24 Q: Okay.

25 A: I typically don't ask a ton of information. Just enough

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 to guide yes or no to a certain test.

2 Q: Okay. Did MI ever disclose to you that Mr. Crews had
3 performed oral sex on him? That Mr. Crews had performed on
4 MI

5 A: When I asked him -- let's see exactly. I asked him if
6 anyone had ever put anything into his mouth he didn't want to
7 and he said yes. He stated I don't want to tell. He then
8 stated he didn't want to tell because he was afraid and
9 embarrassed. I asked if he was afraid of his stepfather and
10 he said no. He sat in the chair.

11 Q: I think I might have -- I might have had that question
12 worded poorly.

13 A: Sorry.

14 Q: What I was asking is did MI ever report that he had to
15 put his penis in Mr. Crews' mouth, not that Mr. Crews had made
16 MI put his penis in Mr. Crews' mouth? Does that make sense?

17 A: He reported that -- okay. I want to make sure I'm
18 understanding.

19 Q: That Mr. Crews made him give him oral sex; right?

20 A: He reported that his stepfather put his penis in MI
21 mouth.

22 Q: Right.

23 A: Okay.

24 Q: But did you get any information that MI had put his penis
25 in Mr. Crews' mouth? Was that reported to you?

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 A: No.

2 Q: That wasn't? And did you get information that MI had put
3 his penis in Mr. Crews' anus I guess?

4 A: No.

5 Q: You didn't get that information?

6 A: No.

7 Q: Okay. And if that had been disclosed to you, I mean that
8 would be one of the things in your notes? I mean that's
9 pretty important; right?

10 A: Correct.

11 Q: Okay. And looking at your intake paperwork, can you tell
12 me the date that the abuse was last reported? What
13 information you had as the last date of the incident?

14 A: So the information that I received said the last time was
15 around the 31st of October.

16 Q: Okay. October 31st? And is it safe to say that your
17 findings may vary on these examinations based on the type and
18 the frequency of the alleged abuse?

19 A: Yes.

20 Q: Okay. I mean that can be pretty important I guess. And
21 the date of the last occurrence in relation to the date you do
22 your exam is an important thing; right?

23 A: Yes.

24 Q: Because it kind of dictates how you handle the case. I
25 think you testified that there is a 72-hour window where you

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 treat cases much differently than if it happened long before
2 then; right?

3 A: Right.

4 Q: So in a case like this where it's reported to you the
5 last incident was October 31st, you wouldn't be looking to send
6 him to the emergency room or wherever they go to get a more
7 thorough examination?

8 A: Correct. Well, it would be the same examination, just a
9 different protocol.

10 Q: I gotcha. And the reason you have a different protocol
11 within that 72-hour window is because essentially you have a
12 much better chance of finding not only physical injuries, but
13 you could find hairs, skin samples, I mean blood, semen, all
14 these kind of things that would be essentially evidence in a
15 case like this?

16 A: Right. Within the 36 hours, yes.

17 Q: Okay. And the 72 hours as well?

18 A: So the way the protocol is written is that 36 hours for
19 an evidence collection, 72 hours for any kind of possible
20 injury.

21 Q: Uh-huh.

22 A: After 36, we don't do an evidence box. So we don't swab
23 for anything after 36. But 72 we will still see them for
24 injuries in the ER. And then after 72 is all outpatient.

25 Q: I gotcha. And in this case it was not referred to the ER

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 because what was reported to you was that it happened
2 basically weeks previously; right?

3 A: Right.

4 Q: Okay. And when you get these cases, I mean a lot of this
5 stuff, the date of the last incident, what happened, that kind
6 of stuff, I mean you can only operate on the information
7 you're given; is that right?

8 A: Correct.

9 Q: I mean you're not a psychic. You can't pull out other
10 information. When you conducted your examination on MI and
11 when you looked in his private areas, when you looked, you
12 know, in his anus or however you want to phrase it, were you
13 looking for evidence of past injuries? Current injuries? I
14 mean bleeding, lesions or whatever the case may be? You're
15 looking at all that stuff; right?

16 A: Well, we look at everything, yes.

17 Q: And essentially at the end of this examination you didn't
18 find anything out of place that you would expect to see on a
19 normal nine-year-old boy?

20 A: Correct.

21 Q: Okay. So I mean we're not talking about rips and tears
22 or any of that other stuff; right?

23 A: Correct.

24 Q: And I think your ultimate impression -- and correct me if
25 I'm wrong. I think the solicitor asked you about this -- is

ASHLEIGH BENDA - CROSS BY MR. CHISHOLM

1 that in a case like this if you don't have any signs of
2 injury, that doesn't necessarily exclude the possibility of
3 sexual abuse. I mean it's possible it still happened?

4 A: Correct.

5 Q: But is it also fair to say that if you have a case like
6 this where you do your examination and there are no injuries
7 whatsoever that that would also be consistent with a child
8 that has never suffered from any type of sexual trauma? Is
9 that safe to say as well?

10 A: It could happen, but that would not -- that's not how I
11 came to a medical diagnosis of sexual abuse.

12 Q: No. What I'm asking you essentially is an absence of
13 injury doesn't mean that this didn't happen is kind of what
14 you're saying; right?

15 A: Right.

16 Q: But an absence of injury is also consistent with this not
17 happening; right?

18 A: If you are examining the physical examination alone, then
19 yes.

20 Q: Right. I mean that could be the other reason you don't
21 see any injuries is because there was no sexual trauma?

22 A: Correct.

23 Q: Okay.

24 MR. CHISHOLM: If I could have a moment? Thank you. I
25 have no further questions.

ASHLEIGH BENDA - REDIRECT BY MS. MIMS

1 THE COURT: Redirect?

2 MS. MIMS: Yes, ma'am.

3 REDIRECT EXAMINATION

4 BY MS. MIMS:

5 Q: Ms. Benda, again with the protocol for a child who is
6 prepubescent, what time frame are we talking about again for
7 seeing injury to a patient? What was that time frame again?

8 A: So the time of the last sexual encounter, 36 hours. Not
9 the time they reported it, but the actual timeframe from the
10 actual incident, 36 hours. If it's past 36 hours, an evidence
11 kit swabbing for DNA, semen, fingernails, none of that is
12 performed if it's after 36. And between 36 and 72; we will
13 see them in the emergency room to assess for any kind of
14 injury. After that 72-hour mark from the time of the last
15 assault, not the disclosure, they're just seen outpatient.

16 Q: Okay. And what date do you understand MI reported?

17 A: The 31st of October.

18 Q: Okay.

19 A: That's when the last occurrence happened. He reported
20 sometime in there.

21 Q: Okay. If you look at your report -- do you have your
22 report in front of you?

23 A: Yes.

24 Q: If you look in the first paragraph, about the third line
25 down, does it tell you about the time that the -- does it kind

ASHLEIGH BENDA - REDIRECT BY MS. MIMS

1 of give you a little bit of the background of when MI
2 disclosed or what date?
3 A: It looks around the 12th of November.
4 Q: Okay. And what date did you see MI again?
5 A: The 14th.
6 Q: Okay. Was that two days later?
7 A: Yes..
8 Q: Okay. And that is the date that he actually reported,
9 not that the abuse took place? The last --
10 A: Correct. Yes, from this information. Yeah.
11 Q: Okay. And again, you mentioned that although you have
12 seen several -- many hundreds of children and you mentioned
13 over 300 were sexual abuse patients; is that right?
14 A: Correct.
15 Q: Okay. But you still have seen very few cases --
16 MR. CHISHOLM: Objection. Leading.
17 MS. MIMS: I'm sorry. I'll rephrase.
18 BY MS. MIMS:
19 Q: Again, how many cases have you seen that showed sexual
20 abuse?
21 A: Very few in males..
22 Q: And was it acute when you saw that?
23 A: Yes.
24 Q: Defense counsel got into a little bit of MI talking --
25 MI demeanor and what he was saying when he came in with you.

ASHLEIGH BENDA - REDIRECT BY MS. MIMS

1 Was **MI** excited to be there with you that day?

2 A: No.

3 Q: Would you describe it as difficult to get information out
4 of him?

5 MR. CHISHOLM: Objection. Leading.

6 MS. MIMS: Okay. I'll rephrase, Your Honor.

7 BY MS. MIMS:

8 Q: Was it difficult to get information out of him?

9 A: Yes.

10 Q: Was his father present?

11 A: Not in the beginning.

12 Q: Okay. At some point, was his father able to help you?

13 A: He was. **MI** wasn't -- he would give me very short, kind
14 of brief answers, and sometimes children are afraid because
15 it's a medical office that they're going to get shots or owies
16 or any kind of pokes. Also, they're, you know, a little bit
17 undressed.

18 When I started talking to **MI** and he expressed he was
19 embarrassed and afraid, he just did not want to talk about
20 this, he mentioned something about his father and I asked him
21 if he wanted me to get his father and bring him into the room
22 and he did. So I went and got his father, Mr. Barwick.
23 Before going into the room, I kind of explained to him what
24 was going on. I didn't want the situation to get worse. He
25 told me he could handle it and kind of be there. He did come

ASHLEIGH BENDA - REDIRECT BY MS. MIMS

1 in and sit next to MI and comfort him, and MI opened up a
2 little bit more about what was going on.

3 Q: Okay.

4 MS. MIMS: I beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 MS. MIMS: Thank you. No further questions.

7 THE COURT: Recross?

8 MR. CHISHOLM: Nothing, Judge.

9 THE COURT: Is this witness free to leave?

10 MS. MIMS: Yes, ma'am.

11 THE COURT: Any objection?

12 MR. CHISHOLM: She is.

13 THE COURT: Thank you. You are free to go.

14 THE WITNESS: Thank you.

15 THE COURT: Please call your next witness.

16 MS. MIMS: The State calls Millicent Walker.

17 MR. CHISHOLM: Can we approach, Judge?

18 THE COURT: Sure.

19 (WHEREUPON, a bench conference was held in the presence
20 of the jury but out of the hearing of the jury off the
21 record.)

22 THE COURT: Ladies and gentlemen, I hope you are ready to
23 take your morning break. There is a matter that I must take
24 up outside your presence and it's a good time for you all to
25 have your morning break. We might have a little teeny one

1 when we're finished, but it's going to be little. Did you
2 have breakfast this morning? A little something something?
3 What was it? Doughnuts?

4 A JUROR: Nothing in there, no.

5 A JUROR: We had snacks.

6 THE COURT: You had snacks? Okay. I should have baked
7 last night. I'm so sorry.

8 All right. If you all would step to your jury room?
9 Leave your notepads in your seats. Please do not discuss this
10 matter or allow anyone to discuss it with you. We will be
11 with you just as soon as I can attend to our matter. Did you
12 just walk out of here with your notepads? Y'all leave your
13 notepads in your seats.

14 (WHEREUPON, the jury exited the courtroom at 10:51 a.m.)

15 THE COURT: All right.

16 MS. MIMS: The forensic interviewer just stepped out to
17 the restroom, Your Honor. I'm sorry.

18 THE COURT: That is absolutely fine. That's actually
19 excellent. That lets me put my hands on the statute.

20 MS. MIMS: May I run real quick too?

21 THE COURT: Absolutely. Absolutely, please.

22 (WHEREUPON, there was a pause in the proceedings.)

23 THE COURT: We have a juror that's having a little
24 trouble hearing. I'm just going to ask you to turn it all up.

25 THE CLERK: Is it the one that has that headphones?

1 (WHEREUPON, the jury note was marked as Court's Exhibit
2 Number 2.)

3 (WHEREUPON, there was a pause in the proceedings.)

4 MR. GIESE: Your Honor, you asked for the statute?

5 THE COURT: Thank you.

6 MR. GIESE: 17-23-175.

7 THE COURT: If you've got it?

8 MR. GIESE: This is our motion, but yes.

9 THE COURT: All right. Yeah. What is it then?

10 MR. GIESE: It's 17-23-175.

11 THE COURT: Thanks.

12 MR. GIESE: You're welcome.

13 (WHEREUPON, there was a pause in the proceedings.)

14 MS. MIMS: May we approach, Your Honor?

15 THE COURT: Yep.

16 (WHEREUPON, a bench conference was held off the record.)

17 MR. LOY: Whenever Her Honor is ready.

18 THE COURT: I'm ready.

19 MS. MIMS: Yes, ma'am.

20 (WHEREUPON, there was a pause in the proceedings.)

21 THE COURT: I'm ready when y'all are ready. Are you,
22 like, doing something?

23 MS. MIMS: I'm sorry. Yes, ma'am. I was just -- the
24 State at this point, Your Honor, would like to make a motion
25 for the out-of-court statement of a child pursuant to South

MILLICENT WALKER - PROFFERED DIRECT BY MS. MIMS

1 Carolina Code 17-23-175. We would like to introduce the
2 forensic interview of **Minor 1** that was conducted by Ms.
3 Millicent Walker on November the 14th of 2013. So at this
4 point we would like to proffer -- we would like to put up Ms.
5 Walker and introduce the -- and proffer of the tape so that
6 Your Honor can view that to see if it fits within the confines
7 of the statute.

8 THE COURT: And I will make that determination regarding
9 the particularized guarantees of trustworthiness.

10 MS. MIMS: Yes, ma'am.

11 THE COURT: Come on down.

12 MS. MIMS: Thank you. Ms. Walker?

13 THE CLERK: Please raise your right hand. State your
14 full name for the record.

15 THE WITNESS: Millicent Walker.

16 THE CLERK: Do you solemnly swear or affirm to tell the
17 truth, the whole truth, and nothing but the truth?

18 THE WITNESS: I do.

19 MILLICENT WALKER, being first
20 duly sworn, testified as follows:

21 PROFFERED DIRECT EXAMINATION

22 BY MS. MIMS:

23 Q: Good morning, Ms. Walker.

24 A: Good morning.

25 Q: Ms. Walker, where are you employed?

MILLCENT WALKER - PROFFERED DIRECT BY MS. MIMS

- 1 A: At Dorchester Children's Center.
- 2 Q: And what do you do at the Dorchester County Children's
- 3 Center?
- 4 A: I am the director of clinical services and I also do
- 5 forensic interviews and child and family therapy.
- 6 Q: Okay. And did you conduct a forensic interview on **Minor 1**
- 7 **██████████** .?
- 8 A: Yes, I did.
- 9 Q: Okay. And when did you conduct that interview?
- 10 A: November 14th, 2013.
- 11 Q: Where was it conducted?
- 12 A: At Dorchester Children's Center.
- 13 Q: Were those interviews recorded?
- 14 A: Yes.
- 15 Q: Was that interview recorded?
- 16 MS. MIMS: Your Honor, may I approach the witness?
- 17 THE COURT: Oh, absolutely.
- 18 BY MS. MIMS:
- 19 Q: I'd like to show you what's been marked as State's
- 20 Exhibit Number 4. Do you recognize that DVD?
- 21 A: Yes.
- 22 Q: And what is that?
- 23 A: It's the forensic interview of **MI**
- 24 Q: Okay. And have you had an opportunity to view or to
- 25 watch this video before today's proceedings?

MILLICENT WALKER - PROFFERED DIRECT BY MS. MIMS

1 A: Yes.

2 Q: And does this video accurately represent your forensic
3 interview with Minor 1 [REDACTED] --

4 A: Yes.

5 Q: -- that was conducted in 2013?

6 MS. MIMS: Your Honor, at this time, the State would ask
7 to publish the DVD.

8 THE COURT: All right.

9 (WHEREUPON, State's Exhibit Number 4, the forensic
10 interview on DVD, was played briefly for the Court at the
11 bench and then stopped. NOT TRANSCRIBED HEREIN.)

12 MR. LOY: Our speaker is distorted so I --

13 THE COURT: I can't understand what she's saying.

14 MR. LOY: Can we maybe turn it down a little or
15 something?

16 THE COURT: Yes.

17 MR. LOY: Because it's -- the sound --

18 THE COURT: I can't understand the words.

19 MR. LOY: I'm trying myself.

20 (WHEREUPON, State's Exhibit Number 4, the forensic
21 interview on DVD, was played for the Court at the bench
22 starting over at the beginning and then stopped at the
23 end. NOT TRANSCRIBED HEREIN.)

24 MS. MIMS: Thank you, Your Honor. At this point, we
25 would ask that the forensic interview be admitted as an out-

1 of-court statement under South Carolina Statute 17-23-175.

2 Your Honor, the interview given is in response to
3 questions that are conducted during an investigative
4 interview. It's an audio and visual statement that has been
5 preserved and was just observed by the Court, and the child
6 has testified and was subject to cross-examination, giving it
7 the required degree of trustworthiness under the statute.

8 THE COURT: Yes, sir?

9 MR. LOY: Thank you. Your Honor, first, I mean I would
10 note the lamentable quality of the -- of the recording. An
11 awful lot of it -- I don't think it's just my own hearing. I
12 think an awful lot of it is pretty garbled and indecipherable.
13 I guess an argument is the part that's indecipherable doesn't
14 hurt me other than if it's placing the -- something in context
15 or explaining something else away.

16 I do think the gist of the tape comes through. I mean I
17 think that what the child is attempting to relay or is
18 attempting to be elicited from the child, the majority of it
19 comes through and I won't just present to the Court I find it
20 completely gibberish, although again it's again lamentable
21 that the quality is as poor as this because, frankly, a lot of
22 it is missed and I think the Court -- you know -- and I'm not
23 inquiring of the Court, but I think the Court would probably
24 concede that a lot of it is missed even with us trying. And
25 the jury is going to miss a lot of it too.

1 Separate and apart from that, Your Honor, I don't move
2 for the exclusion of the tape in its entirety at this point.
3 I do move for the tape to be redacted in the following
4 particulars and if I could publish that for the Court?

5 THE COURT: Sure.

6 MR. LOY: And my numbers are not exact, but I tried to
7 keep up with the hour and minute count and I think they're
8 pretty close. The tape as I understand begins -- and I think
9 it's -- and this is hours, minutes, and seconds as they roll.

10 The tape begins at 17:36:35 and I think that it starts
11 off with the interviewer telling the child this is a safe
12 room, nothing bad happens, you can talk in here. The -- no
13 one is going to get to see the tape unless a judge says it, et
14 cetera, et cetera.

15 I think that this is inappropriate bolstering at this
16 point in time. It's laying the groundwork to argue, well, the
17 child knew this was a safe room. The child was told there was
18 nothing to hold back. And again, there's reasons that it's
19 used as an attempt to bolster the testimony or at least the
20 statements that come subsequent to it.

21 Further, it does a lot of stuff from 17:36 to -- excuse
22 me -- 17:36:35 where it begins to 17:44:30 that I think is
23 completely irrelevant and it does nothing except showcase the
24 child as cute, as winning. I don't know what effect it has on
25 a jury to sit there and listen to the child, who they've

1 already met, talk about what his favorite color is, what his
2 nickname is, how he does in school, what his favorite subject
3 is, what his cat's name is, his dog's name is, these things.

4 Again, I think it at least gives rise to the possibility
5 that some juror or more sit over there watching these things
6 and think, well, he's just a little angel. I know he's not
7 going to say anything that's not true..

8 This stuff is -- it's irrelevant and whether my
9 perception is correct or not that it would win the jurors
10 over, it certainly -- that is our position and I certainly
11 don't think it has anything to do with proving the State's
12 case what the child's colors are, et cetera. It's not -- it's
13 really not a lot different than just bringing in home movies
14 and showing here he is at Christmas unwrapping his presents
15 and the surprises that he got, et cetera, when he was a child
16 at the swimming pool or swinging on the swing.

17 I mean I'm sure they've got those winsome things, but
18 they have nothing to do with whether or not -- our position is
19 it has nothing to do with whether or not the child was abused.
20 They make no fact in dispute more or less likely by their
21 presentation to the jury. We think they're prejudicial and I
22 would ask to have those excluded.

23 Further, subsequent to that, there's some conversation
24 where the child himself comes out with -- or the interviewer
25 -- and I'm not sure which it is -- talks about, well,

1 sometimes a caseworker might have to see this, someone from
2 DSS might have to see this, police officers might get
3 involved, et cetera. If there is a Family Court action, it's
4 not been presented to the jury up to this point in time and if
5 DSS is involved and is doing some sort of investigation, it's
6 not -- all this stuff is extraneous to the statement that the
7 child gives and I think it gives an air of authenticity and
8 authority to the entire proceeding and underscores what's
9 going on, and I'd ask the Court to exclude those. Again, they
10 don't tend to make whether or not Mr. Crews abused the child
11 any more or less likely.

12 And after that, she goes back -- and again, it's not that
13 I think it's just winning, you know, and certainly he's a cute
14 boy. There's no doubt, but what his friends' names are and if
15 he likes to play baseball, he's a little innocent fellow, he
16 wouldn't know to lie, he plays with stuffed animals and those
17 are the games that he plays. He plays kick a pig, whatever
18 that is.

19 But again, and I see Your Honor laughs and the jury may
20 also because it's a cute thing, but it's not coming from him
21 and it has nothing to do with the facts that are in dispute
22 and I think it's unfair to allow those in.

23 And subsequent at that point in time, there are a whole
24 bunch of inaudible stuff, stuff that I can't make out,
25 followed with who takes care of the pets at mom and dad's

1 house, et cetera. Within this context, I think the inaudible
2 stuff is probably the same kind of thing that we're
3 addressing, that is not the abuse itself because we haven't
4 got to it.

5 At 17:44:30, the interviewer begins to ask the child
6 about naming body parts and I think that's probably relevant.
7 I mean although later it doesn't need a bunch of information
8 or effort to put it in context. The only body part he talks
9 about as far as the abuse goes is my private part or Jim's
10 private part. I don't mean -- the body part I think it
11 probably speaks for itself, but I think if the State wanted to
12 publish that where the child looks at the chart and says this
13 is what I call the private part, this is what I call it, et
14 cetera, I think that is probably relevant to the case itself,
15 at least to place the child's statement in context and I
16 wouldn't object to it.

17 But subsequent to that at 17:46:45, the interviewer
18 begins with, well, what parts are okay to touch on a boy, not
19 what happened but just in general. What parts are okay to
20 touch on a girl? And we've already got information that he
21 has a sister at home, et cetera.

22 And I don't think this is as critical as I don't think
23 it's critical to the State's case. I think it's prejudicial
24 to us, bootstrapping back to the arguments I've made,
25 particularly when it comes behind it with, well, who gives you

1 hugs and who gives you kisses and who gives you tickles. And
2 it's my uncle and my aunt and we do these things, and again
3 it's just showcasing this child and attempting to win -- or at
4 least whether it's attempting or not, potentially just winning
5 this child -- the jurors over with the child's personality,
6 demeanor, and presentation, and he gets hugs and kisses from
7 his aunt and uncle, et cetera. I don't think it proves the
8 case. I think it's irrelevant. It muddies the water.

9 And from 17:46 to 17:48:58, that's what's going on. That
10 is he hugs me, my mom kisses me. Is it okay on the mouth to
11 give you a kiss? If I want my mom to, that sort of thing.
12 And it's just -- again I think it's just attempting to bolster
13 the child although it's not bolstering in the extent that it's
14 coming under him saying he's telling the truth, but certainly
15 jurors can watch that and say he sounds like he's telling the
16 truth there and he's cute as a little button, et cetera. I
17 don't believe a child like that would say anything that wasn't
18 correct.

19 At 17:48:58, he begins to talk about Jim and he says now
20 stepdad touched me. There's some stuff about he's going to
21 jail, et cetera. I think that's prejudicial, but I also think
22 the jury's already aware that incarceration is a threat to Mr.
23 Crews at this point. And so I don't necessarily object to
24 that.

25 And then at approximately 18:11:30, we get into a whole

1 bunch of stuff and I understand why the interviewer does it
2 and he's doing a comprehensive interview, not merely
3 addressing the circumstances of the accusation, but we get
4 into what's your favorite food? Have you ever been hungry
5 when there wasn't food there, when the lights didn't work, the
6 water didn't work? Who takes you to the doctor? Who takes
7 you to the dentist? What happens if you break the rules and
8 get punished? Suppose Minor 2 gets punished at home, how is
9 that? Who cooks at your dad's house? Has there been food,
10 lights, water? How do you get punished there? What are the
11 sanctions for Minor 2

12 And again, they've had -- the child has been on the
13 stand. He's testified to his home life and his mom has
14 testified also briefly at least as to what was going on there.
15 Not all of this stuff was covered. It wasn't presented at
16 that point in time. It's not relevant now how Minor 2 gets
17 punished, but to the extent that it paints a picture of the
18 family life at home, what the dynamics are within the family
19 itself, the jury listens to that and thinks this is a
20 different type of family than the -- than would be dishonest
21 or deceitful or plant the seed for this prosecution in an
22 effort -- whether it's to gain leverage in a domestic dispute
23 or anything else, which is apparently going on, the divorce
24 proceeding and stuff is still on hold. Again, it has nothing
25 to do with the case itself.

1 And further, whether or not there's ever been food at
2 dad's house, whether or not the lights have ever been cut off
3 at dad's house --

4 THE COURT: Let me -- I gotcha. Before we get so far
5 afield, one of the -- have you all opened the door on the
6 cross-examination of MI where there was some comparison
7 between the two houses? Do you have a better time at your
8 dad's than you do at your mom's? Did you get punished with
9 your mom's? I mean I'm not so sure that door hasn't been
10 opened on cross-examination because certainly Mr. Chisholm
11 went into that. He went into on cross -- and I thought he was
12 eliciting the testimony for a potential argument that things
13 were not as rosy at mom's house as at dad's house and
14 therefore this was some sort of manipulation to stay at dad's
15 house. I'm not so sure that the door hasn't been opened
16 because there clearly was examination with regards to that.

17 MR. LOY: Which in all candor is an argument I had not
18 considered and I think you're correct. At that point, I think
19 the comparison -- and I'm not abandoning the rest of my
20 argument to this point, but the comparison between the homes
21 and did you get fed at mom's house, did you -- I'll withdraw
22 that.

23 THE COURT: Throw a bomb?

24 MR. LOY: No, no. I wouldn't look at it that way. I
25 would with chagrin step away from that request to redact.

1 THE COURT: Let me ask you this question. Have -- are
2 you -- you might -- you're not to the end yet?

3 MR. LOY: No, Your Honor.

4 THE COURT: Okay.

5 MR. LOY: There's also this stuff about have you heard
6 grown-ups yell and curse at each other?

7 THE COURT: Yeah.

8 MR. LOY: Have you seen alcohol and drugs? My aunt gets
9 drunk. All of which I think has absolutely nothing to do with
10 the case. I think it just confuses the matter and I would --
11 well, at 18:22 where it tells -- excuse me. The interviewer
12 or the police officer says I told police the same thing. I
13 think that that's prejudicial. No police officer has
14 testified to that effect as far as I understand.

15 And then also all the stuff where the kid is just --
16 excuse me. The child is alone and in the room drawing. Okay?
17 It can't be probative of anything, but jurors again I think
18 could sit there and watch and I mean just think he's -- he's
19 just cute. I mean they'll just buy it. You know, I think it
20 just underscores his testimony.

21 If I could have just one more moment?

22 18:31:48. Has Jim done it to anyone else? This is very
23 important I believe, Your Honor, because what happens is
24 immediately prior to that the -- she has gone out of the -- by
25 my notes, the interviewer has gone out of the room.

1 As will probably come out either in direct or cross, she
2 has conferred with law enforcement because that's what they
3 do. They go out and they confer with law enforcement. This
4 testimony is forthcoming. And then she has come back in and
5 specifically asked has he done it to anyone else, and I think
6 the implication is that he's at least being investigated for
7 it or they have suspicions of it and they want to know about
8 anything else that he's got along those lines. So I certainly
9 think that that -- that question should go out.

10 And then the last stuff about is there someone else you
11 can talk to. Suppose it were to happen again at some point in
12 the future, could you tell your guidance counselor or your
13 preacher, that sort of thing. I would ask the Court to cut
14 that off on the same similar arguments.

15 THE COURT: Okay. Let me take you back to the -- to the
16 beginning. Let me just tell you this last -- the last section
17 about whether or not -- well, the very ending part, can you
18 talk to somebody, is there somebody that you can talk to, I
19 don't think that's important. I don't think it's important
20 for our purposes and so I will ask you to speak to that. The
21 end, is there somebody you can talk to.

22 And so that ending part I'll ask Ms. Mims -- because --
23 and I'll hear -- I'll hear from you, but I tend to agree with
24 you. But I want to hear from the State about that.

25 Let me -- now, we've got to go back to the beginning.

1 Here's the difficult part of that beginning because normally
2 the explanation about who can potentially see this tape, you
3 know, there are law enforcement officers, maybe DSS, folks who
4 are helping your family, and this tape won't be seen unless
5 the judge says it can be seen by others, and it's something
6 along those lines.

7 Here's what happens and normally it would be an easier
8 decision than it is because at that point he flops over, boom.
9 And he looks up and he says you mean there's a microphone, and
10 then going into that colloquy, and he's over. Bam, over. He
11 flops over on the chair.

12 And so my -- I guess my question is is if we begin this
13 interview with the jury and this child is flopped over on the
14 chair, how is the jury supposed to assess why is he flopped
15 over on the chair? What's going on with him? Because they've
16 got to assess and the instruction talks about the fact that
17 when you have a child witness, you, the jury, have to assess
18 what's going on with this child when he's answering questions.

19 If he had not had that reaction, I would agree with you
20 easily, but my concern is starting this with him flopped over
21 because he is flopped over when she begins to ask him
22 questions and then, as time goes by, he eases back up.

23 So normally I would agree with you. So I'll ask you if
24 you can address that. That's my concern about that. Because
25 the jury has got to assess what is going on with him.

1 With regards to the questions about, you know, what's
2 your favorite color, I think that again they've got to have a
3 baseline and, you know, does it need to be quite so much?
4 They need something. They need some baseline I think. I
5 think that they need to be able to assess how does this child
6 answer questions that are obviously not emotionally charged
7 and I think they are important.

8 And then I'm trying -- what was the next -- what was the
9 next after this?

10 MR. LOY: The next was body parts and there were some
11 things that I agreed on the parts and that is the chart. I
12 call these nipples and I call this private part and stuff, and
13 I think in a case such as this it's going to just generally be
14 admissible and relevant.

15 But then we get into is it parts that are okay to touch
16 and who gives you hugs, who gives you kisses, who gives you
17 tickles. Is it okay if they kiss you on the mouth? And his
18 responses, you know, well, my -- you heard them, but it's my
19 family members do and it's okay and they can kiss me on the
20 mouth if I want them to and things like that.

21 Again, I think at this point we've established some
22 degree of perspective on the child's age and maturity at that
23 point, if that's part of what the Court is addressing with the
24 earlier questions. That is your favorite color, how do you do
25 in school, responsiveness, et cetera. I mean this stuff here

1 is just -- I mean who do you giggle and play and who in your
2 family, you know, and also it tends to just underscore or
3 bolster a familial relationship separate and apart from Mr.
4 Crews.

5 THE COURT: Let me ask you this question. I hear that
6 portion of it, but the other portion is that the jury has got
7 to assess this child's ability to know what is and what is not
8 appropriate conduct, and I think that's where all of these
9 questions go. And -- and as part of the interview, the
10 business about tickling, sometimes it is part of the forensic
11 interview because I think that -- well, I think it goes to
12 what is and what is not appropriate conduct between people.
13 And so I'm probably inclined to leave that one alone and it's
14 fairly limited.

15 MR. LOY: My concern with that and the distinction would
16 be that, A, there's no allegation of tickling or that there's
17 been an abuse and the child was tickled and fondled in the
18 process by subterfuge or anything like that. And secondly, I
19 don't think the jury does have to know if this child is able
20 to determine what's appropriate or inappropriate, although
21 clearly fellatio and anal intercourse and the things that he
22 describes -- whether he found them appropriate, inappropriate,
23 et cetera, is irrelevant because society and the legislature
24 has obviously found them inappropriate and so ruled.

25 THE COURT: Well, it is though because it is his ability

1 to articulate what is and what is not.

2 Uh-oh. It's a note. No. Can we go to lunch? The jury
3 wants to go to lunch.

4 MR. LOY: I think it's his -- and --

5 THE COURT: And I think we're going to --

6 MR. LOY: It's his ability to articulate what happened. .

7 THE COURT: Well, we'll take a break here and let me go
8 ahead and I am going to go ahead and send them to lunch
9 because we've got a little bit more to go.

10 One thing about that that may make it more relevant --
11 and I'll just give you this so you can think about it as we
12 pick it back up -- I thought I heard him say where are places
13 that are not appropriate for you to touch and he said mouth,
14 and that for him ties this into the allegations in this case.
15 And I thought that may or may not make those questions more
16 relevant because I remember him saying what are places where
17 it's not okay to be touched and he said mouth. I thought I
18 heard him say mouth.

19 MR. LOY: That doesn't provoke a new argument for me on
20 that point. My position has been stated --

21 THE COURT: I understand.

22 MR. LOY: -- as it relates to the hugs, kisses, and
23 tickles.

24 THE COURT: Well, but again, that's -- there's -- the
25 jury has got to be able to make a judgment -- make a relative

1 judgment. So let me think about that one and then we'll pick
2 it back up. Let me -- yeah, I'm going to let the jury go to
3 lunch. I'm going to let them go out..

4 (WHEREUPON, the jury entered the courtroom at 12:42 p.m.)

5 THE COURT: Ladies and gentlemen, as you come in, I am
6 going to send you to lunch; so I hate for everybody to get
7 snuggled in. But y'all come on in because I do need to give
8 you your lunch instructions.

9 Because obviously it's taking me a little bit longer to
10 do what I must do, I will send you to lunch. We do have a
11 little bit more that needs -- that we will do.

12 And I'm going to ask you all to be back -- it's a quarter
13 until one. I'm going to ask you all to be back at 2:30. I'm
14 sure we will have finished by then. That gives us a little
15 bit of time to get some lunch as well. And there's a
16 previously scheduled matter at two that won't take me but just
17 probably five minutes to do.

18 So I'm going to ask you all to be back here -- let's --
19 just so these folks -- everyone can get something to eat,
20 let's say at 2:30. Please do not discuss this matter or allow
21 anyone to discuss it with you. Don't read anything, listen to
22 anything about this matter as you must receive all of the
23 information from which you will make up your minds here in
24 court while court is in session.

25 We might be taking a little bit longer than we need, but

1 I do want to be ready to go when you all get back at 2:30,
2 please. Thank you. Have a good lunch. Leave your notebooks,
3 of course, in your seats.

4 (WHEREUPON, the jury exited the courtroom at 12:44 p.m.)

5 (WHEREUPON, the jury note was marked as Court's Exhibit
6 Number 3.)

7 THE COURT: And you know what? Let's -- you have stated
8 your objections?

9 MR. LOY: I have.

10 THE COURT: They may not have any problems with them. So
11 let me hear and actually stop and hush and hear from the
12 State. Because they might be -- they might be in agreement
13 with you and here we would be working and struggling and we
14 could be eating.

15 MR. LOY: Unlikely they're in agreement with me, Your
16 Honor.

17 MS. MIMS: Yeah. Unlikely, Your Honor.

18 THE COURT: I breathe, therefore I hope.

19 MS. MIMS: That's good.

20 THE COURT: Go right ahead.

21 MS. MIMS: Very briefly, Your Honor, you know, as a whole
22 I would just at first put out there that this is an
23 investigative interview and that if we start piecemealing this
24 thing, it does sort of lose its effectiveness. We're looking
25 for child abuse. She's looking to see what the basis of this

1 child's understanding is regarding what's right and what's
2 wrong and if we -- as I said, if we start piecemealing this,
3 I'm afraid were losing the context of what's going on.

4 Furthermore, a lot of the answers that have been coming
5 from the child in the forensic interview were actually
6 questions that defense counsel has asked, particularly
7 regarding DSS that came out in a question that was asked by
8 Mr. Chisholm on cross-examination. So I feel like they -- as
9 you've mentioned, they have definitely opened the door to
10 this.

11 Regarding him, you know, just -- I defer to Your Honor
12 because I think you made most of the arguments that we were
13 going to make and probably more eloquently, but I think that
14 this has to be taken in context overall and you have to have
15 some clear understanding of what exactly the child does
16 understand. And I think defense counsel has definitely hit on
17 the fact or definitely asked questions to the child on cross-
18 examination regarding, you know, how is it at dad's house?
19 Isn't it so great? And then, you know, we do have the child
20 answering, well, there's drinking at dad's house and there's
21 an aunt who gets, you know, drunk.

22 And so I think they've opened the door to that and I
23 think that gets to come in. I think now they've made an issue
24 of how it is at dad's house and I would argue that I think
25 that is also something that they will try to hit on in the end

1 that, hey, MI wanted to go live with dad because everything
2 was so jolly and great there because that's what they've
3 alluded to in cross-examination. And if that's what they've
4 opened the door to, then I think that it should be -- that we
5 should now be allowed to hear what the child saw at dad's
6 house.

7 THE COURT: All right. Move on for me then and to the
8 other instances of potentially illegal conduct towards a
9 child. Have you seen them fighting, you know, and those kinds
10 of things. Not -- I'm not talking about the water and the
11 food; I'm talking about the have you seen adults fighting,
12 have you seen them hit a child, and the answer to all of that
13 is no.

14 MS. MIMS: Yes, ma'am. And I think also that -- again,
15 it goes along with what the child's understanding of right and
16 wrong is. What is good conduct? What is bad conduct? I
17 think that that had to be established before we could go
18 forward knowing the child's intellectual capabilities or what
19 he understands from society as being right and wrong.

20 I think it's very important that the jury understands
21 where this child is and what was going on in his brain and his
22 understanding at the time.

23 THE COURT: Okay. And how about the -- the duration of
24 the coloring at the end? I mean it goes on forever.

25 MS. MIMS: I don't have a problem with us not watching

1 him color for a long time.

2 THE COURT: I mean, you know -- okay. And -- okay. So
3 here's where I am. The beginning part of it where she's
4 explaining to him about potentially who could see the tape
5 where he flops over has to come in. It just -- you have to
6 understand this child's emotional reaction to the -- to the
7 investigative part and that's -- I think that's a substantial
8 portion of it.

9 But I think before we do all that though, I think I need
10 to address the statute first before we start piecing it apart
11 or taking it apart.

12 Obviously, I would make a finding that the statement is
13 given in response to questioning conducted during an
14 investigative interview of the child. There is an audio and
15 visual recording of the statement that is preserved on film or
16 other electronic means because I think it's on a disk.

17 I was very concerned when we began because of the quality
18 of the -- of the audio and the -- let me say that the audio
19 that was played on the court's -- courthouse's equipment is I
20 think substantially better. I think you can hear it
21 adequately. I'll say adequately. And the more you listen to
22 it, the better you get at it. I do think it substantially
23 better than when it was played on Mr. Giese's computer and
24 that's usually backwards. I mean it's usually the other --
25 it's usually not a problem.

1 MR. GIESE: This is Ms. Mims' computer, Your Honor.

2 THE COURT: I'm sorry. Ms. Mims'. And it seems to me
3 that, Ms. Mims, you probably want to have a discussion with
4 your employer about the quality of it.

5 MS. MIMS: I need a new computer. Yes, ma'am.

6 THE COURT: With your computer?

7 MS. MIMS: Yes, ma'am.

8 THE COURT: So what's interesting about that is that a
9 couple weeks ago I was actually in Charleston and whatever
10 their -- whatever their devices -- their recording devices
11 are, y'all should borrow them because they really are a lot
12 better. That was remarkably clear.

13 Having said that, in comparison to so many other cases
14 that are tried, I don't find the quality of this audio to be
15 such that it's unfair that it be played, and I have done that.
16 I have actually made that ruling before where the quality was
17 so bad and I wasn't going to have -- I wasn't going to subject
18 the jury to trying to piece the words together.

19 In a perfect world, would it be better? I think it would
20 be better, but I certainly think it's adequate and I certainly
21 have heard many recordings that are on a par with this one.

22 Obviously, this child has testified, has been subject to
23 cross-examination, and that I do believe that given the
24 totality of the circumstances surrounding the making of this
25 statement that this statement does have particularized

1 guarantees of trustworthiness. The statement was not elicited
2 by leading questions, although she does use reflective
3 listening..

4 I learned about that in judge school and what reflective
5 listening is is when she is repeating what he is saying and
6 the reason that -- as I understand it, reflective listening is
7 used is to be sure you have it right. So -- and you are
8 hearing the child correctly and giving the child an
9 opportunity to correct if she is hearing incorrectly.

10 Obviously, she's given her training. She's been trained
11 in conducting interviews. The statement does present a
12 detailed account of the alleged offense or offenses.

13 Whether the statement has internal coherence. And number
14 four is a little intriguing and I think it's probably like the
15 *Sullivan v. New York Times*. You'd know it if you saw it. In
16 other words, if there is a statement where the child is -- and
17 I can imagine that you would hear it if there was a lack of
18 internal coherence. Certainly this young man, this child, is
19 certainly coherent and the statement within the bounds of the
20 statement is coherent and there is internal coherence.

21 And therefore, I think it meets the statutory provisions.
22 Now, I want to go back and deal with some of the portions that
23 I think ought to be removed.

24 I don't believe that the first part of it ought to be
25 removed because I think this jury has got to be able to assess

1 why he is lying down when she begins to question him regarding
2 these events. I do believe that the jury needs the -- a
3 baseline because the -- this child exhibits a lot of behavior,
4 a lot of -- just a lot of behavior throughout this interview.
5 He goes from lying down to sitting up to fingers in the mouth
6 to biting his fingernails to the way that he sits in the
7 chair.

8 It's varied; so it's having a lot of emotional response.
9 So I think it's particularly important that the jury have the
10 ability to observe him respond to inane questions. I think
11 they have to be able to assess this child and any child. I
12 think they need to have a variety of questions answered, some
13 that are more emotional and the others are not.

14 So the first objection I would overrule. The second one
15 I would overrule. Tell me what -- take me to the next one --
16 the next area. That was the map of the private parts. I'm
17 going to allow him to talk about the private parts and what's
18 appropriate touching and not appropriate touching.

19 MR. LOY: The appropriate touching, et cetera?

20 THE COURT: Yes.

21 MR. LOY: Well, at -- it looks like shortly after 18:10,
22 they take a break and this probably will be elicited testimony
23 that the interviewer leaves the room, comes back in, and asks
24 has Jim done it to anyone else, and I think particularly
25 coupled --

1 THE COURT: Okay. Hold on. Why does that have any
2 relevance at all? Let me just -- let me just cut to the
3 chase. At this moment, I'm not going to allow that in -- that
4 question and that answer. Now, that may be different as we go
5 forward depending on the issue that we talked about with **Minor 2**
6 who may be answered. I may -- that may change.

7 MS. MIMS: I have no problem with taking that out.

8 THE COURT: Okay.

9 MS. MIMS: I don't think it benefits the State at all.
10 So I have no problem because his answer is no.

11 THE COURT: Well --

12 MS. MIMS: So --

13 THE COURT: Aside from all that, I don't think it's
14 relevant.

15 MS. MIMS: Yes, ma'am. I understand.

16 THE COURT: I don't want -- I don't want to rule on the
17 basis of the question.

18 MS. MIMS: I understand, but no, I don't have any problem
19 with that.

20 THE COURT: I really don't. Now, it may become relevant.
21 It could actually become relevant, but at this moment it is
22 not. What is next?

23 MR. LOY: Next, Your Honor, is -- and I don't know that I
24 specifically addressed this and I meant to.

25 THE COURT: I'm sorry.

1 MR. LOY: But it's -- no, you didn't stop me.

2 THE COURT: I interrupted you like I just did.

3 MR. LOY: I'm more concerned with the reflective versus
4 leading, but no, Your Honor, this is --

5 THE COURT: It's reflective. Go ahead.

6 MR. LOY: I would concede there's a great deal of
7 reflectivity within the -- it's not -- I would also contend
8 it's not devoid of leading, but not so tainted by that as to
9 be --

10 THE COURT: There is some leading. I agree with that.
11 There is some.

12 MR. LOY: 18:17:38, you heard grown-ups yell and argue?
13 Yes. Stepdad Jim gets mad and says da, da, da, and to me it's
14 inaudible. I think Your Honor was able to hear more than I
15 was able to hear.

16 THE COURT: Let me stop you there. Let me stop right
17 there because -- let me hear from you because I could -- I
18 agree. That was -- I found myself there to. Did Jim -- and
19 that was it. You may have heard more than I did. All I heard
20 have you heard people --

21 MR. LOY: My concern --

22 THE COURT: Jim -- and that was it.

23 MR. LOY: My concern is what they hear.

24 THE COURT: I know. I agree, but I found it to be
25 inaudible and because it started with "and Jim" --

1 MR. LOY: I got to stepdad gets mad and says. I mean I
2 wrote it down. I can't -- but I -- and I was -- I think
3 that's accurate.

4 MS. MIMS: I'm just looking at my notes very quickly.

5 THE COURT: Sure.

6 MR. LOY: And that's 18:17:38.

7 MS. MIMS: I don't know if it was very audible for me
8 either because I didn't even write it down in my notes.

9 THE COURT: And I -- it's too -- that would be a -- it's
10 just too low. It needs to come out.

11 MS. MIMS: Yes, ma'am.

12 THE COURT: Because if we can't hear what it is, I don't
13 want the jury speculating about what that argument was. So
14 that little piece of it has to come out, but --

15 MS. MIMS: Yes, ma'am.

16 THE COURT: Are you going to be the geek?

17 MR. GIESE: Yes, ma'am.

18 THE COURT: Okay. So that one's got to come out.

19 MR. GIESE: Yes, ma'am.

20 THE COURT: And Jim's -- whatever it is. Have you heard
21 people arguing and Jim says whatever. And I think at dad's
22 house, the answer was no. No yelling at dad's? Okay. So
23 that portion will just -- we'll just excise that.

24 Now, what's the next portion?

25 MR. LOY: And I'm sorry. 18:31:48. I think the "Jim

1 says" came up twice because I've got -- no, that was has Jim
2 done it to anyone else. 18:31 --

3 THE COURT: Yeah, that's out.

4 MR. LOY: We've already ruled on that?

5 THE COURT: Yes.

6 MR. LOY: Then lastly is the can you -- I believe lastly
7 is are there other -- if it happened in the future, can you --

8 THE COURT: That's out. Now, the portion -- let me say
9 the portion about the drinking --

10 MR. LOY: The drunk aunt.

11 THE COURT: That my aunt drinks and carries on, I think
12 that's in because -- because of the door having been opened
13 about the different households.

14 MR. LOY: And I mean I --

15 THE COURT: Yeah.

16 MR. LOY: I've conceded this point.

17 MS. MIMS: And, Your Honor, with the Jim asking him if he
18 liked it, that's in because that comes right after the Jim
19 yelling at 18:38.

20 THE COURT: That's different. Yeah, that's different. I
21 didn't hear -- I didn't hear an objection to that.

22 MS. MIMS: So that's okay. Thank you.

23 MR. LOY: Your whole -- yes -- I mean I'm having -- it's
24 unfortunate, but it's not -- thank you, Your Honor. And I'm
25 also like the solicitor willing to defer to Your Honor, you

1 know, as she so magnanimously did earlier. I'm willing to
2 defer to Your Honor on that. It's not just her. I join in
3 that. Thank you, Your Honor.

4 THE COURT: Gosh, I'm glad I know you all so well.

5 MR. GIESE: Just so I'm clear since I'll be running --

6 THE COURT: All right. Don't ask -- you can't go back
7 and ask me because I have no idea.

8 MR. GIESE: One small question.

9 THE COURT: Okay.

10 MR. GIESE: When -- because you don't want the drawing
11 when he's -- the whole portion where he -- Millicent leaves --
12 or Ms. Walker leaves the room and he's drawing --

13 THE COURT: Yeah. I don't know how you are going to do
14 that.

15 MR. GIESE: But do you want me to just stop it, like,
16 right when --

17 THE COURT: Just say, you know, I'm going to step out and
18 then step in.

19 MR. GIESE: So when she says that, stop it, and then
20 we'll go forward?

21 THE COURT: Yeah. And let me just tell you I don't --
22 and I probably ought to put this -- and I may -- I may from
23 henceforth, particularly when it goes on that long -- and let
24 me share with you all why. There is a whole body that is
25 involved in this field called art therapy and children will

1 disclose by drawing what they will not disclose with words.

2 And I actually got a little concerned about that as I'm
3 watching him draw because I noticed that I started playing art
4 therapist as I'm watching him and wondering if he was trying
5 to communicate something by those drawings. So I think that's
6 a -- I think that's a very valid objection, really even on a
7 different ground because I started -- well, I wonder what that
8 means? Well, I wonder what that means? Because I had a
9 roommate in college that's a great art therapist. That's why.
10 That's probably unique to me, but I actually did do that and I
11 don't want to encourage the jury to speculate. So that would
12 be an additional grounds that it ought to be out.

13 MR. GIESE: Yes, ma'am.

14 MR. LOY: Thank you, Your Honor.

15 THE COURT: Yes? Yes? Everybody hungry?

16 MR. GIESE: Yes, ma'am.

17 THE COURT: You're skinny. You don't need to eat anyway.
18 All right. Yeah? Done, done, and done?

19 MR. GIESE: Yes, ma'am.

20 THE COURT: Okay. Do I have emails? Because -- here,
21 let me tell you why. I'm a little bit concerned about the
22 jury. I don't want to send them back out because, you know, I
23 don't mind them getting mad at me. I just don't want them
24 getting mad at y'all. I'm concerned with y'all.

25 So anything -- do we have any other stuff like that?

1 We're not going to do the *Jackson v. Denno*. We're done with
2 the tape. Anything else you need to bring up like that?

3 MS. MIMS: I'll just put Ms. Walker up. I'll do what I
4 did before. I'll introduce the video and then I guess Mr. Loy
5 will ask some questions based on what I asked in direct and I
6 guess that will be it.

7 MR. LOY: I think I pretty much got wider latitude than
8 what you asked on direct.

9 MS. MIMS: Like, a little.

10 THE COURT: Okay. She'll ask two questions that are
11 definitely answered. All right. And let me just ask you -- I
12 want you to approach so I can ask you this.

13 (WHEREUPON, a bench conference was held off the record.)

14 THE COURT: Okay. So is that all right to do that?

15 MR. CHISHOLM: It is, Judge.

16 THE COURT: All right. Wonderful. Give me just a second
17 because I've got to get to another screen. There we go. All
18 right. Here we go. All right. Would you place Mr. Crews
19 under oath for me, please, ma'am?

20 THE CLERK: Please raise your right hand. State your
21 full name for the record.

22 THE DEFENDANT: James Archie Crews IV.

23 THE CLERK: Do you solemnly swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth?

25 THE DEFENDANT: I do.

1 THE CLERK: Thank you.

2 THE COURT: Mr. Crews, it is my understanding that at
3 this point the State has this last witness and the witness --
4 live witness will actually introduce the forensic interview
5 and the tape will then be played.

6 You've heard the testimony in camera, meaning outside the
7 presence of the jury, and you've seen the tape. And then the
8 State will rest and then the time will come when it will be
9 your opportunity to present a defense and your opportunity to
10 present witnesses, to include yourself.

11 I would like to talk to you at this point -- although it
12 is a little bit early, but I would like to talk to you at this
13 juncture about your right to testify. Do you understand that
14 I wish to do that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And do you have any objection or concern
17 about my doing that now?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Okay. And the reason I really want to do
20 that, quite frankly, Mr. Crews, is because we're about to take
21 our lunch break and that gives you an opportunity to speak
22 with counsel again after this instruction over the lunch
23 break, which is why I would like to do that. So that's the
24 reason that I would like to do that now.

25 I'm going to be going over with you certain of your

1 rights and it's really important that, if you don't understand
2 what I'm discussing with you, that you let me know and because
3 I want you to obviously know and understand exactly what I'm
4 talking to you about. Okay?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And I want you also to keep in mind that
7 there are many ways to explain any one thing. So if you don't
8 understand what I'm talking about, I want you to let me know
9 that. Okay?

10 THE DEFENDANT: Okay.

11 THE COURT: Very well. Now, what I want to talk to you
12 about is that you have the right certainly to testify and you
13 have the right to claim the protections given to you by the
14 Fifth Amendment of the Constitution of the United States and
15 also of the State of South Carolina.

16 The Fifth Amendment to the Constitution of the United
17 States says that no person shall be compelled in any criminal
18 case to be a witness against himself. This means that you
19 cannot be required to testify in this case. Obviously, you
20 have the right to testify on your own behalf. However, no one
21 can make you testify. This is a personal right and no one can
22 waive this right, your Fifth Amendment right, except for you.

23 If you decide to testify, you will be subject to the same
24 rules that govern other witnesses and you may be examined and
25 cross-examined on any relevant issue in this case.

1 In addition, if you have any convictions involving
2 dishonesty or false statement or for crimes punishable by
3 imprisonment for more than a year and this Court determines
4 that the probative value of admitting this evidence outweighs
5 its prejudicial effect to you, the solicitor will be able to
6 introduce your record to attack your credibility.

7 I would just pause at this point and ask if Mr. Crews has
8 a record that would come -- that you think would be relevant
9 under this particular provision.

10 MS. MIMS: I think he has enough of a record that I would
11 try to make a motion to bring it in.

12 THE COURT: Okay.

13 MS. MIMS: Yes, ma'am.

14 THE COURT: All right. Well, without more, we can go
15 into that more if you all need to, but because I think that's
16 information that you all may not want to have. Y'all, let's
17 do that.

18 MR. LOY: May we inquire as to what that record is that
19 would be attempted to be introduced at this stage?

20 THE COURT: Yes. Let's do that. Yeah. Tell me what
21 that would be.

22 MS. MIMS: Your Honor, hold on and I'll grab his folder,
23 but I do remember that he has pled guilty to an assault charge
24 that was reduced from a criminal sexual conduct with a minor.

25 THE COURT: I would not allow that. I would not allow

1 you to cross-examine on that. So that's very easy.

2 MS. MIMS: That's fine.

3 THE COURT: Anything else?

4 MS. MIMS: I beg the Court's indulgence.

5 THE COURT: Okay.

6 MS. MIMS: He has a possession with intent to distribute
7 -- is it cocaine? Within proximity of a school, but I don't
8 know if it was -- I don't have a disposition on it.

9 MR. LOY: It was dismissed at the preliminary hearing is
10 my understanding, Your Honor.

11 THE COURT: Okay.

12 MS. MIMS: I'd have to check on that, Your Honor.

13 THE COURT: I understand. All right. That would be the
14 only two?

15 MS. MIMS: Yes, ma'am.

16 THE COURT: Those would not come in for your
17 informational purposes. So you would not be asked with
18 regards to -- you would not be impeached with regards to the
19 criminal prosecutions. In other words, I would not let them
20 ask you that. And even if they were able to ask you, it would
21 only go to the issue of believability, not propensity. And --
22 but for -- as you consider this, consider that I would not
23 allow the State to cross-examine you with regards to either of
24 those two charges or those two crimes. Okay?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Okay. Now, counsel, do y'all have any
2 questions about that? Have I been clear about that? I
3 wouldn't want -- I just wouldn't let them do it. Yes?

4 MR. LOY: Thank you. No, Your Honor.

5 THE COURT: Got it. Okay. Because I want to be sure you
6 all are clear as you have your discussions with him.

7 Now -- and, Mr. Crews, if you decide to testify, the
8 decision to testify must be freely, voluntarily, and
9 intelligently made with knowledge of the protections given to
10 you by the Fifth Amendment and the consequences of your
11 decision to testify. If you decide not to testify, I will
12 instruct the jurors that they cannot give the fact that you
13 did not testify any consideration whatsoever and that there is
14 to be absolutely no prejudice to you because you did not
15 testify. It is left entirely up to you to decide whether or
16 not you testify.

17 Obviously, I want you to have an additional opportunity
18 to talk to your attorneys and I'm sure you've been talking to
19 the people whose judgment you value and I would urge you to do
20 that. Friends, family, whoever that might be. But, Mr.
21 Crews, please understand that the final decision to testify or
22 not testify will be left entirely up to you. You will make
23 that decision. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any questions about that?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Is there anything you want me to go into any
3 more?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: I would also explain to you that there --
6 that in the instruction to the jury that I give when folks
7 decide they don't want to testify, I tell them that the jury
8 cannot give any consideration whatsoever to the fact that you
9 decided not to testify. In fact, I tell the jury they can't
10 talk about it in the jury room. It's not a topic to be
11 discussed. And the reason is is the burden is and remains on
12 the State to prove guilt, not the defendant. So that is an
13 instruction that I would give -- that I give the jury when
14 people decide not to testify.

15 With all that information, Mr. Crews, obviously I want
16 you to continue to consider and continue to think and most
17 importantly perhaps consider to continue to have conversations
18 with your lawyers.

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Knowing and understanding that you have
21 rights under the Fifth Amendment and ultimately the decision
22 to testify or not to testify is yours. Okay?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Very well. Anything further along those
25 lines?

1 MR. CHISHOLM: No, Judge.
2 THE COURT: Very well. From the State?
3 MS. MIMS: No, ma'am.
4 THE COURT: Very well. Very well. Thank you for letting
5 me do that.
6 MR. LOY: Thank you, Your Honor.
7 THE COURT: All right. Y'all go get some lunch.
8 MS. MIMS: 2:30, Your Honor?
9 THE COURT: 2:30.
10 (WHEREUPON, there was a break in the proceedings from
11 1:17 p.m. until 2:47 p.m.)
12 THE COURT: Okay. Now.
13 THE BAILIFF: Now?
14 THE COURT: Yes, now.
15 (WHEREUPON, the jury entered the courtroom at 2:48 p.m.)
16 THE COURT: Ladies and gentlemen, at this time, we will
17 continue with the State's case. Please call your next
18 witness.
19 MS. MIMS: Thank you, Your Honor. The State calls
20 Millicent Walker.
21 THE CLERK: Please raise your right hand and state your
22 full name for the record.
23 THE WITNESS: Millicent Walker.
24 THE CLERK: Do you solemnly swear or affirm to tell the
25 truth, the whole truth, and nothing but the truth?

MILLCENT WALKER - DIRECT BY MS. MIMS

1 THE WITNESS: I do.

2 THE CLERK: Thank you. You can have a seat.

3 MILLCENT WALKER, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. MIMS:

7 Q: Good afternoon, Ms. Walker.

8 A: Hi.

9 Q: Where are you employed?

10 A: At Dorchester Children's Center.

11 Q: And how long have you worked there?

12 A: Since January of 2007.

13 Q: And what do you do at the Dorchester Children's Center?

14 A: I am the director of clinical services and I also do
15 forensic interviews and child and family therapy.

16 Q: Okay. Did you conduct a forensic interview on Travis
17 Barwick?

18 A: Yes.

19 Q: When did you conduct that interview?

20 A: November 14th, 2013.

21 Q: And where was it conducted?

22 A: At Dorchester Children's Center.

23 Q: Okay. Where is that located?

24 A: It is located in downtown Summerville at 303 E.
25 Richardson Avenue.

MILLICENT WALKER - DIRECT BY MS. MIMS

1 Q: Okay. Were those interviews -- the interview that you
2 conducted with **MI** was that interview recorded?

3 A: Yes, it was.

4 MS. MIMS: May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY MS. MIMS:

7 Q: I want to show you what's been marked as State's Exhibit
8 Number 4. Do you recognize that DVD?

9 A: Yes.

10 Q: Okay. And what is it a DVD of?

11 A: It's the DVD of Travis's forensic interview.

12 Q: Okay. Does this DVD look the way it did when it left
13 your possession?

14 A: Yes.

15 Q: And have you had an opportunity to review the interview
16 on this DVD?

17 A: Yes.

18 Q: And does this video accurately represent the interview
19 that you had with **Minor 1**?

20 A: Yes.

21 Q: Okay.

22 MS. MIMS: Your Honor, at this time, I'd ask you to admit
23 State's Exhibit Number 4 into evidence and to publish to the
24 jury.

25 THE COURT: Very well. Yes?

MILLCENT WALKER - DIRECT BY MS. MIMS

1 MR. LOY: Your Honor, I have no objection to it being
2 introduced pursuant to the hearings that we've had earlier
3 today.

4 THE COURT: Very well.

5 MS. MIMS: Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit Number 4, the DVD of the
7 forensic interview of MI [REDACTED], was admitted into
8 evidence and then played in open court. NOT TRANSCRIBED
9 HEREIN.)

10 MS. MIMS: Just one more question, Your Honor?

11 THE COURT: Yes..

12 BY MS. MIMS:

13 Q: I don't recall if I asked, Ms. Walker, when again -- can
14 you give me the date again that that interview took place?

15 A: November 14th, 2013.

16 Q: Okay.

17 MS. MIMS: I have no further questions, Your Honor.

18 THE COURT: Cross-examination?

19 MR. LOY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. LOY:

22 Q: Good afternoon, Ms. Walker.

23 A: Good afternoon.

24 Q: You -- the agency that you work for, it's not a law
25 enforcement agency; is that right?

MILLICENT WALKER - CROSS BY MR. LOY

1 A: That's correct. It is not.

2 Q: But y'all do work closely with law enforcement at your
3 agency, do you not?

4 A: We work with investigative agencies, like law
5 enforcement, the Department of Social Services.

6 Q: Well, for now, my question is about law enforcement and
7 y'all do work closely with law enforcement, do you not?

8 A: Yes.

9 Q: Okay. The interview room that we just saw, that set-up,
10 is it equipped with the technology which would allow someone
11 somewhere else in the building to monitor those conversations?
12 Can I sit somewhere else in the building and watch what's
13 going on in that interview room?

14 A: Yes.

15 Q: Okay. And is that via -- by way of a -- one of those
16 one-way mirrors or is there actually a camera where someone
17 else can watch that feed in live time as it's being recorded?

18 A: So there are cameras and microphones in the room and it's
19 -- I guess it's through, like, closed-circuit television into
20 an observation room where it would allow somebody else to
21 observe the forensic interview.

22 Q: Okay. Closed-circuit TV? That is being able to see
23 roughly what it is we saw or exactly what we saw except in
24 real time?

25 A: Yes.

MILLCENT WALKER - CROSS BY MR. LOY

- 1 Q: Okay. And if you recall, in this case was there someone
2 else who was there and was watching the video as it was being
3 recorded?
- 4 A: Detective Santana of the Summerville Police Department.
- 5 Q: And that would be the gentleman seated on the table here
6 -- at the table here to our left?
- 7 A: Yes.
- 8 Q: Okay. And was there anyone else do you know?
- 9 A: There may have been someone from our agency. I'm not
10 sure.
- 11 Q: But as best you -- but you are sure that Detective
12 Santana was there?
- 13 A: Yes.
- 14 Q: And although you're not a police officer, you state you
15 work with law enforcement. Did you talk with Detective
16 Santana prior to commencing your interview?
- 17 A: I'm sure that I did.
- 18 Q: Typically, that would be something that you do?
- 19 A: Yes. Typically, it would be.
- 20 Q: Okay. And as your interview progressed, I noticed there
21 was a time you got up and left the room at least once and then
22 came back and recommenced the interview. Do you recall that
23 also?
- 24 A: Yes.
- 25 Q: Okay. And when you got up -- and typically when you get

MILLICENT WALKER - CROSS BY MR. LOY

1 up and leave the room during the course of these
2 investigations, it's not just to go get a drink of water or
3 anything. You go and talk to the people who are watching; is
4 that right?

5 A: Yes.

6 Q: And it's basically -- is there something else I'm leaving
7 out? Is there something that needs to be explored further?
8 Do you have suggestions for me before I end this interview?
9 Is that right?

10 A: That's what you're asking if I asked the people in the
11 other room?

12 Q: Yes.

13 A: If there's anything else that I'm missing or need to
14 explore further?

15 Q: Yes.

16 A: Yes.

17 Q: Okay. And in this case, the person that you're asking is
18 law enforcement?

19 A: Yes. Law enforcement or someone from our agency.

20 Q: Okay. And then after taking that break, I noticed that
21 you come back in and you sit down and you asked MI does your
22 mom still have that same house or own that same house or
23 something to that effect. Do you recall that also?

24 A: Yes. I believe I asked him if mom still lived in the
25 same house.

MILLICENT WALKER - CROSS BY MR. LOY

1 Q: Okay. And then you immediately followed that up with how
2 about this couch in the living room or can we explore that --
3 the information about the couch a little more. Do you recall
4 that in the -- on the tape also?

5 A: Yes.

6 Q: Okay. And what color is the couch that we're talking
7 about; is that right?

8 A: Yes.

9 Q: And you're asking specifically about a couch that earlier
10 had been referenced in connection with some sort of sexual
11 activity; is that right?

12 A: Yes.

13 Q: And this -- I'm sorry. Prior to taking the break, you
14 try to -- just as a courtesy to the child as well as a matter
15 of completion and professionalism, you try to touch on all the
16 bases that you think are most important and get all the
17 information that you need and then as a last sort of closure
18 go out and ask is there anything else before we close the door
19 on this or close this interview; is that right?

20 A: Well, it's also a time -- as a forensic interviewer,
21 we're in that room sometimes for a long time and then stepping
22 out and making sure that for me in following our protocol and
23 the questions that we would ask the child that I have all of
24 the things covered or, when there is law enforcement or an
25 investigative agency observing, finding out if there's

MILLICENT WALKER - CROSS BY MR. LOY

1 anything that's missing, that we need to touch base to prevent
2 the child from having to talk again about it.

3 Q: In this case, when you come back in and you're talking
4 about the couch, that was at the request of Detective Santana,
5 was it not?

6 A: I wouldn't recall specifically.

7 Q: It's not something that you touched on initially?

8 A: Right.

9 Q: It's not something that typically you would have asked if
10 they say the couch in the living room?

11 A: I might typically ask that if it was in reference to
12 something that someone was investigating or an allegation of
13 abuse possibly, yes.

14 Q: Okay. So regardless, once you took your break, you went
15 out, you spoke with Detective Santana, you immediately came
16 back in, and either of your own accord or pursuant to his
17 request if he thought it would advance his investigation, you
18 attempted to further identify the specific piece of furniture
19 where this may have occurred; is that right?

20 A: Yes.

21 Q: Now, what Detective Santana did or didn't do with the
22 information subsequent to that, you have no idea; is that
23 correct?

24 A: That's correct.

25 Q: Okay.

1 MR. LOY: Thank you. I don't have any more questions.

2 THE COURT: Redirect?

3 MS. MIMS: No, ma'am.

4 THE COURT: Is this witness free to leave?

5 MS. MIMS: Yes, ma'am.

6 THE COURT: Any objection?

7 MR. LOY: None, Your Honor.

8 THE COURT: Thank you. You're free to go. All right.

9 Our next witness, please.

10 MS. MIMS: Your Honor, at this time, the State would
11 rest.

12 THE COURT: All right. Ladies and gentlemen, you have
13 now heard the witnesses and received the evidence from the
14 State in the State's case in chief. That signifies to me
15 there are matters that I must take up outside your presence.

16 Please step to your jury room. Do not discuss this
17 matter. Do not allow anyone to discuss it with you. Please
18 leave your notepads in your seat and we'll be with you
19 shortly.

20 (WHEREUPON, the jury exited the courtroom at 3:53 p.m.)

21 THE COURT: Motions?

22 MR. CHISHOLM: Thank you, Judge. At this time, we'd make
23 a motion for a directed verdict, understanding that you're
24 looking more at the existence of evidence than the weight and
25 understanding the statute which says testimony in this kind of

1 case need not be corroborated. I think it's implied in the
2 statute that credible testimony need not be corroborated.

3 Our position would be that the testimony that's been
4 presented, up to now anyway, has been pretty much all over the
5 place and would be unbelievable to the point that it wouldn't
6 be sufficient for the jury to reach a decision.

7 THE COURT: Thank you so much. And I would respectfully
8 deny your motion and you're exactly correct. It is not for me
9 to weigh the evidence, but to establish whether there is
10 evidence on each and every element of the offense from which a
11 jury could render a verdict of guilt in this matter and I do
12 find there is such evidence and would respectfully deny your
13 motion, noting your exception thereto.

14 Will there be witnesses called by the defense?

15 MR. CHISHOLM: There will not, Judge.

16 THE COURT: Very well.

17 MR. LOY: And, Your Honor, just for our record, I have at
18 the table and real-time discussed that with Mr. Crews. It is
19 still his desire at this moment not to testify.

20 THE COURT: And I would with your permission just ask him
21 to tell me that since we chatted before our lunch break. Is
22 that correct, Mr. Crews?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Very well. Thank you. All right. What I
25 would propose to do then is that I would propose to have the

1 jury come back out. Call the defense. At that point, you
2 would rest, and then I'll explain to the jury that we will
3 argue and charge in the morning. Yes, yes? And then that
4 would give us time to go over the charge. Any objection to
5 proceeding in that manner?

6 MS. MIMS: No, ma'am.

7 THE COURT: No?

8 MR. CHISHOLM: Nothing further, Judge.

9 THE COURT: Very well. All right. Thank you. Let me
10 have the jury, please. You all will open. Well, the rule
11 hasn't changed yet; right? Correct?

12 MR. LOY: No.

13 THE COURT: It's still proposed. It's still a proposed
14 change. Just checking.

15 MS. MIMS: I'll check on that tonight, Your Honor.

16 THE COURT: Huh?

17 MS. MIMS: I'll check on that tonight.

18 THE COURT: I gotcha. I just like closing arguments.
19 Yeah.

20 (WHEREUPON, the jury entered the courtroom and 3:59 p.m.)

21 THE COURT: All right. Ladies and gentlemen, I will now
22 turn to the defendant. Yes, sir?

23 MR. CHISHOLM: At this time, the defense rests, Judge.

24 THE COURT: Thank you very much. Ladies and gentlemen,
25 you have now heard the witnesses and received the evidence

1 which you will in this case.

2 What remains for us are the arguments of counsel and my
3 charge or instruction on the law. There's no -- there's a
4 classic rule and that rule is don't start the argument and the
5 charge after four o'clock. We're about after four o'clock; so
6 we're going to do that in the morning.

7 Ladies and gentlemen, when you return in the morning at
8 9:30, here's what will occur. You will hear the arguments of
9 counsel, you will then hear my charge or instruction on the
10 law, they'll be a very short break, and then I'm going to
11 explain to you when we reach that point and then you're going
12 to receive this case for your deliberations.

13 Now, obviously the curiosity is going to be heightened.
14 Please remember that you've not heard the arguments of
15 counsel, you have not heard my instruction on the law, and you
16 are not prepared to deliberate. So please keep in mind my
17 instruction not to discuss this matter.

18 Do not discuss this matter. Do not allow anyone to
19 discuss it with you, and do not do any sort of an
20 investigation. Don't go to the Internet. Don't blog. Don't
21 tweet. Don't do the linked thing. Don't go to Facebook.
22 Don't go to MySpace or your space or anybody else's space.
23 You must receive all the information from which you will make
24 up your mind here in court while court is in session. Please
25 keep that in mind.

1 Ladies and gentlemen, I believe that 9:30 is a good
2 starting time for us in the morning. Have a very pleasant
3 evening. Leave your notepads in your seats. We will secure
4 them over the evening and then we will place them in your
5 seats in the morning. Have a great evening. Remember to
6 leave your cell phones home tomorrow. Thank you so much.

7 (WHEREUPON, the jury exited the courtroom at 4:02 p.m.)

8 THE COURT: All right. You had -- now that you've
9 rested, you renew the same motion; correct?

10 MR. CHISHOLM: Yes, Judge.

11 THE COURT: Very well. Obviously, I would respectfully
12 deny that motion for the reasons stated earlier, noting your
13 exception thereto.

14 Counsel, I would so much appreciate an informal charge
15 conference, if you would be so kind. I am -- if you'll give
16 -- I know y'all need to take a comfort break and I need about
17 two minutes to make sure that I have my copies and then we'll
18 go over it very briefly and then you'll have it over the
19 evening to view in the comfort of your own homes.

20 And I just simply ask if there is a charge that you have
21 a burning desire to add, bring it with you. Don't bring it --
22 don't bring the problem to me. Bring the solution so we can
23 look at it together.

24 But if you all would just give me that time, go ahead and
25 take your break, and then I'll see you in a couple minutes.

1 Thank you.

2 MR. LOY: And, Your Honor, if now is an appropriate time,
3 I would also renew my earlier motion for a mistrial prior to
4 the commencement of the case.

5 THE COURT: Wonderful. Thank you for doing that and, on
6 the same basis as before, I would respectfully deny your
7 motion.

8 MR. LOY: Thank you, Your Honor.

9 THE COURT: All right.

10 (WHEREUPON, the proceedings adjourned for the day at 4:04
11 p.m.)

12

13 --- END DAYS 1 THROUGH 3 OF 4 OF REQUESTED TRANSCRIPT ---

14

15 (CONTINUED IN A FURTHER TRANSCRIPT)

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1 State of South Carolina)
2) Certificate
3 County of Florence)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 333 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Dorchester County, South Carolina, on the
13 14th, 16th, and 17th days of March, 2016.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16
17 s/ Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 May 22, 2016
22
23
24
25

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF DORCHESTER 2013GS-18-1838
3
4
5

6 STATE OF SOUTH)
CAROLINA)
7 PLAINTIFF,) TRANSCRIPT OF RECORD
8 VS.) DAY 4 OF 4
9) MARCH 18, 2016
10 JAMES CREWS, IV) ST. GEORGE, SC
11 DEFENDANT.)
12

13 B E F O R E:

14 HONORABLE DIANE GOODSTEIN, JUDGE, AND A
15 JURY.

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

17 SHEILA MIMS, ESQUIRE
18 PHIL GIESE, ESQUIRE
Attorneys for the State

19 ASH CHISOLM, ESQUIRE
20 JOHN LOY, ESQUIRE
Attorneys for the Defendant

21
22 Ruth C. Weese,
23 Official Court Reporter
24 Ninth Judicial Circuit
25

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1 (The following proceedings were held
2 outside the presence of the jury at 10:10 a.m with
3 the Defendant present.)

4 THE COURT: All right. Ruth, thank you
5 so much. Appreciate that very much and coming so
6 promptly. Anything from the State before we bring
7 the jury out?

8 MS. MIMS: Regarding the charges, Your
9 Honor, I just wanted to make sure that you would be
10 okay including the 16-3-657 language regarding the
11 child's testimony need not be corroborated.

12 THE COURT: That's already admitted.

13 MR. CHISOLM: I do have an objection on
14 that.

15 THE COURT: I know. You know, what
16 concerns me, it is my understanding that in order
17 to preserve it, and I want to be sure you do that,
18 it has to -- the objection should come after the
19 charge.

20 MR. CHISOLM: That's fine, Judge.

21 THE COURT: Just since we are talking
22 about it is my understanding that you do object to
23 my charging that.

24 MR. CHISOLM: Yes, ma'am.

25 MS. MIMS: And if I may just make a

1 very quick motion, Your Honor. I don't like to
2 object in counsel's closing so before we get
3 started, I just wanted to clarify it's my
4 understanding that defense will want to mention DNA
5 and that no DNA I guess samples were taken or
6 anything like that. We didn't put up any police
7 officers, defense counsel didn't put up any police
8 officers. There are no facts in evidence regarding
9 DNA or any forensic evidence or that they even
10 didn't collect because I guess you have got Tara
11 who will say she didn't remember them coming to the
12 house to take any sheets or anything like that.
13 But that's essentially it. So I would ask that
14 they be barred from mentioning DNA or any lack of I
15 guess forensic evidence.

16 THE COURT: Okay. I will not do that.
17 I'm not going to limit them in that regard.
18 Anything else?

19 MS. MIMS: No ma'am.

20 MR. CHISOLM: No, Judge.

21 THE COURT: Very well. And y'all are
22 going to open on the law and then --

23 MS. MIMS: If it's okay with you I will
24 open on the law and then go straight into closing.
25 Is that okay?

1 THE COURT: You mean go straight into
2 closing?

3 MS. MIMS: Into my closing.

4 MR. LOY: We offered no defense.

5 MS. MIMS: They have last argument.

6 THE COURT: That's right, I'm sorry.
7 My brain just missed a beat.

8 MS. MIMS: I wish it was that way too,
9 Your Honor. If that's okay with you. I have some
10 law on the computer that we are going to flash up
11 and then I will just move straight into close.

12 THE COURT: That's fine.

13 MS. MIMS: Thank you. Got it.

14 THE COURT: Jury, please.

15 (Whereupon the jury entered the
16 courtroom at 10:20 a.m.)

17 THE COURT: All right. Good morning,
18 ladies and gentlemen. I would share with you that
19 our delay this morning, my court reporter Ms. Smith
20 suffered some health issues and is attending to
21 those this morning so we will keep her in our
22 thoughts and wish her well. And Ruth has got the
23 call and it was like came to our rescue like the
24 Calvary and so we are grateful to her for coming
25 and finishing our trial.

1 As we talked on Monday we are a court
2 of record and we can't hold court if we don't have
3 a court reporter so I am grateful to her without
4 any hesitation, I'm not quite sure how she got here
5 as quickly as she did. I hope we don't have to
6 pitch in for a ticket. I am grateful to her being
7 here with us this morning.

8 Ladies and gentlemen, what is going to
9 be occurring this morning is we are going to have
10 the closing arguments of counsel and then I'm going
11 to instruct you on the law applicable to this case.
12 There will be a very short break which I am going
13 to explain to you and then you are going to receive
14 the case for your deliberations. You will first
15 hear from the State, the State closing's argument,
16 and then you will hear from counsel for Mr. Crews
17 in their closing argument. Once the closing
18 arguments are finished I will then explain the law
19 to you applicable to this matter.

20 Ladies and gentlemen, at this time I'm
21 going to ask that you please draw close as we
22 listen to the closing arguments. Ms. Mims.

23 MS. MIMS: Thank you, Your Honor, may
24 it please the Court.

25 THE COURT: Yes, ma'am.

1 MS. MIMS: Good morning, ladies and
2 gentlemen. This has been a long case and there's
3 been a lot of moving back and forth, so on behalf
4 of the State of South Carolina, on behalf of the
5 victims and their family, on behalf of the defense
6 and Mr. Crews, I want to thank you for being here
7 because let me tell you without you the wheels of
8 justice would not turn. You are a vital part of
9 what we do every single day so thank you so much.
10 I know that we probably wrenched you away from some
11 very important stuff so thank you for being here.

12 As Your Honor has explained to you it
13 is now time to do the closing arguments. The State
14 goes first. And when I am finished then the
15 defense comes up here and they talk to you about
16 their case. And then Her Honor is going to
17 instruct you on the law. But before we get to
18 that, I very briefly want to go over just some of
19 the law that pertains to our facts. And then I
20 will start the closing argument.

21 Mr. Crews has been charged with
22 criminal sexual conduct with a minor in the first
23 degree. Now, the State must prove to you that he
24 engaged in a sexual battery upon a victim who was
25 less than 11 years of age. Those are the two

1 elements the State must meet to meet our burden of
2 proof in this case. Now, the second prong is
3 really easy. Less than eleven years of age. MI
4 testified to you that he's 11 years old
5 now. He reported the incident when he was nine so
6 that's a prong that I don't think anybody disputes.
7 He was less than 11 of years of age. But let's
8 talk about the sexual battery. Sexual battery is
9 sexual intercourse, cunnilingus, which is oral sex
10 upon a woman, fellatio, which is oral sex upon a
11 man, or anal intercourse or any intrusion, however
12 slight, of any part of a person's body or of any
13 object into the genital or anal opening of another
14 person's body.

15 Now, I would argue in this case we had
16 sexual battery under both of those prongs. We have
17 the fellatio. MI testified that he was made to
18 perform oral sex on Mr. Crews. We have the anal
19 intercourse. MI testified that Mr. Crews would put
20 his penis in his butt and we also have the any
21 intrusion, however slight, through the anal
22 intercourse.

23 Now, you are the judges of the facts in
24 this case. And you get to determine what type of
25 credibility you are going to give to the witnesses

1 who are on this witness stand. And here's some of
2 the factors that you can consider. The demeanor of
3 the witness, how did the witness act when they were
4 on the witness stand. Were they forthright, were
5 they kind of hesitant to tell you what was going
6 on. Were they consistent. Have they told the same
7 story maybe not only to you, but in the past. The
8 opportunity to know the facts they are testifying
9 to. Do they have firsthand experience, do they
10 know something about the case, and bias means that
11 they prefer one thing over another. You can look
12 at this yourself. You get to determine if you
13 think that witness was biased. And corroboration.
14 I think we have corroboration in this case, too. I
15 will talk about that later. But corroboration is
16 when one witness tells you something and another
17 witness says something similar. Are they
18 corroborating each other.

19 Now, this is very important when you
20 are dealing with these cases. The testimony of the
21 victim need not be corroborated in prosecutions
22 under South Carolina code of law 16-3-652 through
23 16-3-658. And criminal sexual conduct with a minor
24 in the first degree falls within this statute. If
25 you believe the testimony that you heard of MI

1 Barwick, under our law that is enough to find James
2 Crews guilty of criminal sexual conduct with a
3 minor in the first degree.

4 You're going to hear a lot about
5 reasonable doubt. Reasonable doubt is the burden
6 of proof that the State must make in order for you
7 to find the Defendant guilty. It is not proof
8 beyond all doubt because there are very few things
9 that we know for absolute certainty. As jurors
10 sitting in this courtroom you weren't present when
11 these incidents are alleged to have taken place.
12 So you don't know beyond all doubt. But if you are
13 firmly convinced that what you were told on this
14 witness stand is true, then you must return a
15 verdict of guilty.

16 You are going to hear a lot more about
17 that as we go on. But if you are firmly convinced
18 you must return a verdict of guilty.

19 Thank you again. And I am thanking you
20 this time because I know that this subject matter
21 you had to hear this week was brutal. It was
22 tough. You had a really hard case that you had to
23 listen to. In our society we protect kids. We try
24 to look after kids. We don't like to hear about
25 any child being injured and we certainly don't like

1 to hear about any child being sexually assaulted.
2 It's a very difficult subject matter. That was MI
3 [REDACTED] reality. That's what he dealt with every
4 time his mom walked out the door. MI didn't have a
5 respite in his home. He didn't have a place to go
6 just to truly relax because when his mom left the
7 home it became a nightmare with his stepfather.
8 It's his reality.

9 And, ladies and gentlemen, I want you
10 to also understand at the beginning how
11 embarrassing this case is or how embarrassing this
12 subject matter is for a child that is 11 years old
13 to tell and how embarrassing it is for a child who
14 is even nine years old. It's hard. It's hard to
15 get up here and talk about the subject matter that
16 he had to talk about. It's very embarrassing. And
17 I want you also to remember I am saying at the
18 beginning and I'm saying it at the end, this boy
19 has told the same story every single time he's been
20 asked. He has told the same story.

21 And I'm going to go over it with you
22 again. MI told you that when my mom would run
23 errands or when she would go to the store or when
24 she would go to work and I had to stay with my
25 stepfather, he would say go to Minor 2 room. Go to

1 Minor 2 room. And he would go to Minor 2 room and he
2 would take off his clothes and he would get on his
3 knees and his stepfather would tell him to put your
4 month on my penis. And he did. And James Crews
5 would say move your head back and forth and he did.
6 And when he was satisfied with that he would say
7 okay, get on the bed with your back down and your
8 butt up. And he would take something from a tube
9 and he would put it in his hands and he would put
10 it on his penis and then he would put his penis
11 into MI butt. And he would go back and forth
12 until he was satisfied and then he would lay on his
13 back and white stuff would come out on his stomach.
14 Wipe it off, put on his clothes and go about his
15 day.

16 That is MI story. Those are his
17 words. And that is the story he told to everybody
18 who asked him. He told that story to mom, he told
19 that story to Nurse Benda, he told that story to
20 the forensic interviewer and he told you today.
21 That's the crux of this whole case. The rest
22 around it is fluff. How many times and where and
23 didn't say this before, he didn't say that after.
24 Let me tell you something, ladies and gentlemen,
25 they can't get up here and tell you he ever said

1 anything different. He never, ever, ever strayed
2 from his story because you know why? It happened.
3 It happened. I want you to think about this. In
4 this case it is black and white. You either
5 believe MI or you think he's lying.
6 There's no middle ground here at all. It's black
7 and white. You either believe MI or you think he's
8 lying and I submit to you you should believe MI and
9 here's why.

10 Again, we are dealing a nine-year old
11 when he reported. Ladies and gentlemen, you know
12 this too. A nine-year old child shouldn't be able
13 to tell you about ejaculation. A nine-year old
14 child shouldn't know about lubrication. A
15 nine-year old child should not know that a man's
16 penis is hairy and that it is hard when he gets
17 excited. He should not know that you have to move
18 your head back and forth when you perform oral sex.
19 Or move your body back and forth when you have sex.
20 No nine-year old child should know that.

21 And MI knew it. How did he
22 know? How did he know? He is not savvy enough to
23 know those things. You know what else he's not
24 savvy enough to know? He is not savvy enough to
25 know that when your stepfather always wants to do

1 that stuff in [Minor 2] room and in the living room it
2 is because he doesn't want to get caught. He
3 doesn't want to get caught. He knew exactly what
4 he was doing. Let me show you. You heard the
5 testimony. Whose room is this? [Minor 2] room.
6 Where does [Minor 2] room face? The road. Who parks
7 right here in front? Tara. He's not savvy enough
8 to make that up. The living room. Remember him
9 talking about the couch in the forensic interview
10 and having to do it in the living room? Well, the
11 living room is right here where the stairs come up.
12 And that window right in front, that's to the
13 living room. Remember [M1] said he would look out
14 the window? Trying not to get caught, ladies and
15 gentlemen. There is a reason that it was in the
16 front of the house and [Minor 2] room, in the living
17 room. He is looking out. No nine-year old is
18 savvy enough to tell you that.

19 And the shed? How about the shed?
20 Defense counsel asked Tara did the shed look like
21 that two years ago she said yes and he said was
22 that slot right here in the middle, was it like
23 that two years ago? And she said yeah. Then he
24 implied well, you can see in there.

25 Ladies and gentlemen, I submit to you

1 it's dark in that shed. You can't so much see in
2 as you can see out. And when he had that child in
3 there looking at those magazines, and when he made
4 that child perform oral sex on him in the shed,
5 that slat sure is beneficial so you can make sure
6 nobody is coming in.

7 No nine-year old is savvy enough to
8 think of that. What about the story of M1 sucking
9 his thumb? To me that was pretty profound. He
10 said I was sucking my thumb one day when his nephew
11 was over. Tells you how young he is. I am sucking
12 my thumb and Jim goes if you don't take your thumb
13 out of your mouth you know what's going to happen.
14 You go to Minor 2 room. And I asked him did you
15 want to go to Minor 2 room and he said no. And I
16 said why not? He said because it hurt when he put
17 his penis in my butt. That's another thing a
18 nine-year old shouldn't know. But M1 got carried
19 away playing and he forgot and put his thumb in his
20 mouth. And Jim said you know where to go and he
21 went off to Minor 2 room. No kid can make that up.

22 And what about the magazines in the
23 shed? He tells you well, he kept the magazines in
24 a slot and he told his mom there was spiders in
25 there so that she would she never go in there and

1 stick her hands in. Think a kid can make that up?
2 And you think a kid can make up the fact that he
3 looked through the magazines and that there was a
4 picture of a man with a woman with a penis? Woman
5 with a penis. Well, here's our corroboration.
6 Here's another reason you should believe M1.
7 Because M1 said there was a man with a penis in the
8 magazine and he says one of the times when Jim did
9 this to me he made me wear a dress. What did Tara
10 tell you? Our marriage started falling apart in
11 August because he wanted to dress as a woman.
12 That's corroboration.

13 The defense is going to get up here and
14 tell you hey, he could know this stuff. He could
15 know this stuff because he have might seen it on a
16 computer or saw it in these magazines. Think about
17 that. Don't let him get away with this because you
18 got no testimony that M1 ever saw any pornography
19 anywhere except in the magazines provided to him by
20 his stepfather. Let's also remember that. Why
21 would a grown man have any need to show a child a
22 pornographic magazine, No. 1. So when they get up
23 here and they talk about the magazines, let's
24 remember where those magazines came from.

25 No testimony about anything

1 pornographic on a computer. And in these
2 magazines, let me tell you what these magazines
3 can't show you and what they didn't show you
4 according to MI MI did those magazines show you
5 the white stuff that came out of Jim's penis? No.
6 Did they show you the tube and the clear stuff that
7 Jim had to put on his penis before he put it in
8 your butt? No. And magazine images can't move,
9 ladies and gentlemen. So if they get up here and
10 tell you he learned all of this from the magazines,
11 well, that magazine didn't tell that child how you
12 had to move to have sex. And it didn't tell that
13 child you have to move your head back and forth to
14 perform oral sex. So don't be fooled by that.

15 And if they get up here and tell you
16 there's no physical evidence, I'm going to remind
17 you about that image you just saw and about the
18 charge you are going to hear that a child's
19 testimony does not need to be corroborated. And I
20 submit to you the reason for that is because you
21 rarely have that physical evidence. If you
22 remember, Nurse Benda got up and she told you very
23 rarely do you find findings of sexual abuse on a
24 child. MI reported on November the 12th. He saw
25 Nurse Benda, had an exam on November the 14th. He

1 reported November 12th. That doesn't mean it
2 happened that day. That's past the 36 hour window
3 that you would see an injury.

4 And what did she say? M1 was assaulted
5 by a man who put his penis in his butt, in the
6 anus. She said the anus is really a place you
7 rarely find any injury because it's used to passing
8 stools. It's used to big objects going out. So
9 you rarely have that injury. So don't be fooled by
10 that. Don't be fooled by that. Don't be led
11 astray by that.

12 And if they get up here and they talk
13 about well, they provided you no DNA. Don't be
14 fooled by that. Let me tell you something about
15 DNA. Everybody wants DNA. Everybody watches CSI,
16 it's exciting. Here's the practicality of DNA.
17 Who is the one who is ejaculating around the house?
18 James Crews. James Crews is the one who is doing
19 that. So if they found anything, they would find
20 James Crews' DNA. Well, ladies and gentlemen,
21 James Crews' DNA proves nothing. He lived in that
22 house with his wife Tara. So if I came to you and
23 said we found James Crews' DNA in here you know
24 what they would say? So what? He lived there with
25 his wife. That's not a big deal. Don't be fooled

1 by that.

2 And here's another thing. If you think
3 MI is lying, you have to ask yourself why. Why.
4 Why would this child make up this story? There's
5 been some talk about well, MI, didn't you like
6 living at your dad's big house instead of a
7 trailer? And what did MI say? No, I liked the
8 trailer.. I had -- my friends were there. And MI
9 told you about how close he was to his mom. And he
10 told you that when he said you know I didn't tell
11 because I was scared he was going to hurt my mom or
12 my sister. He loved his mom. There was absolutely
13 no testimony that he just wanted to go live with
14 his dad. You know, if he wanted to live with his
15 dad how about this? Mom, can I go live with dad?
16 He saw dad all the time. So if they want you to
17 believe that this child made up this story just to
18 go live with his father? Don't be fooled by that.

19 And here's the other thing. There's
20 testimony about Tara and Jim having marital
21 problems and MI thinking that okay, oh my Gosh, she
22 is going to give him another chance because she
23 turned around and said what do you think after Jim
24 asked if they could make it work? And MI said oh,
25 no, no, don't go back to him and she goes why. And

1 then he tells this story? If you think that that
2 nine year-old can make that story up in that
3 millisecond then find him not guilty. I submit to
4 you there's absolutely no way in that second that
5 that child thought his mom might take Jim Crews
6 back that he could make up this story. There is
7 absolutely no way.

8 And if they try to get up here and tell
9 you somebody told him to lie, don't let them fool
10 you on that either. Why would anybody tell him to
11 lie? If they tried to infer it was mom, hold them
12 accountable for that. Because what did mom get out
13 of this? Mom is now living in Maine. Mom has had
14 nothing to do with the trailer that is still there.
15 She is living in Maine carrying on with her life.
16 If mom had told her child to do that why would he
17 still be here two years when she has moved on, has
18 had nothing to do with him and nothing to do with
19 the trailer. Why would any mother make her child
20 go through this pain? Don't be fooled by that.

21 And they may tell you hey, [M] is
22 inconsistent. He's inconsistent. He got up and he
23 said some things he hadn't said before. He told
24 you new stuff. Well, remember Kendra Twitty.
25 She's our child abuse dynamic expert. She got up

1 here and she said kids don't remember in a linear
2 fashion. Well, linear fashion means they don't
3 remember Tuesday he did this, Wednesday he did
4 this, Thursday he did this and Friday he did this.
5 They remember flash fold moments. A memory will
6 also pop up when absolutely nothing that they have
7 been doing had anything to do with the abuse.
8 That's a flash fold moment and that's what kids
9 remember.

10 And also do you remember me talking to
11 MI and saying did anybody ever ask you if Jim
12 assaulted you in the shed? And he said no. MI,
13 did anybody ever ask you what Jim wore when he
14 performed these acts on you? And he said no.
15 Nobody asked the right questions, ladies and
16 gentlemen. Maybe that's it, too.

17 And not consistent. This is my
18 favorite. He can't remember how many times that
19 this has happened to him, therefore he's lying.
20 Don't be fooled by that. Again, he has told you
21 the same story over and over. Over and over.

22 Ladies and gentlemen, I submit to you, indulge me,
23 that an adult who is in a mature relationship could
24 not tell you the first time they had sex with their
25 partner. They couldn't tell you where they had sex

1 with their partner every time. They couldn't tell
2 you how often they had sex with their partner every
3 time, and they couldn't tell you the last time they
4 had relations with their partner and tell you two
5 years later. So if an adult can't do it why are we
6 expecting a child to?

7 You know, ladies and gentlemen, I don't
8 know how many times Jim Crews sexually assaulted MI
9 [REDACTED]. I don't know. I don't know if it was
10 four times a week, I don't know if it was 35 times
11 total. I don't know. But I do know that based on
12 the story that child told he did it one time. And
13 one time is enough to convict him of criminal
14 sexual conduct with a minor. Please find him
15 guilty.

16 THE COURT: Thank you so much. On
17 behalf of Mr. Crews.

18 MR. CHISOLM: Please the Court, good
19 morning. I told y'all, seems like an eternity at
20 this point, but I told you a few days ago that
21 these are tough cases to get. And nobody is
22 excited to get them. I told you the testimony is
23 going to be tough to listen to and I don't think I
24 have been proved to be a liar on that point. I
25 don't think anybody probably enjoyed listening to

1 **M1** testify. I didn't enjoy it, I imagine you
2 didn't either. But one of the reasons these cases
3 are so tough is that what you have to be willing
4 and able to do is to strip away the pure emotion of
5 the case. And almost step back and consider the
6 case in a vacuum and look at the evidence that was
7 actually presented and see if it proves what they
8 said it proves.

9 And we are not here to determine
10 whether **M1** is a cute kid or if he's a good kid.
11 I'd concede he is. He has got that in his face. I
12 have no doubt about it. I'm not here to try to run
13 him down or anything along those lines. We are
14 here to see if they can prove their case.

15 The State has essentially banked on the
16 charge they put up there. The testimony in this
17 kind of case need not be corroborated. But it's
18 not quite that simple. If they had brought solid
19 testimony and it is sufficient for you to think
20 you're firmly convinced of Mr. Crews's guilt, then
21 they are right. But if you have testimony that is
22 not rock solid, if it is shaky, and if you have
23 concerns about it, you have every right to look if
24 there's any proof of any sort to back up any of
25 these claims.

1 So I want to make sure we're clear on
2 that. And, I don't know, seems like we might have
3 listened to two different cases. Ms. Mims said **MI**
4 got up here and told you the same story every time,
5 the same story told from the beginning and we will
6 have a chance to examine that here in a minute.
7 But I don't know that that's remotely true. The
8 State's case really boils down to this. Why would
9 he get up here and make this up? How would he know
10 about this kind of stuff? He got up here and said
11 it so it must be true. That's their case. They
12 don't really have anything else besides that.

13 But I will submit to you anybody is
14 capable of telling a lie. I don't mean to
15 disparage anyone, but I'm pretty sure everyone in
16 this courtroom at one point or another has probably
17 done it themselves. And when you are called as a
18 witness in court it doesn't give you super powers.
19 Your ability to say something that is not true is
20 not stripped away. And there's a very good reason
21 we have witnesses come in here and the first thing
22 they do, they have to put their hand on the Bible
23 and swear to tell the truth, the whole truth,
24 nothing but the truth. That's the part **MI** actually
25 gets right. We have to do that. And we do that

1 because it's really the only way we can try to get
2 people to tell the truth and make the best effort
3 to have them tell the truth, but swearing an oath
4 obviously doesn't work all the time either.

5 And it's not like Pinocchio. If
6 someone gets up there and says something that it is
7 not true there's not going to be a physical
8 indicator like their nose growing or anything like
9 that. And unfortunately it's also not like
10 Matlock. When they get up there and they are not
11 telling the truth and I say isn't it true this is
12 all a lie? They are not going to say you got me,
13 Mr. Chisolm. Here's why I did it, here's why I
14 made all this up. You don't get that in the real
15 world.

16 So what you have to do is look at the
17 story that's been presented and see if it adds up,
18 see if it's cohesive, see if it sticks together.

19 One of the things the judge told you in
20 the beginning of this case is that as the defense
21 we don't have to prove anything. I didn't have to
22 question any of these witnesses. I don't have to
23 do this closing argument, the opening or anything
24 else. Because the State has the entire burden of
25 proof in this case and that goes back to the

1 presumption of innocence. And, you know, there's a
2 good reason for that. The law recognizes that it's
3 really hard, if not impossible, to prove that you
4 didn't do something in a courtroom as well as out
5 in the real world. It's hard to show that you
6 didn't do something. That's why we have these
7 rules. And the same goes for someone that's not
8 telling the truth. You can't look inside their
9 head and figure out why they are not telling the
10 truth. That's why we have the presumption of
11 innocence and that's why they have the burden of
12 proof.

13 So ultimately I mean why would MI make
14 this up? Really? Who knows? Who knows? There's
15 a million different reasons why it could happen. I
16 mean from what we have heard sounds like there is
17 turmoil in the house. Obviously we disagree with
18 the source of the turmoil, but we do know that Tara
19 wanted to get rid of Jim and he wasn't willing to
20 leave. And she was about to kick him out when all
21 of this came out. We know it sounded like they
22 have other pending matters. I think she referenced
23 DSS has a case going and they are waiting to see
24 what happens here.

25 So they got complications. I mean

1 maybe that played into it. Maybe MI just doesn't
2 like the guy. I don't know. That goes back to he
3 is not going to come in here and say I hate him.
4 He's mean to me, I want him gone. He's not going
5 to tell us that. Why he would make something like
6 this up? We are not going to find that out.

7 Now, how would he know about this
8 stuff? That's a much more interesting question.
9 It's a good question.

10 How would he know about some of these
11 things and more importantly when did he learn about
12 some of these things? Ms. Mims talked about the
13 cheetah shirt or dress or whatever that came out.
14 She talked about the lube. How would a child know
15 about lube coming in a container and all these
16 things she is talking about. How about the
17 mahogany penis I guess you would call his penis.
18 Take a look at Mr. Crews. His penis is apparently
19 roughly the size or the color of this bar here.
20 How would he know about these things?

21 Well, he didn't know about them. Watch
22 that forensic interview. See if any of this comes
23 up. See if he talks about the lube when they ask
24 him did he put anything on his penis. See if he
25 mentions this cheetah shirt. See if he mentions

1 the shed, if he mentions the bathtub, if he
2 mentions the cheetah shirt, the penis this color,
3 see if any of these things came out. I will give
4 you a hint. They didn't. So where did it come
5 from? Well, maybe he remembered it while he was
6 watching his phone because that's what he said
7 about the bathtub incident. I asked him about
8 that. You remembered about the bathtub while you
9 are watching your phone.

10 Their expert got up here and told you,
11 Ms. Twitty, the I think dynamic sex abuse expert is
12 what she is labeled. She told you if you have a
13 phone, if you got internet access you can open the
14 door to a pretty terrifying world that will show
15 you all of this and more. The internet is a scary
16 place. So did he remember these things while he
17 was watching his phone maybe? Maybe that's why
18 when all this was initially reported you didn't
19 hear half of this stuff. This isn't a piecemeal
20 disclosure. These things aren't more embarrassing
21 than what he initially disclosed about having to
22 give Mr. Crews oral sex and receiving anal sex.
23 These things aren't more embarrassing and these
24 aren't things you would just forget. I think
25 there's a reason that we are hearing about them now.

1 in trial this week as opposed to two years ago.

2 So again, ultimately it comes back to
3 the fact that it's not our job to prove why he is
4 lying or any of this stuff. That's their job to
5 convince you that he's telling the truth that this
6 stuff actually happens.

7 So how can they do that in a case like
8 this? Well, there's several ways. They can
9 present a complaining witness or the alleged victim
10 in a case that will come up here and say I'm the
11 victim. This is what happened to me and hopefully
12 in theory you get credible, consistent evidence
13 that adds up, makes sense and everything else. You
14 typically see that in one of these cases, most
15 criminal cases for that matter.

16 You can call other witnesses, people
17 who will come in here and tell you I was involved
18 in the case in some manner. Here's what I saw.
19 Here's what I heard. Here's what I did during this
20 case. We didn't have a lot of that. Lastly, they
21 can present forensic evidence and that could be a
22 whole wide range of things, fingerprints,
23 footprints, DNA, semen analysis, all these kind of
24 things.

25 Well, let's start with the witnesses.

1 Where are they? As a juror you are entitled to ask
2 yourselves why did the State call the witnesses
3 they called. Why they tried to elicit the
4 testimony that they tried to get out of them. You
5 can also ask yourself why they didn't call the
6 witnesses that they didn't call. Ms. Mims
7 referenced one of them. MI cousin or nephew or
8 whatever, the thumb sucking incident she was just
9 referring to. Where is Landon? He's eight now.
10 Why didn't we hear from him? Better yet how about
11 Minor 2 You may remember that's MI older sister.
12 She lived with him in 2013 and I think his
13 testimony was she lives with him to this very day.
14 His older sister that MI said saw everything. When
15 I say everything what I mean is them exchanging
16 oral sex, exchanging sex, saw the whole thing.
17 There's apparently an eyewitness that can come in
18 here and say oh, yes, everything he's telling you
19 is the truth and I saw it. And if that was
20 actually true, do you think the State might have
21 called Minor 2 up here to tell you that she saw this
22 stuff? You think there's a reason that she wasn't
23 their first witness in this case?
24 What about this? How many law
25 enforcement officers did you hear from in this

1 case? I was trying to think on my way up here this
2 morning I don't think you heard from any of them.
3 In a child rape case so to speak you didn't hear
4 from a single law enforcement officer this entire
5 week. Now, you know they are involved in some
6 capacity. You heard reference to Detective
7 Driscoll, and you have heard reference to Detective
8 Santana, and we know Detective Santana was present
9 for the forensic interview, that's what Ms. Walker
10 said, we know Detective Santana was present for the
11 medical examination at MUSC. Probably not in the
12 room during the examination, but he was there. And
13 he's been sitting here all week watching
14 everything. And apparently he has nothing to say
15 about this case. Why do you think that is?

16 If you remember these allegations, what
17 M1 told you is that this thing more or less would
18 happen the same way every time. And it usually
19 ended oddly enough with Mr. Crews finishing,
20 getting away from M1, laying on his back and peeing
21 the black and white stuff on his stomach. And then
22 apparently wherever they were he would clean up. I
23 think he said with Minor 2 bedding was one example.
24 He said this is pretty much how it went. And at
25 this point he said this was happening in Minor 2

1 room, in MI room, in his mom and Jim's room, in
2 the bathroom, in the shed, the living room, the
3 couch, he has basically said all these places where
4 this was happening Mr. Crews is ejaculating which
5 would basically produce a treasure trove of
6 forensic evidence. So that being said, isn't it
7 odd that Detective Santana wasn't called to tell
8 you about how thorough his investigation was?

9 And do you think if he had collected
10 some evidence in this case that would be beneficial
11 to the State he would have been called to tell you
12 about it? Do you think it has something to do with
13 what Tara told us? Tara being MI mother, she is
14 a co-owner of the house, maybe sole owner at this
15 point, I don't know, but she said that Detective
16 Santana or law enforcement in general, she never
17 got a call can we come check out the house. And
18 nobody ever showed up. And she said if they had
19 she would have been more than willing to let them
20 search. They could have ripped out the floor,
21 taken the couch. They could have gone in and
22 knocked down the shed which probably wouldn't be
23 too difficult. They could have done all these
24 things yet you didn't hear about any of this. And
25 keep in mind, she still owns this house two

1 and-a-half years later.

2 You have access last week, yesterday,
3 and we haven't heard a word about all this evidence
4 that is out there, evidence that if it's collected
5 and if it's presented could prove their case. Or
6 if it's not, clears Mr. Crews. Funny how that
7 works.

8 So that leaves us with forensic
9 evidence. And Ms. Mims said that these cases, they
10 don't produce forensic evidence. She's absolutely
11 right. That is the typical case because the people
12 that actually do this stuff, that rape children,
13 they're secretive. They don't want to get caught
14 because consider the stakes. So they don't do this
15 kind of stuff around witnesses. They use condoms,
16 they clean up after themselves so to speak. And
17 they don't do it in a shed ten feet away from the
18 neighbor that you can see into.

19 If you recall I think Tara's testimony
20 was the shed is ten feet from the neighbor on this
21 side and kudos to the photographer for cutting that
22 out of this picture so you can't see it.

23 So usually -- she was right. Usually
24 wouldn't have forensic evidence. However, in this
25 case you have got all you want. If the story is

1 true the entire house is a forensic scene, the
2 shed, the bathtub, everywhere. So that's not
3 exactly the case that we have here this week. And
4 there's no other forensic evidence that's been
5 presented here.

6 Nurse Benda, I want to give her the
7 benefit of the doubt. She's the MUSC SANE nurse
8 that did the actual physical examination. I'm not
9 trying to be hard on her at all, but she operated
10 under the information she was given. She did the
11 examination on **MI** I believe it was November 14th.
12 And what she was told is that the last incident had
13 been October 31st of that year, about two weeks
14 prior. And the best information she had as to the
15 frequency of how many times this happened was a
16 couple. So she goes in to do her examination.
17 That's the parameters she's looking for. She is
18 looking at a nine year-old boy that's been abused a
19 couple times, the last time being couple weeks
20 prior. So when she does her examination and
21 doesn't find anything out of the ordinary at all.
22 You know, that's not really surprising.

23 What if she knew then what you know
24 now? That the actual allegation is that this had
25 happened for the last time on November 11th which

1 MI told you from the stand, that the last time he
2 was abused was the day before the police were
3 contacted, which oddly enough is within the 72-hour
4 magic window that she talked about from the stand.
5 Would she have treated the case differently if she
6 knew that last incident of abuse was within that
7 72-hour period? She testified she would.

8 What if she knew that this wasn't
9 something that allegedly happened a couple times?
10 What if she knew the allegation was what MI told us
11 this week which was this is something that's been
12 happening from his early memories when he was four
13 or five years old and it's something that happened
14 three or four times a week. Sometimes more than
15 once in a day. That it wasn't once every six
16 months, it was pretty much a constant thing from
17 his earliest memories up until he was nine years
18 old, four or five years he is raped three or four
19 times a week every week. What if she had known
20 that? That's a little different story.

21 So I give her some leeway. She can
22 only operate under the parameters she has. But
23 that's why you are here. You know, you guys come
24 in and you have a lot of collective wisdom. You
25 have common sense. So you can come in here and

1 judge how realistic that is that if a child is
2 raped hundreds of times, I'm not going to do the
3 math, hundreds of times, from the time he's four
4 years old until the time he reports at nine years
5 old, that the last incident was three days before
6 his physical exam, you can decide whether it makes
7 sense that when they do this physical examination
8 there's nothing out of the ordinary or as I
9 eventually got Ms. Benda to say it looks the exact
10 same as if you were looking at that area on a boy
11 that had never been abused. I think there's a good
12 reason for that.

13 So we don't really have a lot of the
14 other witnesses in this case. No law enforcement.
15 We did have Ms. Twitty, that was the sex abuse
16 expert, and she is very nice. And she came a long
17 way to come up here, but I think what she told you
18 is stuff you probably already know. Some kids or
19 people in general when they report sexual abuse
20 they report it immediately. Some people wait a
21 couple months before they report. Some people wait
22 years before they report. Essentially any time you
23 report is going to be consistent with sexual abuse
24 to Ms. Twitty. And some people when they report
25 tell you everything all at once. Some people

1 reveal some of the information. And some people
2 only reveal a little bit of the information when
3 they disclose. Again, pretty much everything she
4 said is any means, any method of disclosure can be
5 consistent with sexual abuse. If you find value in
6 that that's good, but that was essentially her
7 testimony as I recall it.

8 So that leaves us with M1 testimony
9 which is what this case is all about. Whether you
10 believe him or not, whether his claims are
11 corroborated. I mean that's why we are here is to
12 see if what he said holds up. The solicitor said
13 he got up here and said the same thing every time.
14 The same thing he said back then is what he told
15 you this week.

16 Well, let's see if it's really true.
17 Let's see if his testimony is credible according to
18 the parameters they put up there. If it is
19 consistent, if he has bias, if it's corroborated.
20 Let's see if it holds up to that.

21 And I have got a few examples and I
22 took some clips from that forensic video you
23 watched I think yesterday and I'd like to play some
24 of those just to kind of emphasize things. Let's
25 start with when did this actually start? When did

1 Mr. Crews start abusing him like this? I think
2 you'll recall from the stand that he said he agreed
3 with me that he told me it was when he was four or
4 five years old. Essentially his earliest memories,
5 I mean earliest memories before then, maybe before
6 then. But during the forensic interview what did
7 he say?

8 (Whereupon, a portion of the forensic
9 interview was played and not transcribed herein.)

10 MR. CHISOLM: The State would say
11 what's the difference in a couple years? It's a
12 minor difference. I mean people change their mind
13 on these kind of things and well, the difference is
14 he is nine years old during this interview. So
15 what's the difference between it started last year
16 versus since my earlier memories when I was four.
17 Pretty big difference. So that's when this
18 started, right? What about when it stopped? When
19 is the last time this happened? Well, I just
20 pointed out his testimony this week was the last
21 time this happened was November 11th, '13, the day
22 before the police were contacted. But what did he
23 say during the forensic interview?

24 (Whereupon, a portion of the forensic
25 interview was played and not transcribed herein.)

1 MR. CHISOLM: October 31st. A day he
2 remembers because it is Halloween and it's his
3 mom's birthday. That's what he says in the
4 beginning of this case. That's what he tells Ms.
5 Benda, that's what she was operating under when she
6 did the exam. That's what everybody thinks until
7 we get to trial.

8 Now, consider this. This is the
9 difference between going to the police and then
10 saying I'm so sorry, what happened to you. When
11 did it happen last? I agree with Ms. Mims that
12 children, sometimes their memories aren't the
13 greatest. But other than something you remember
14 from today, the day you are in, you will remember
15 what happened the day before. It happened
16 yesterday. That's easy to remember. So when they
17 asked him in 2013 the day he went to the police he
18 didn't say he did it yesterday. He said it
19 happened two weeks before. She would say I
20 wouldn't worry about that. What difference is
21 that? He doesn't remember if it was yesterday or
22 it was two weeks.

23 It's ridiculous. His story completely
24 changes. This isn't a minor distinction. What
25 about how many times did it happen? He couldn't

1 remember telling me or telling -- Detective
2 Driscoll asked him if he remembered saying anything
3 about it happening 34 times. He didn't remember
4 that. He apparently told Ms. Benda it happened a
5 couple times. This week as I pointed out a moment
6 ago, apparently happened hundreds of times.
7 Hundreds. There's a difference between a couple
8 and 34. There's certainly a difference between a
9 couple or 34 or three to four times a week since I
10 was a child, since I was four. This isn't a minor
11 distinction. Ms. Mims said don't worry about that.
12 If it happened once that's enough, but no, you are
13 trying to figure out if he is telling the truth and
14 this isn't something you would be embarrassed about
15 to say how many times it happened. This isn't
16 something you would remember later oh, yeah, it
17 didn't happen a couple times, it happened hundreds
18 of times. I forgot about that when I initially
19 reported it. He completely changes his story.

20 What about how it happened? What kind
21 of things happened during these incidents? He
22 basically relegates himself to saying in the
23 forensic interview and kind of on the stand as well
24 it pretty much happened the same way every time.
25 There is a reason for that. If you are asked to

1 make up a story, it's much easier to make up one
2 story with one set of facts and remember that and
3 be able to repeat it. However, if you are pressed
4 about different instances the more details you are
5 asked the harder it gets.

6 So in the forensic interview his
7 testimony I think is that he would do this while he
8 was laying on his back. Does that make sense to
9 you? And he also said that while he was sitting on
10 the floor he performed oral sex on Jim. I don't
11 think I am the only one curious about that
12 statement. If you remember in the forensic
13 interview, the interviewer said you are sitting on
14 the floor? How does that work? And she tried to
15 get him to clean it up, are you sure you weren't up
16 on your knees? And he eventually said he's on his
17 knees sitting on his feet.. So ask yourself about
18 the logistics of that.

19 And he has talked a lot about Jim
20 peeing on his stomach. He mentioned on the video
21 the black and white stuff. You never hear any
22 description this week or on the video of Jim
23 masturbating which is kind of unusual in this
24 scenario. He finishes, lays down, he talk about
25 the pain, but he doesn't mention any of the

1 masturbation which I think would kind of be
2 critical to that scenario.

3 And this -- you may remember when I had
4 -- when I was asking M1 some questions. I said
5 when this stuff would happen he would -- Jim would
6 take his own clothes off and he would come into the
7 room, would you take your own clothes off? Or
8 would Jim take your clothes off for you? Which
9 probably seemed like a weird question at the time.
10 That's why I pressed him on it. He said I took my
11 own clothes off. I said are you sure? Yeah, that
12 would be kind of weird if he did that, would it
13 not? Yes. And you would remember that even two
14 years later, wouldn't you? Yes. We can play back
15 his testimony if you need on any of this. But what
16 did he actually say in the forensic interview about
17 this?

18 (Whereupon, a portion of the forensic
19 interview was played and not transcribed herein.)

20 MR. CHISOLM: Another example of the
21 story completely changing. What about remember we
22 have heard about these magazines with the lady with
23 the penis and all this stuff. Again, I'm curious
24 when he learned about this stuff. Because he was
25 asked about that. He was asked about that in his

1 forensic interview. Let's see what he said back
2 then. This isn't something you can confuse.

3 (Whereupon, a portion of the forensic
4 interview was played and not transcribed herein.)

5 MR. CHISOLM: So again, he is
6 disclosing that he has been forced to perform oral
7 sex, that he's been a victim of anal sex and all
8 this other terrible stuff he talks about in the
9 interview. And they ask him point blank have you
10 ever seen any dirty pictures, anything on the
11 internet? It's unequivocal. No. Is this
12 something he remembers between then and now? Is
13 this something he remembered since October about
14 the lady with the penis? That's kind of hard to
15 explain. And again, it's a story that changes
16 completely.

17 How about where it happened? In 2013
18 on the video M1 I believe said it happened in
19 Minor 2 room. It happened in his room, M1 room.
20 He said it happened in the living room on the couch
21 in there. And then on the stand he is giving a
22 different kind of story here. He says it happened
23 in those rooms, and then in October he told me also
24 in mom and Jim's room. And you may remember I said
25 it happened in your mom and Jim's room? No, I

1 don't remember that. Never happened there. Are
2 you sure? Yes. That's one of the times I
3 approached. And I actually read it out. Don't you
4 say right here it happened in MI room, Minor 2
5 room and mom and dad's room? Yeah, that's what it
6 says, but I really don't remember that. So that's
7 October.

8 And then this week we get that it
9 happened in Minor 2 room, MI room, the living
10 room, the bathtub, the shed, probably missing a
11 room, and he actually deletes a room, not my mom
12 and Jim's room. He adds these since October. Is
13 that something you would forget? Is that something
14 that is embarrassing to reveal in 2013, it's
15 embarrassing to say that it happened in the
16 bathroom, but not in your room? Or in your
17 sister's room? And is this the cold, calculating
18 mastermind that they have portrayed Mr. Crews as
19 that only does this in Minor 2 room because he can
20 look out the window and see who is coming? Yeah,
21 the guy that's laying in the bathtub, MI apparently
22 is leaning over the tub giving him oral sex.
23 That's the mastermind that's so cautious he will
24 never be caught.

25 So how about this? How about the

1 allegation of what actually happened? And this is
2 huge. This may be the biggest thing of all in this
3 case. In the interview they say tell me what
4 happened. What did he do? Well, he made me suck
5 his penis and he put his penis in my butt. In that
6 that interview in 2013 it was reported to Nurse
7 Benda and everyone else, there's no mention of Mr.
8 Crews sucking MI penis.

9 There's no mention of MI putting his
10 penis into Mr. Crews. And I will let you work out
11 the logistics on how a four or five year old is
12 doing that to begin with, but he gets here in trial
13 and all of a sudden oh, yeah, it must have slipped
14 my mind that all that stuff was happening. This
15 completely changes. Apparently this is a minor
16 distinction that he forgot about these things.
17 It's ridiculous.

18 One thing I forgot to go over about all
19 these places that are being added and deleted and
20 where all this happened. During the forensic
21 interview which is all done within an hour or so on
22 the same day, in the same interview they asked him
23 one instance how many times did it happen on the
24 couch, MI

25 (Whereupon, a portion of the forensic

1 interview was played and not transcribed herein.)

2 MR. CHISOLM: One time on the couch.

3 (Whereupon, a portion of the forensic
4 interview was played and not transcribed herein.)

5 MR. CHISOLM: This is the same
6 interview, the same day within the same hour he is
7 asked the same question and gives two entirely
8 different answers. So we are not talking about a
9 situation where it's been a long time, maybe he
10 remembered some details later. There's a reason
11 that he gives two different answers to the exact
12 same question in the same interview.

13 And just to sum it up, you have been
14 taking notes. I know you have been paying
15 attention, which I appreciate. But to sum it up,
16 he has been inconsistent and contradictory with his
17 story pretty much any way he possibly can as far as
18 when it started, when it stopped, how many times it
19 happened, where it happened, how it happened, and
20 what actually happened. He is all over the place
21 pretty much every way you can be.

22 The State wants to say kids will be
23 kids, you know? They might not remember every
24 detail, these minor things that we've been talking
25 about here. And, you know, they are right. And if

1 he had said Jim wore a blue shirt back in 2013 when
2 this happened and then he came in here today this
3 week and testified and said well, he was actually
4 in a blueish green shirt, I would agree with them.
5 I wouldn't be raising this issue. I wouldn't be
6 saying, see, he's saying different things. They
7 would be right.

8 That's not what we have here and that
9 logic doesn't apply when you have got these kind of
10 things going on in the case. If you use the
11 State's logic, and I will give you an example. If
12 you go out to eat tonight and you order a steak
13 salad. You are sitting at the table and they bring
14 it out and they set it in front of you, it smells
15 good, looks good, you pick up your fork and you go
16 to take a bite and you look and the steak is
17 rancid, it's rotten. Got maggots on it.

18 At that point do you just pick the
19 steak out and continue eating the salad and just
20 assume the rest of it is probably good? That's
21 their logic. That if 90 percent of this case
22 doesn't make sense or if 90 percent of it changes
23 over and over, well, that's no big deal, you should
24 still believe the remaining 10 percent. And the
25 State mentioned reasonable doubt and there's a

1 reason they mentioned that, because that's their
2 burden. They have to prove their case to that
3 level which is a difficult thing to do.

4 And reasonable doubt is something a lot
5 of people get confused on. The legal instruction
6 will be some variation of it's a doubt that would
7 cause a reasonable person to hesitate to act which
8 clears it up to some degree. In my experience I
9 have noticed a lot of people think reasonable doubt
10 means what you do is you look at the case and you
11 say well, I think it's about 50/50 who I believe
12 and whichever side gets tipped slightly. It is not
13 that. It is completely different than that. If
14 you can think about it kind of on a spectrum of
15 absolute innocence on one end and absolute guilt on
16 the other. I will give a couple scenarios.

17 If you find yourself saying this guy is
18 innocent, he's completely innocent, I don't believe
19 any of this stuff, then obviously that's the
20 definition of reasonable doubt a thousand times
21 over. You vote not guilty. That's an easy one.
22 It gets harder though when you get into different
23 scenarios. Like if you find yourself saying well,
24 I think they might have proven their case, but I
25 don't know. I'm not so sure about it. Or if you

1 say I'm not sure. Maybe they have proven their
2 case. I'm 50/50 on it. Or even if you find
3 yourself saying you know what? I'm almost positive
4 that this guy committed this crime but for these few
5 things in the back of my mind that are causing me
6 to not be firmly convinced I would think he did it.

7 Any of these things are basically
8 reasonable doubt. These are scenarios where you
9 have a reasonable doubt. And in some countries you
10 have different verdicts. You have a guilty
11 verdict, a not guilty verdict or not proven which I
12 like. We don't have that here. What they have
13 done in this country is they have wrapped not
14 proven into not guilty. So if you fall in that
15 area on the spectrum your only option you have
16 available is not guilty.

17 Now, another way to think of it, when
18 you face a huge life-changing decision like if you
19 go to the doctor and they say okay, I have looked
20 at your file and we are going to have to cut your
21 leg off. And they haven't done any examination of
22 you, they haven't provided an x-ray, your leg is
23 not even hurting and they say we have to take that
24 leg off, how does next week sound? You say I think
25 I'm going to get a second opinion. That's

1 reasonable doubt because you are dealing with
2 deadly serious consequences. You want to be sure
3 that what they are saying is the truth.

4 And that scenario as Mr. Crews'
5 scenario is every bit as serious as that. That's
6 the kind of consideration you have to give in these
7 cases.

8 So please consider the plausibility of
9 the claim itself that this child has been raped
10 repeatedly since he was four or five years old up
11 until he was nine the day before it was reported
12 and has zero injuries whatsoever. Consider that.
13 Consider the witnesses that you never heard from in
14 this case and why you didn't hear from them.
15 Consider the absolute lack of any kind of proof
16 that any of this happened besides M1 saying it
17 happened in various ways.

18 And I think when you do that, I think
19 you are going to find these things are the very
20 definition of reasonable doubt. And when you get
21 back there and you cast your secret ballots or
22 however mechanism you employ to reach your verdict,
23 please think about these things. If you do, I feel
24 confident you will return a verdict of not guilty.
25 Thank you.

1 THE COURT: Thank you, Mr. Chisolm.
2 Ladies and gentlemen, first a short break. Just
3 stand up. See how good that feels? Ladies and
4 gentlemen, it's going to take me probably about
5 30 minutes to deliver the charge to you.

6 And I don't want you to keep it to
7 yourself, I do need you to pay attention closely,
8 is there anybody that needs to take a comfort
9 break? Here's what we are going to do. You have
10 not heard my charge on the law so you are not going
11 to be permitted to deliberate. So this same
12 instruction will apply. Do not discuss this matter
13 or allow anyone to discuss it with you. Take your
14 break, whenever everybody is comfortable and ready
15 to go, knock on the door. We will await you. You
16 just come on back in. If you will step to the jury
17 room.

18 (Whereupon, the jury exited the
19 courtroom at 11:16 a.m.)

20 (Whereupon, a short recess was taken.)

21 (Whereupon, the jury entered the
22 courtroom at 11:30 a.m.)

23 THE COURT: Thank you. Ladies and
24 gentlemen, you have now heard from the witnesses,
25 you have heard from the attorneys. It is now my

1 duty to explain to you the law applicable to this
2 case.

3 Ladies and gentlemen, the indictment in
4 this matter charges the Defendant, Mr. Crews, Mr.
5 James Archie crews, IV, with criminal sexual
6 conduct with a minor where the victim is under 11
7 years of age, first degree. I remind you that the
8 fact that the Defendant was arrested, charged and
9 indicted in this case is not evidence in this case
10 and cannot be considered by you as evidence of
11 guilt in this case, nor does it create any
12 presumption or inference of guilt.

13 This document is simply the formal
14 written instrument which contains the charge
15 against the Defendant. It is the formal document
16 by which the case is brought into this court.

17 Ladies and gentlemen; Mr. Crews has
18 pled not guilty to this indictment and that plea
19 places the burden on the State to prove the
20 Defendant guilty. A person charged with committing
21 a criminal offense in South Carolina is never,
22 never required to prove himself or herself innocent
23 or not guilty.

24 I charge you that it is an important
25 rule of the law that the Defendant in a criminal

1 trial, no matter what the seriousness of the charge
2 may be, that that Defendant will always be presumed
3 to be innocent of the crime for which the
4 indictment was issued unless guilt has been proven
5 by evidence satisfying you of that guilt beyond a
6 reasonable doubt. This presumption of innocence
7 does not end when you begin your deliberations, but
8 it accompanies the Defendant throughout the trial
9 until you reach a verdict of guilt based on
10 evidence satisfying you of guilt and a reasonable
11 doubt.

12 The presumption of innocence is like a
13 robe of righteousness placed about the shoulders of
14 the Defendant which remains with the Defendant
15 until it has been stripped from the Defendant by
16 evidence satisfying you of the Defendant's guilt
17 beyond a reasonable doubt. The presumption of
18 innocence is not a mere legal theory. It is not a
19 legal phrase only, but it is a substantial right to
20 which every Defendant is entitled unless you, the
21 jury, are satisfied from the evidence of the
22 Defendant's guilt beyond a reasonable doubt.

23 What then is reasonable doubt in the
24 law? Reasonable doubt is the kind of doubt that
25 would cause a reasonable person to hesitate to act.

1 The State has the burden of proving the Defendant
2 guilty beyond a reasonable doubt. Some of you may
3 have served as jurors in civil cases where you were
4 told that it is only necessary to prove a fact is
5 more likely true than not true such as by the
6 greater weight or the preponderance of the
7 evidence.

8 In criminal cases the State's proof
9 must be more powerful than that. It must be beyond
10 a reasonable doubt. Proof beyond a reasonable
11 doubt is proof that leaves you firmly convinced of
12 the Defendant's guilt.

13 There are very few things in this world
14 that we know with absolute certainty, and in
15 criminal cases, the law does not require proof that
16 overcomes every possible doubt. If based on your
17 consideration of the evidence you are not -- let me
18 begin again. If based on your consideration of the
19 evidence you are firmly convinced that the
20 Defendant is guilty of the crime charged you must
21 find the Defendant guilty.

22 If on the other hand, you think there
23 is a real possibility that the Defendant is not
24 guilty you must give the Defendant the benefit of
25 the doubt and find him not guilty. I remind you

1 that you and I during this trial have certain
2 duties to perform. As the trial judge it is my
3 responsibility to preside over the trial in this
4 case and I also have the duty to rule on the
5 admissibility of the evidence offered during this
6 trial.

7 You, of course, consider competent
8 evidence and I have the additional duty to charge
9 you regarding the law applicable to this case. As
10 the presiding judge I am the sole judge of the law
11 of this case. And it is your duty as jurors to
12 accept and to apply the law as I now state it to
13 you. If you already have any idea as to what the
14 law is or maybe what it ought to be, and your
15 beliefs do not agree with what I now tell you the
16 law is, you are by your oath now bound to abandon
17 your preconceived idea because you are sworn to
18 accept and to apply the law exactly as I state it
19 to you.

20 Now, in every case tried in this court
21 before a jury the jury becomes the sole, the only
22 and the exclusive judge of the facts. A trial
23 judge cannot intimate, state, comment on or make
24 any statement to a trial jury about the facts in a
25 case since you, the jury, are the sole judges of

1 the facts in this case. You are not to infer from
2 what I have said during the progress of this trial,
3 the ruling on the admissibility of evidence or
4 otherwise or anything that I say now during the
5 course of this instruction to you that I have any
6 opinion about the facts in this case.

7 The law does not allow me to have an
8 opinion about the facts in this case. I have no
9 opinion regarding the facts. That is a matter
10 solely for you to determine. As jurors it is your
11 duty to determine the effect, the value, the weight
12 and the truth of the evidence presented during this
13 trial.

14 Now, ladies and gentlemen, they're
15 typically two types of evidence which are generally
16 presented during a trial. One is called direct
17 evidence and the other is called circumstantial
18 evidence. Direct evidence is the testimony of a
19 person who claims to have actual knowledge of a
20 fact such as an eyewitness. Circumstantial
21 evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact.
23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than
2 of direct evidence.

3 You should weigh all the evidence in
4 the case and after weighing all the evidence if you
5 are not convinced of the guilt of the Defendant
6 beyond a reasonable doubt you must find the
7 Defendant not guilty. I'm going to give you an
8 example what I am talking about with direct and
9 circumstantial evidence. Go with me to February.
10 Not so much this past February, but certainly the
11 February before. It's cold. Snow is forecast.
12 You walk outside. You look up. And snow hits you
13 in the eye. You really are an eyewitness. You are
14 not only seeing snow, when you go back in and say
15 oh, it is snowing outside, you just testified to it
16 on direct evidence. That is direct evidence. You
17 are an eyewitness as you wipe it out of your eye to
18 it snowing. It's snowing outside. You are
19 presenting direct evidence because you saw it.
20 You're an eyewitness.

21 Now, let me give you an example of
22 circumstantial evidence. Let's stay in February.
23 Cold outside and snow is forecast. You are kind of
24 excited. Doesn't happen all the time. So you go
25 outside right before you go to bed. You look

1 outside, all you see is your poor, pitiful brown,
2 crunchy grass. Well, you go to bed, wake up in the
3 morning and snow covers everything. You dash of
4 course immediately off to the TV just to make sure
5 that whatever your employment or school it is all
6 cancelled so you got the official snow day. But
7 here's what you see. It snowed overnight. It
8 snowed overnight. How do you know that? You
9 didn't see it snow overnight. So you don't know it
10 directly. You are not -- you can't directly say
11 it, but you know it through inference because
12 here's what you do know. February, cold outside,
13 snow was forecast, brown, crunchy grass when you
14 went to bed around 11, you woke up in the morning
15 snow is covering everything. You know through
16 inference because you know the surrounding facts
17 which point to the fact that it snowed overnight.
18 You know that it snowed overnight as a matter of
19 inference. You know it through inference. You
20 infer and what you do know is that it snowed
21 overnight. That is circumstantial evidence.

22 All right. Now, ladies and gentlemen,
23 as you make your determinations necessarily you
24 must determine the credibility of witnesses who
25 have testified in this case. What in the world

1. does that mean, credibility? It simply means
2. believability. It becomes your duty as jurors to
3. analyze, to evaluate the evidence and to determine
4. which evidence convinces you of its truth.

5. In determining the believability of
6. witnesses who testified in this case you may
7. believe one witness over several witnesses, or
8. several witnesses over one witness. You may
9. believe a part of the testimony of a witness and
10. reject the remaining part of the testimony of that
11. same witness. You may believe the testimony of a
12. witness in its entirety or you may reject the
13. testimony of a witness in its entirety.

14. You may consider whether any witness
15. has exhibited to you any interest, bias, prejudice
16. or other motive in this case. You may also
17. consider the appearance and the manner of the
18. witnesses while on the witness stand.

19. Ladies and gentlemen, these are
20. examples. I share that with you as examples. You
21. did not check your common sense at the courthouse
22. door. Ladies and gentlemen, I instruct you and
23. emphasize that the fact that the Defendant, Mr.
24. Crews, did not testify is not, is not, a factor to
25. be considered by you in any way in your

1 deliberation and in your consideration on the
2 question of the guilt or innocence, in other words,
3 on the issue and the question of whether the
4 Defendant is guilty or not guilty.

5 Ladies and gentlemen, the fact that the
6 Defendant did not testify must not, must not be
7 considered by you in any manner whatsoever. And
8 the reason is that the Defendant has the
9 constitutional right to remain silent and the
10 assertion of this right must not be considered by
11 you in your deliberations. I repeat, under your
12 oath you are to draw no conclusion whatsoever from
13 the fact that the Defendant in this case did not
14 testify.

15 Ladies and gentlemen, the fact that
16 this Defendant did not testify should not, must not
17 even be discussed in the jury room. Don't even
18 mention it. Don't talk about it. Because, you
19 see, the burden of proof as I have stated to you is
20 and remains on the State to prove guilt beyond a
21 reasonable doubt. The Defendant is not required to
22 prove he's innocent. He's not required to prove
23 anything. The burden is on the State to prove
24 guilt beyond a reasonable doubt; therefore, it
25 would be inappropriate to give any consideration or

1 discussion regarding the Defendant's not
2 testifying. And finally I repeat, it must not even
3 be discussed.

4 Now, ladies and gentlemen, our rules of
5 evidence ordinarily do not permit witnesses to
6 testify regarding their opinions or conclusions.
7 There is an exception to this rule and that
8 exception exists for witnesses who have been deemed
9 to be expert witnesses. Those folks are witnesses
10 who by virtue of their education and experience
11 have become an expert typically in some art,
12 science, profession or calling. And these expert
13 witnesses may state their opinions which are
14 relevant and material and they may state those
15 opinions, of course, within their expertise and are
16 also allowed to explain the reasons for those
17 opinions.

18 You should consider any expert opinion
19 received in evidence in this case and like any
20 other evidence give it the weight you think it
21 deserves. If you decide that the opinion of an
22 expert witness is not based on sufficient education
23 and experience or if you conclude that the reasons
24 given in support of the opinion are not sound or
25 that the opinion is outweighed by other evidence,

1 you may disregard the opinion entirely. An expert
2 witness's testimony is to be given no greater
3 weight than that of other witnesses simply because
4 the witness is an expert.

5 Further, you are not required to accept
6 an expert's opinion even though it is not
7 contradicted. Expert opinion testimony is given
8 for the purposes of helping you understand the
9 evidence and not for the purpose of controlling the
10 judgment.

11 Now, during this trial you heard
12 testimony from a child. Where a witness is a child
13 you must determine as with any witness whether that
14 testimony is believable. In deciding believability
15 you may consider not only matters that I have
16 already discussed with you, but you may also
17 consider the age of the child, the child's ability
18 to observe and remember facts and the child's
19 ability to understand and answer questions.
20 Because young children may not fully understand
21 what is happening here, it is up to you to decide
22 whether the child understood the seriousness of
23 appearing as a witness at this criminal trial,
24 whether the child understood the questions, whether
25 the child has a good memory, and whether the child

1 understands the difference between lying and
2 telling the truth.

3 In addition, young children may be
4 influenced by the way the questions are asked. It
5 is up to you to decide whether the child understood
6 the questions asked.

7 Now, ladies and gentlemen, I further
8 charge you that the testimony of the victim need
9 not be corroborated in prosecutions under Sections
10 16-3-652 through 16-3-658 and I further charge you
11 that this offense is alleged to be a violation of
12 Section 16-3-655.

13 Now, ladies and gentlemen, I'm going to
14 read to you the allegations in the indictment. And
15 again that is indictment 2013-GS-18-1838 which
16 alleges by the State that in Dorchester County,
17 South Carolina, between the dates of November
18 the 1st, 2011 through November the 12th, 2013, the
19 Defendant, James Archie Crews, IV, did engage in
20 sexual battery upon a minor who is less than
21 11 years of age and that the Defendant did force
22 the victim, **Minor 1**, to engage in anal
23 intercourse, perform fellatio on the Defendant, and
24 the Defendant did perform fellatio on the victim.
25 This offense is in violation of Section 16-3-655 of

1 the South Carolina Code of Laws as amended.

2 Now, ladies and gentlemen, I'm now
3 going to instruct you with regards to the law of
4 first degree criminal sexual conduct with a minor.
5 Ladies and gentlemen, the State must prove beyond a
6 reasonable doubt that the Defendant engaged in a
7 sexual battery with the victim. A sexual battery
8 is sexual intercourse, cunnilingus, fellatio, anal
9 intercourse, or any intrusion, however slight, of
10 any part of a person's body or of any object into
11 the genital or anal openings of a person's body
12 except when the intrusion is accomplished for
13 medically recognized treatment or diagnostic
14 purposes. The State must then prove beyond a
15 reasonable doubt that the victim was less than
16 11 years old at the time of the sexual battery.

17 Consent, willingness, indifference or
18 ignorance on the part of minor, if any, as to what
19 was taking place does not in any way affect the
20 charge of criminal sexual conduct with a minor.
21 Ladies and gentlemen, that is because a child
22 cannot consent.

23 Ladies and gentlemen, those two
24 elements must be proven by the State beyond a
25 reasonable doubt.

1 Now, I'm going to go over the verdict
2 form with you. I'm going to begin by telling you
3 two things. The first thing that I want to tell
4 you is that there are two possible verdicts. And
5 in a moment I'm going to be going over these two
6 possible verdicts with you and I'm going to go over
7 them and I'm going to talk about one and I'm going
8 to talk about the other one. But before I talk
9 about them I want you to understand I could have
10 talked about the second one first and the first one
11 second just as easily. So you are to take no
12 hidden meaning in which the order of these two
13 possible verdicts is placed on paper. It is just
14 when you put two things on a piece of paper one has
15 got to be first and one has got to be second.
16 There is no hidden meaning so please be mindful of
17 that.

18 Secondly, ladies and gentlemen, your
19 verdict must be unanimous. It must be the verdict,
20 your verdict must be the verdict of each and every
21 one of you. It must be the verdict of all 12 of
22 you. It must be unanimous so that should be a
23 hint. The next time my jury leaves I want you to
24 stay with me. Yes, ma'am.

25 So keep that in mind. Your verdict

1 must be unanimous. Now, ladies and gentlemen, this
2 is the verdict form and I know you can't see it
3 that far away. I'm going to read it to you. The
4 first part of it is called a caption, the title of
5 the case, has the indictment number. And it says
6 please circle the appropriate verdict below and
7 follow the accompanying instructions carefully.

8 Now, it states as to the charge of
9 sexual conduct with a minor first degree we the
10 jury unanimously, now you know why my children
11 think I am a nag, unanimously find the Defendant
12 and there are two possible verdicts, guilty or not
13 guilty. Irrespective of what is the verdict of the
14 jury, Madam Presiding Juror, I'm going to ask you
15 to circle it so it is very clear which of these two
16 possible verdicts is, in fact, the verdict of the
17 jury.

18 Now, ladies and gentlemen, when you
19 have finished your deliberations and you have
20 filled out your verdict form you will knock on the
21 door. You will return to the courtroom, bring the
22 verdict form with you, and then you will give it to
23 one of my bailiffs who will give that to me. Do
24 not publish the verdict. I will just share that
25 with you. Now, when you have finished your

1 deliberations and you have filled out your verdict
2 form, I'm going to ask that you date the form.
3 Just for your reference today is March the 18th,
4 2016. And you know who you are. So you will sign
5 it, Mrs. Presiding Juror, and then date the verdict
6 form for me.

7 Now, in just a moment I'm going to be
8 asking you to step back to your jury room and I'm
9 going to give you this instruction. Do not discuss
10 this matter or allow anyone to discuss it with you.
11 And because now for days I have been telling you
12 that was going to be the time for you to
13 deliberate, I'm going to tell you exactly what's
14 going to be going on because you are not yet quite
15 ready to deliberate.

16 When you step back to your jury room on
17 this next occasion I'm going to turn to these
18 attorneys. I'm going to ask them two questions.
19 Have I given this jury all the law that they need
20 for their deliberations and have I stated it for
21 them correctly? Now, they help me in this regard
22 because they help me know whether or not I have
23 failed to give you an instruction that you may need
24 for your deliberations. And I may need to bring
25 you back out because I have failed to give you all

1 the law that you may need for your deliberations.
2 In the event that I bring you back out for that
3 reason, I'm going to ask you in advance not to
4 consider that instruction with any emphasis, just
5 know this is my chance to get this right, give you
6 all the law you may need.

7 Now, sometimes, goodness knows it is
8 not intended, but sometimes something just comes
9 out wrong. I don't mean it to. And these lawyers
10 help me know that. And sometimes I need to invite
11 jurors back out because I need to correct an error
12 that I have made. I'm going to ask you in advance
13 in the event that I need to invite you back out for
14 that reason please allow me to correct my error in
15 your minds. Again, this is my one chance to get
16 this right, to give you all the law that you may
17 need for your deliberations and to state it for you
18 correctly.

19 Now, in the event that I do not need to
20 invite you back out, you will be brought the
21 verdict form and the exhibits and a specific
22 instruction to begin your deliberations. For those
23 of you whose little din din bell is thinking about
24 going off we have ordered lunch. Lunch will be
25 delivered when it arrives. And it is perfectly

1 fine to deliberate over lunch. There's absolutely
2 no problem with that at all. Which segues into
3 this: All 12 of you must be present for you to
4 deliberate. So if you need to take a comfort
5 break, stop your deliberations, take your break,
6 and then just reconvene your deliberations when all
7 12 of you are together again. Again, let me say
8 all 12 of you must be present for you to
9 deliberate.

10 Now, ladies and gentlemen, I am going
11 to conclude with this: Your verdict comes from the
12 Latin phrase veredictum which means to speak the
13 truth. To speak the truth. Ladies and gentlemen,
14 that is your task. Please step to your jury room.
15 Do not discuss this matter or allow anyone to
16 discuss it with you. Leave your note pads in your
17 seat. They will be brought to you along with the
18 exhibits and we will be with you shortly.

19 (Whereupon, the jury exited the
20 courtroom at 12:03 p.m.)

21 THE COURT: Now, Ms. Loris, as our
22 alternate, what I'm going to ask you to do, what I
23 am going to do is in a minute Ms. Susie will take
24 you to the other jury room and I'm going to ask you
25 that once the jury begins its deliberations stay

1 (Whereupon, the alternate juror left
2 the courtroom at 12:06 p.m.)

3 THE COURT: Any exceptions or additions
4 from the State?

5 MS. MIMS: No, ma'am.

6 THE COURT: From the defense?

7 MR. CHISOLM: Yes, Judge. My previous
8 objection to the charge on the testimony of the
9 victim need not be corroborated in the prosecution
10 of this type. The basis of my objection is
11 essentially that I have a concern this charge kind
12 of has a possibility of confusing the jury. They
13 can easily interpret this or misinterpret it as an
14 instruction to disregard a lack of corroborating
15 evidence which isn't exactly the case. It really
16 comes down to whether or not they believe the
17 testimony, but the way it is worded I have a
18 concern that's not really relayed.

19 I would quote from a dissenting
20 opinion, State versus Bynum, 369 S.C. 106. Justice
21 Pleiconis more eloquently than I said, "More
22 important, charging this rule carries a strong
23 possibility of biasing the jury against the
24 Defendant. No witness's testimony need be
25 corroborated. By specifically charging that the

1 alleged victim's testimony need not be
2 corroborated, the trial court singles out the
3 alleged victim and appears to express an opinion on
4 her credibility." For these reasons that would be
5 the basis for my objection.

6 THE COURT: Thank you so much. And in
7 that then it was associate Justice Pleiconis, now
8 Chief Justice Pleiconis, we may have a change in
9 the law. It may cease to be a minority opinion and
10 become in fact the law. But in the law as I have
11 charged it I would respectfully deny your request
12 noting your exception thereto.

13 MR. CHISOLM: Thank you, Judge.

14 THE COURT: Anything further?

15 MS. MIMS: No, ma'am.

16 THE COURT: Counsel, do this for me,
17 please. Look one more time at the verdict form and
18 the exhibits that are going back to the jury. And,
19 Ms. Susie, you can take -- let me hold Ms. Loris'
20 right there. There you go. That way you can't get
21 it confused, right? Once you have delivered the
22 note pads and the exhibits and the verdict forms to
23 the jury, you tell them start deliberations and
24 start the 15 minutes.

25 (Whereupon, the jury began deliberating

1 at 12:12 p.m.)

2 THE COURT: Counsel, we will now be in
3 recess.

4 (Jury continued deliberating.)

5 (COURT'S EXH. 4, jury note, was marked
6 for identification.)

7 (Whereupon, Court's Exhibit 4 was sent
8 back to the jury at 12:50 p.m.)

9 (COURT'S EXH. 5, jury note, was marked
10 for identification and sent back to the jury at
11 1:04 p.m.)

12 (The following proceedings were held
13 outside the jury's presence at 1:13 p.m.)

14 THE COURT: Anything before we bring
15 the jury out? Okay.

16 MR. GIESE: For purposes of the record,
17 we cut out from 181738 to 181809, that's the part
18 about the stepdad and mom arguing. That's somewhat
19 inaudible. Then we cut out from 182245 to 182750.
20 That's when Ms. Walker leaves the room and shows MI
21 coloring and then Ms. Walker coming back in. Then
22 from 183138 to 183152, that's where Ms. Walker asks
23 has Jim done this to anybody else. And then we cut
24 the video at 183245, that's those few questions
25 about --

1 THE COURT: The other events.

2 MR. GIESE: Yes, ma'am.

3 MR. LOY: When I commented on it, it
4 came in earlier, and I said subject to our earlier
5 discussion, my understanding is the unredacted
6 portions that just were published are what's
7 actually in evidence.

8 THE COURT: Thank you very much.

9 MR. LOY: Thank you, Your Honor.

10 THE COURT: All right. The pieces that
11 you all played earlier were very clear. Were you
12 playing them on this or something else?

13 MR. LOY: Playing them on Mr. Chisolm's
14 computer, Your Honor. Your Honor, this is at
15 everybody's disposal if it plays better on this
16 one.

17 MS. MIMS: I honestly think, Your
18 Honor, it's the Dorchester County system. It is
19 terrible. I have played it on two different
20 computers in my office.

21 THE COURT: I thought I could hear it
22 so clearly.

23 MR. GIESE: It would be easier for me
24 to use a computer than this just for the record.

25 THE COURT: Meaning?

1 MS. GIESE: I don't mine using Mr.
2 Chisolm's computer.

3 THE COURT: That would be awesome.
4 Tell them it will be literally another minute.

5 (Whereupon the jury entered the
6 courtroom at 1:20 p.m.)

7 THE COURT: Ladies and gentlemen. I
8 have your note. We have the video ready to play
9 for you and if you would be so kind. Thank you,
10 Mr. Giese. If you can't hear, let me know.

11 (Whereupon, Exhibit 4, MI [REDACTED]
12 forensic interview, was played for the jury at 1:20
13 p.m. without the court reporter taking it down
14 verbatim.)

15 THE COURT: We have a juror who needs
16 to take a bathroom break. Ladies and gentlemen, we
17 will stop here and then we will start back when you
18 have had a comfort break. If you will all step to
19 the jury room and then y'all 12 apparently won't be
20 together when you have the comfort break. When you
21 are finished come on back in and we will finish
22 reviewing the videotape.

23 (Whereupon, the jury exited the
24 courtroom at 2:07 p.m.)

25 (COURT'S EXH. 6, jury note, was marked

1 for identification.)

2 (Whereupon, the jury entered the
3 courtroom at 2:16 p.m.)

4 THE COURT: Thank you. Mr. Giese, you
5 may continue, please.

6 (Whereupon, the forensic interview of
7 MI [REDACTED] was played for the jury and not
8 transcribed herein.)

9 (Time video ended: 2:26 p.m.)

10 MR. GIESE: That's all, Your Honor.

11 THE COURT: Ladies and gentlemen, I'm
12 going to ask you please retire to your jury room
13 and continue your deliberations.

14 (Whereupon, the jury exited the
15 courtroom at 2:26 p.m.)

16 THE COURT: We will continue in recess
17 until we hear from the jury. We will be at ease.

18 (Whereupon, the jury continued
19 deliberating.)

20 (Whereupon, a verdict was reached at
21 2:45 p.m.)

22 THE COURT: Anything from the State
23 before we bring the jury out?

24 MS. MIMS: No, ma'am. Your Honor, I
25 was trying to get the victim's family in real

1 quick.

2 THE COURT: We will wait. It is my
3 understanding the jury has reached a verdict.

4 (Whereupon, the jury entered the courtroom
5 at 2:50 p.m.)

6 THE COURT: You can pass it up.

7 (Brief pause.)

8 THE COURT: I find that the verdict is
9 in due form. If you would publish it for me,
10 please.

11 THE CLERK: In the matter of State of
12 South Carolina versus James Archie Crews, IV,
13 indictment No. 2013-GS-18-1838 as to the charge of
14 criminal sexual conduct with a minor first degree
15 we the jury unanimously find the Defendant guilty.
16 Signed by foreperson Wanda Gums March 18th, 2016.

17 THE COURT: Ladies and gentlemen, if
18 this was your verdict in your jury room and
19 continues to be your verdict here in the courtroom,
20 please indicate by raising your right hand, please.

21 (All hands raised.)

22 THE COURT: Let me observe for the
23 record that all jurors, their right hand is raised.
24 You can put your hands down. Anything further from
25 the State?

1 MS. MIMS: No, ma'am.

2 THE COURT: Anything from the defense?

3 MR. CHISOLM: No, ma'am.

4 THE COURT: Very well. Ladies and
5 gentlemen, I want to thank you for your service on
6 this jury and on this jury panel this week. In
7 just a moment just for your informational purposes,
8 we are going to be proceeding with -- I'm going to
9 hear from the Defendant and anyone who wishes to
10 speak on behalf of the Defendant, of course on
11 behalf of the victim and then I'm going to proceed
12 to sentencing.

13 Folks sometimes wonder and if they wish
14 to stay you are now a member or about to become a
15 member of the public. You are most welcome to stay
16 if you wish. But I am about to discharge you also.
17 So your either remaining or not is going to be
18 completely left up to you. I do need to give you
19 some information. You now are at liberty to talk
20 about this case if you choose. So when you go home
21 this evening whoever has been curious that you have
22 continued to say no, I can't talk about it. I
23 can't talk about it. You certainly can say you can
24 talk about it at this point if you wish, if you
25 wish.

1 Now, ladies and gentlemen, I have told
2 panels this for 19 years, I'm scared if I stop
3 telling them then there will be a problem, but I
4 want to tell you before I even tell you there has
5 never been a problem. Arguably maybe about five
6 years ago, maybe a bump on it, but not really.
7 It's this.

8 Sometimes people do studies about jury
9 panels or whatever. And sometimes people can
10 persist perhaps a little more than they otherwise
11 would about asking jurors to talk about a case when
12 they have said I don't want to talk about it.
13 These lawyers aren't going to do that and the
14 reason you may be contacted by a lawyer quite
15 frankly is the practice of law is an art and not a
16 science. And these are wonderful lawyers, all of
17 them, and they continue to want to get better at
18 what they do. They might want to talk to you, do
19 you have any suggestions, whatever. If you are
20 comfortable again that's fine. If you are not just
21 tell them. They are not going to persist. But
22 sometimes people can be doing studies or whatever
23 and so in an abundance of precautions should
24 someone ask you to talk about this case and you
25 have told them you don't want to and they persist,

1 call the clerk. She will contact me and I will
2 intercede on your behalf. People then get a little
3 bit concerned. I want to know that. Maybe
4 arguably I had it happen a long time ago. Maybe,
5 arguably. So admittedly I'm sensitive about it.
6 So I want jurors to know should this happen,
7 because I'm scared daggonnit, if I didn't do it
8 y'all be the first folks that might happen to.

9 So anyway, you now are not eligible to
10 serve on a jury in a court of record for about
11 until 2016. Do keep that in mind. I know you are
12 upset. However, there's hope in the Municipal
13 Court and Magistrate's Court for you to serve in
14 2016. You have an exemption for 2017 and 2018
15 should you choose to exercise that exemption.
16 Remember that. If you forget, guess what, we keep
17 records of it so we would have that here as well.
18 Those of you that may need something immediately
19 for your employer, we have those for you. You need
20 only step into back into your jury room and we will
21 get that for you. You will receive obviously a
22 certificate when you receive your big fat jury
23 service check. Remember that trip to Tahiti we
24 talked about on Monday? This check is going to get
25 you to Jedburg, maybe. It is a very small token of

1 all that you have given to our system and that is
2 your dear and precious time and for every tick of
3 the clock. We are so truly grateful, all of us. I
4 would simply conclude by telling you it's certainly
5 been an honor and a privilege to serve with you in
6 this capacity. Should our paths ever cross again
7 likewise it would be an honor and a privilege.

8 Have a very good weekend. Those who
9 wish to remain stay in the jury box. Those of you,
10 gosh, there's no traffic in St. George. Those that
11 wish to leave it's completely left up to you. You
12 go with our appreciation. Thank you all so much.

13 (Thereupon, the jury exited the
14 courtroom at 2:55 p.m.)

15 THE COURT: All right. On behalf of
16 the State, I am happy to hear from anyone, first of
17 all, with regards to the victim.

18 MS. MIMS: Your Honor, the victims
19 would like for me to address the Court rather than
20 them, the victims's family. Your Honor, on behalf
21 of the Barwick family, I would just like to say
22 that this has been an extremely difficult time in
23 their lives. The last two years have been
24 extremely hard for this family. On behalf of the
25 State we think that this man is extremely

1 dangerous.

2 As the Court is aware, he has a prior
3 assault charge which has been reduced from the same
4 charge he is here for today which is a criminal
5 sexual conduct with a minor charge in the past. He
6 has done this before. We are asking that you
7 consider a very lengthy sentence for Mr. Crews
8 because the State feels that if is he allowed to
9 get out anytime soon he will do it again.. So we
10 would ask Your Honor for a very harsh sentence for
11 Mr. Crews.

12 THE COURT: Very well. Thank you, Ms.
13 Mims, on behalf of the State. Mr. Chisolm.

14 MR. CHISOLM: May it please the Court,
15 Mr. Crews is 47 years old. He has been
16 incarcerated since November I believe 15th of 2013,
17 since his arrest. I think you might have heard
18 that he was in school at the time of his arrest
19 studying to become a medical assistant and he also
20 worked construction over the years until he got
21 some pretty severe back injuries and pretty much
22 led to him trying to get out of that field
23 altogether. I won't argue with the verdict. I
24 understand it. I would ask you to consider the
25 procedural history of the case and that my

1 understanding this is a 25-year mandatory minimum
2 sentence. If he were to get that he would get out,
3 if he made it, when he was about 70 years old. So
4 I would ask for any mercy the Court can show.

5 THE COURT: Very well. All right. I
6 think that our record needs to be clear, Ms. Mims,
7 I think you were clear. While Mr. Crews may have
8 been charged with criminal sexual conduct with a
9 minor in the past, that he actually pled to an
10 assault.

11 MS. MIMS: Yes, ma'am.

12 THE COURT: He did not plead to
13 criminal sexual conduct with a minor because as you
14 know that has elements for this particular
15 statutory provision.

16 MS. MIMS: Yes, ma'am.

17 THE COURT: All right. Mr. Crews, I am
18 going to commit you to the State Department of
19 Corrections for the balance of your life. That
20 will be the order of the Court.

21 MS. MIMS: Thank you very much, Your
22 Honor.

23 THE COURT: This matter will now be
24 concluded and we will be adjourned.

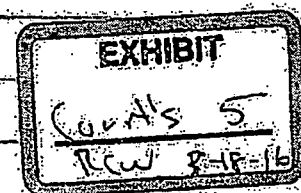
25 (These proceedings were concluded at

Wanda L. Smith #60
Could they have called Myra
as a witness on either side?

You have all of the information
from which you will make
your decision.

Doreen Smith

Wanda K. Hunt #60
James #51 would like to see the
rides again. Is that possible?



WITNESSES

Nicholas Santanna

Summerville Police Department
13-088611

ARREST WARRANT NUMBER

2013A1820500675

TRUE BILL

Arrested: November 15, 2013

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: December 3, 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS18-1838

**The State of South Carolina
County of DORCHESTER**

COURT OF GENERAL SESSIONS

December 7, 2015 TERM

**THE STATE
vs.**

James Archie Crews IV

Indictment for

**Criminal Sexual Conduct with Minor -
Victim Under 11 Yrs of Age - First
Degree**

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2015 DEC -3 PM 2:11
CLERK OF COURT
DORCHESTER COUNTY

APP'X 342

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

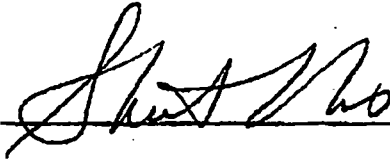
INDICTMENT
2013GS18-1838

As a Court of General Sessions, convened on December 3, 2015 the Grand Jurors of DORCHESTER County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YRS OF AGE -
FIRST DEGREE**

That in Dorchester County, South Carolina, between the dates of November 1, 2011 through November 12, 2013, the Defendant, James Archie Crews IV, did engage in sexual battery upon a minor who was less than eleven (11) years of age in that the defendant did force the victim, Minor I [REDACTED] to engage in anal intercourse, perform fellatio on the defendant and the defendant did perform fellatio upon the victim. This offense in violation of Section 16-3-655 of the South Carolina Code of Laws, as amended.

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


Sheila Mims, Solicitor

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340

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
 STATE VS.
James Archie Crews IV

AKA:

Race: WHITE Sex: M Age: 47DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Summerville, SC 29483-2645DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal Sexual Conduct with Minor - Victim Under 11 Yrs of Age - First DegreeIN THE COURT OF GENERAL SESSIONS 25-lifeINDICTMENT/CASE#: 2013GS18-1838A/W#: 2013A1820500675Date of Offense: 10/31/2013S.C. Code §: 16-3-655(1)CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST

Mims, Sheila15784
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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

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

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter: Brian W. Case

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

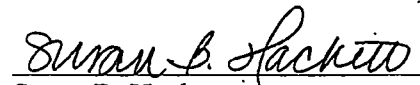
Judge Code: 2112Sentence Date: 3-18-2016

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of April, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ARCHIE CREWS, IV,

APPELLANT

APPELLATE CASE NO 2016-000670

RECEIVED

MAY 16 2017

FINAL BRIEF OF APPELLANT

ATTORNEY GENERALS
OFFICE

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

APP'X 346

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in charging the jury, over objection, that the complainant's testimony need not be corroborated by other evidence in contravention of State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016)?

STATEMENT OF THE CASE

On December 3, 2015, a Dorchester County grand jury indicted Appellant for criminal sexual conduct with a minor in the first degree (2013-GS-18-1838). R. 338-339. The state, represented by Sheila Mims and Phil Giese, called the case to trial on March 14, 2016, before the Honorable Diane Schafer Goodstein and a jury. R. 1. Ash Chisholm and John Loy represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 329, ll. 11-16. On March 18, 2016, Judge Goodstein sentenced Appellant to life imprisonment. R. 335, ll. 17-20; R. 340.

Trial counsel filed a notice of appeal on March 24, 2016, which was served on opposing counsel on the same day. This brief follows.

ARGUMENT

The trial judge erred in charging the jury, over objection, that the complainant's testimony need not be corroborated by other evidence in contravention of *State v. Stukes*, 416 S.C. 493, 787 S.E.2d 480 (2016).

Relevant facts

State's case-in-chief

The state's case consisted of three main witnesses: Minor 1, his mother, and the nurse who examined him.¹ The state offered no physical or forensic evidence, except to the extent the video recorded interview of Minor 1 by the forensic interviewer would be considered forensic evidence. The nurse who examined Minor 1 found no physical findings to support Minor 1's accusations. Rather, the nurse and mother were presented as witnesses to testify that Minor 1 had disclosed instances of sexual abuse to them. However, the examination of those witnesses revealed inconsistencies with the stories told by Minor 1 at trial. Further, the video recorded interview – the forensic interview – revealed additional inconsistencies in Minor 1's revelations of alleged sexual abuse.

Minor 1

¹The state also called Millicent Walker, a forensic interviewer at the Dorchester Children's Center, who interviewed Minor 1 on November 14, 2013. R. 238, ll. 9-20. Her testimony was limited to laying a foundation for the introduction of the video recording of the forensic interview of Minor 1. R. 239, ll. 22-24; State's Exhibit #4. The state also called Kendra Twitty, a forensic interviewer and therapist at Hope Haven, a children's advocacy center and rape crisis center. She testified as an expert in the field of child-abuse dynamics. R. 120, ll. 13-23; R. 124, ll. 3-4. Twitty's testimony consisted of explaining her experience of how children recall information. According to her experience, children who experienced trauma do not "remember things in, like, a linear fashion.... They remember, like, flashbulbs or kind of a snapshot of a memory to recall their traumatic experience." R. 124, ll. 11-20. She also explained that children who are abused do not tell right away – something called "delayed disclosure." R. 125, ll. 4-9. She provided multiple reasons for delayed disclosure. R. 125, l. 10 – R. 126, l. 1. Twitty had never met Minor 1 and offered no evidence to corroborate his testimony. R. 129, ll. 17-20.

Not only was Appellant Minor 1's stepfather for as long as eleven-year old Minor 1 could remember, but Minor 1 claimed Appellant had been sexually assaulting him back to his earliest memories. R. 54, ll. 14-25; R. 78, ll. 10-11; R. 81, ll. 3-24. According to Minor 1, the abuse occurred continuously – "There wasn't a break." R. 92, ll. 2-7. During the trial, Minor 1 told the jurors that the last encounter was on November 11, 2013, the day before Minor 1 and his mother went to the police. R. 111, l. 25 – R. 112, l. 6. However, he told the forensic interviewer that the last encounter was on October 31, 2013, which he remembered because this was his mother's birthday. State's Exhibit #4 at 17:49. Initially, Minor 1 told the police that Appellant made him have sex with him thirty-four times, but at trial Minor 1 claimed "[i]t happened way more than that many." R. 112, ll. 15 – R. 113, l. 1. Oddly, Minor 1 told the forensic interviewer the abuse was only a couple of times. State's Exhibit #4 at 17:58. At trial, Minor 1 claimed Appellant did "the bad stuff" to him "[a] couple times a week, like three, maybe four times a week" "[w]henever [his] mom and [his] sister were gone." R. 68, ll. 2-11.

When asked to describe the alleged abuse at trial, Minor 1 claimed Appellant made him put his mouth on his penis. R. 57, ll. 11-20. He recalled the first time this happened, but could not remember how old he was at the time. R. 57, ll. 21-23; R. 58, ll. 21-22. According to Minor 1, he went into the family's living room at Appellant's request. R. 57, l. 24 – R. 58, l. 1. Appellant pulled down his pants and told him to put his mouth on his penis. R. 57, l. 25 – R. 58, l. 6. Minor 1 was on his knees and Appellant made him "do, like, a rock-back-and-forth motion with [his] head." R. 58, ll. 7-11. Appellant then instructed Minor 1 to go to his sister's room and remove his clothing, which he did. R. 59, ll. 1-3. Minor 1 claimed Appellant entered sister's room, either completely naked upon entry or removing his clothes after entry, and put his penis in Minor 1's butt. R. 59, ll. 3-4; R. 59, ll. 5-7. During this encounter, Minor 1 claimed he was

on his hands and knees as Appellant had instructed. R. 59, ll. 11-14. He further claimed that Appellant "did a rock-back-and-forth motion" while his penis was in Minor 1's butt. R. 59, l. 24 – R. 60, l. 1. "After that," according to Minor 1, Appellant "laid back on his back and some white stuff came out of his penis" and "went on his stomach." R. 60, ll. 6-15.² Appellant wiped it off using sister's blankets, and the two "went on with [their] day." R. 60, ll. 16-19. Finally, Minor 1 claimed Appellant told him to keep it a secret, which he did, initially. R. 60, ll. 20-23.

Minor 1 claimed another sexual encounter happened when his nephew was present. However, Minor 1's nephew did not testify at trial. According to Minor 1, Appellant threatened that if he sucked his thumb, then "the bad stuff would happen." R. 61, ll. 15-21. Despite Minor 1's best efforts, he was unable to resist the temptation and sucked on his thumb. As a result, "the bad stuff happened." R. 61, ll. 23-24. According to Minor 1, Appellant caught him sucking his thumb and instructed him to go to sister's room and take off his clothes, which he did. R. 62, ll. 19-24. Thereafter, according to Minor 1, Appellant put his penis in his butt and put his penis in Minor 1's mouth. R. 63, ll. 1-2.

Minor 1 told the jurors that the "bad stuff" usually happened in sister's room, but it also happened on the couch in the living room. R. 63, ll. 18-23. He claimed that "one time," while Appellant was in the bathtub, he made Minor one put his mouth on his penis. R. 63, l. 24 – R. 64, l. 1; R. 88, l. 19 – R. 89, l. 2. Minor 1 remained outside the bathtub, but managed to put his mouth on Appellant's penis while Appellant was lying in the bathtub and "do the rock-back-and-forth motion." R. 64, ll. 4-8; R. 89, l. 5-15. When Appellant instructed him to stop, he did, "went back out and went on with [his] day." R. 64, ll. 8-9.

² During the forensic interview, Minor 1 said the stuff that came out was "black and white." State's Exhibit #4 at 18:04. Upon further leading questions from the interviewer, Minor 1 said the stuff was gray. State's Exhibit #4 at 18:04. Upon additional leading questions, Minor 1 said the stuff was clear and rescinded his earlier statement about black. State's Exhibit #4 at 18:04.

Another place where "the bad stuff" happened was the shed, according to Minor 1. R. 68, ll. 21-25. Minor 1 described Appellant sitting in a chair and making him put his mouth on his penis. R. 70, ll. 3-8. Upon further prodding by the solicitor, Minor 1 claimed Appellant pulled his pants down to enable the encounter. R. 71, ll. 1-4. He also claimed that Appellant made him get on his knees in order to put his mouth on his penis. R. 71, ll. 5-8. Finally, Minor 1 claimed that Appellant made him look at magazines filled with "naked pictures of people" in the shed. R. 71, ll. 11-16. The people in the magazines were "[d]oing the things that [Appellant] would make [Minor 1] do." R. 71, ll. 19-21. He even saw a picture of a girl with a penis in one of the magazines. R. 71, ll. 22-25. In complete contradiction to this testimony, during the forensic interview, Minor 1 specifically denied seeing pictures of people with no clothes in any form – photographs, cell phone, computer, movies. State's Exhibit #4 at 18:11. No magazines – and no pornography – of any sort were introduced at trial.

Minor 1 claimed Appellant would put something on his penis prior to inserting it into his anus. He was unsure what it was, but claimed it was from a tube. R. 63, ll. 3-13. However, during his forensic interview, Minor 1 stated he did not know if Appellant put anything on his penis. State's Exhibit #4 at 17:52. At trial, he also claimed that "a couple times [Appellant] wore this - - it was a cheetah-looking short dress. It was - - it was tiny. It was, like a cheetah dress, super tiny." R. 72, ll. 20-24. When the solicitor prodded for more information on this point, Minor 1 said, "It wasn't, like, a dress. It was - - no, it wasn't like a dress." R. 72, l. 25 – R. 73, l. 2. However, he said it was not for a man. R. 73, ll. 3-4.

He also described Appellant has have a "hard," "hairy," "dark brown" penis. R. 75, ll. 5-18. This too was in direct contradiction to his statements to the forensic interviewer that the top of Appellant's penis turned white. State's Exhibit #4 at 18:05. On cross-examination, Minor 1

even claimed that Appellant made Minor 1 place his penis into Appellant's butt. R. 82, ll. 14-15. In addition to the "white stuff" being wiped on sister's blanket, Minor 1 said the "white stuff" was on the couch, living room floor, and anywhere else where Appellant was during the encounters. R. 96, ll. 1-24.

Despite these numerous accusations, the state failed to produce any lubricant recovered from the home, a cheetah print dress or shirt, or any items of evidence from the home containing Appellant's DNA or even the presence of sperm and/or semen.

When Minor 1 was nine-years old, he told his mother about the alleged abuse after his mother and Appellant argued and separated. When his mother asked Minor 1 if she should give Appellant another chance, Minor 1 said, "no, no, no." R. 73, ll. 10-16. His mother questioned him on his response and he "told her a couple of lies." R. 73, ll. 16-19. When his mother did not believe the "lies," he told her "about the stuff that [Appellant] was doing." R. 73, ll. 19-20. His mother called the police. R. 73, ll. 24-25. Minor 1 saw a doctor and spoke to a woman at the Dorchester County Children's Center. R. 74, ll. 5-10.

Minor 1 admitted that his trial testimony differed from statements he had made previously. R. 102, l. 24 – R. 103, l. 1; R. 105, ll. 8-10; R. 109, ll. 3-7. He candidly admitted he had not told the police, the medical doctor, or the forensic interviewer about the sexual encounters in the shed or the one encounter in the bathtub. R. 83, l. 23 – R. 84, l. 17; R. 94, ll. 18-23. Minor 1 never told the police or the forensic interviewer regarding Appellant wearing a cheetah print shirt/dress. R. 104, ll. 5-14. He claimed he remembered the bathtub incident while "watching [his] phone." R. 94, l. 24 – R. 95, l. 2; R. 109, ll. 11-14. The incidents involving the cheetah outfit and the magazines "just came" to him. R. 109, l. 18 – R. 110, l. 7. He also reviewed a prior statement in which he claimed he was abused in the bedroom shared by his

mother and Appellant, but claimed he was not thinking clearly when he said that because it “definitely never happened in their room.” R. 94, ll. 4-11. During his forensic interview, Minor 1 told the interviewer that the last incident occurred on October 31, 2013, which was his mother’s birthday. State’s Exhibit #4 at 17:49. However, at trial, Minor 1 claimed nothing happened on that date, and that the last encounter was on November 11, 2013. R. 110, l. 19 – R. 111, l. 6; R. 114, ll. 10-14.

Although Minor 1 claimed his older sister witnessed multiple incidents of sexual abuse, sister did not testify at the trial. R. 98, l. 20 – R. 99, l. 22; State’s Exhibit #4 at 18:06.

Tara Crews

Tara Crews, Appellant’s wife and Minor 1’s mother, confirmed that on November 12, 2013, Minor 1 told her Appellant was sexually abusing him. R. 141, ll. 9-12; R. 148, ll. 13-15; R. 150, l. 21. Tara claimed she and Appellant had argued because of Appellant “dressing like a woman.” R. 148, ll. 20-24. When Appellant left for school, Minor 1 approached her and asked if she was going “to try to make this work” with Appellant. R. 150, ll. 7-9. Tara claimed Minor 1’s face was “totally white” with “fear” and she asked him to tell her what was wrong. R. 150, ll. 9-16. According to Tara, Minor 1 said, “he rapes me.” R. 150, ll. 19-20.

Tara admitted that although she was no longer living in the residence she once shared with Appellant, she still owned the home. R. 152, ll. 8-17. Between November 2013, when she and Minor 1 went to the police to report the alleged abuse and March 2016, when Appellant was tried, the police never asked to search the home. R. 158, ll. 4-8. Tara would have readily consented to a search, and permitted law enforcement to seize any items of potential evidence, including bedding, furniture coverings, and even sections of the carpet. R. 158, ll. 9-21.

Ashleigh Benda

Ashleigh Benda, a registered nurse at MUSC Children's Hospital, testified as an expert in the field of child abuse pediatrics. R. 163, ll. 20-23; R. 164, ll. 8-9; R. 166, ll. 23-25. She examined Minor 1 on November 14, 2013, two days after he reported the alleged misconduct to the police. R. 167, ll. 6-9; R. 174, ll. 14-17; R. 178, ll. 14-18. Benda found no signs of sexual abuse despite a full body examination. R. 171, ll. 12-21; R. 191, ll. 17-23. According to Benda, "all the studies and literature out there and our state protocol," provide that an examination should occur in an emergency room setting if the date of the last sexual contact was within thirty-six hours of the examination. R. 173, ll. 2-7. Benda explained the protocol would allow emergency room examination "up to 72 hours depending on the type of abuse." R. 173, ll. 7-8. However, "[a]fter 72 hours, the yield of finding evidence, finding injury, getting any kind of information or diagnostic findings is so low," the examination would be conducted in an outpatient setting. R. 173, ll. 9-13; R. 190, ll. 17-20. It was Benda's understanding based on information provided by Minor 1 that the last date of sexual contact was October 31, 2013, a date very much outside the 36-hour and 72-hour windows. R. 189, ll. 11-15; R. 193, ll. 16-20. Benda explained that one of the reasons why she may not have found any physical evidence of abuse was due to timing. R. 173, ll. 14-19. Minor 1 reported to Benda there had been "just a couple" of instances of abuse. R. 187, ll. 18-21.

Charge Conference

At the conclusion of the presentation of the evidence, the judge engaged the lawyers in a charge conference. The state requested the judge instruct the jury on "the 16-3-657 language regarding the child's testimony need not be corroborated." R. 256, ll. 8-11. The judge agreed to the request. R. 256, l. 12. Trial counsel immediately objected, but the judge insisted that in

order to "preserve" the objection, trial counsel would need to object "after the charge." R. 256, ll. 15-19.

State's Closing Arguments

The prosecutor's central theme in closing was that Minor 1's testimony "need not be corroborated" in this case. R. 262, ll. 20-23.³ The prosecutor instructed the jury on how to determine a witness's credibility, including demeanor, consistency over time, opportunity to know the facts testified to, and bias. R. 261, l. 23 – R. 262, l. 11. She then told the jury that corroboration could be used to determine a person's credibility and that "corroboration is when one witness tells you something and another witness says something similar. Are they corroborating each other." R. 262, ll. 13-18. Immediately thereafter, the prosecutor told the jurors

Now, this is very important when you are dealing with these cases. The testimony of the victim need not be corroborated in prosecutions under South Carolina code of law 16-3-652 through 16-3-658. And criminal sexual conduct with a minor in the first degree falls within this statute. If you believe the testimony that you heard of [Minor 1], under our law that is enough to find [Appellant] guilty of criminal sexual conduct with a minor in the first degree.

R. 262, l. 19 – R. 263, l. 3.

According to the prosecutor, "the crux of this whole case" was Minor 1's testimony that Appellant sexually abused him. R. 265, l. 21. "The rest around it is fluff. How many times and where and didn't say this before, he didn't say that after." R. 265, ll. 21-23. Conceding that her

³ In the opening statement, the prosecutor set up this theme that Minor 1's testimony need not be corroborated and informed the jurors that the judge would instruct the jury in this regard at the close of the case. Specifically, the prosecutor wanted "to focus" the jury's "attention on one part of the law that the judge" would "instruct" "at the end of th[e] trial." R. 44, ll. 1-4. That "part of the law" was that "in South Carolina a child witness' testimony need not be corroborated." R. 44, ll. 8-9. The prosecutor explained that the jurors could "convict someone based on a child's testimony alone." R. 44, l. 10. He asked the jurors "to keep that in mind" throughout the trial as various witnesses testified. R. 44, ll. 12-15.

case depended entirely upon the jury believing Minor 1's testimony, the prosecutor said, "I want you to think about this. In this case it is black and white. You either believe [Minor 1] or you think he's lying. There's no black and white. You either believe [Minor 1] or you think he's lying and I submit to you you should believe [Minor 1]." R. 266, ll. 3-9.

Oddly, the prosecutor argued to the jurors that Minor 1's testimony was corroborated by his own testimony and by his mother's testimony.

And you think a kid can make up the fact that he looked through magazines and that there was a picture of a man with a woman with a penis? Woman with a penis. Well, here's our corroboration. Here's another reason you should believe [Minor 1]. Because [Minor 1] said there was a man with a penis in the magazine and he says one of the times when [Appellant] did this to me he made me wear a dress. What did Tara tell you? Our marriage started falling apart in August because he wanted to dress as a woman. That's corroboration.

R. 269, ll. 2-12.

To counter the anticipated defense argument that the state lacked any physical evidence to support its case, the prosecutor "remind[ed]" the jury "about the charge you are going to hear that a child's testimony does not need to be corroborated." R. 270, ll. 15-19. In the prosecutor's opinion, the reason for such a charge was "because you rarely have that physical evidence." R. 270, ll. 19-21.

Jury Charge

During the charge on the law, the judge instructed the jurors how to evaluate the credibility of child witnesses.

Now, during this trial you heard testimony from a child. Where a witness is a child you must determine as with any witness whether that testimony is believable. In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts and the child's ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether

the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions asked.

R. 315, l. 11 – R. 316, l. 6. This instruction was not given during the general charge on how to evaluate the credibility of witnesses. Instead, this section appeared after the instruction to the jury not to consider the fact that Appellant did not testify and consideration of expert witnesses. Cf. R. 311, l. 22 – R. 313, l. 18 with R. 312, l. 19 – R. 315, l. 10.

Immediately after the instruction regarding children as witnesses, the judge instructed the jury concerning the “no corroboration” rule. Specifically, the judge instructed:

Now, ladies and gentleman, I further charge you that the testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 and I further charge you that this offense is alleged to be a violation of Section 16-3-655.

R. 316, ll. 7-12.

Following this instruction, the judge read the indictment to the jurors yet again. R. 316, l. 13 – R. 317, l. 1. Thereafter, the judge instructed the jury on the elements of criminal sexual conduct with a minor in the first degree. R. 317, ll. 2-25. The final instruction to the jury concerned completion of the verdict form and unanimity. R. 318, l. 1 – R. 322, l. 18.

Objection

In keeping with the judge’s instruction that he must object to the charge after it was given, trial counsel re-iterated his earlier objection to the judge instructing the jury that the testimony of Minor “need not be corroborated in the prosecution of this type.” R. 323, ll. 7-10. Trial counsel noted the charge would confuse the jury because the jurors could interpret the language to mean they could disregard the lack of corroborating evidence. R. 323, ll. 10-18. Thereafter, trial counsel cited the dissent in State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244

(2006), explaining that the charge biased the jury against the defendant by singling out the alleged victim's testimony as not requiring corroboration and appearing to express an opinion about the alleged victim's credibility. R. 323, l. 19 – R. 324, l. 5.

In response, Judge Goodstein noted the dissent in Rayfield, supra, was written by then-Associate Justice Pleicones, now Chief Justice Pleicones, and that a change in the law may occur. R. 324, ll. 6-9. "It may cease to be a minority opinion and become in fact the law." R. 324, ll. 9-10. Despite acknowledging the well-reasoned dissent in Rayfield, supra, Judge Goodstein overruled trial counsel's objection to the charge. R. 324, ll. 10-12.

Discussion

On May 4, 2016, less than two months after Appellant's trial, the South Carolina Supreme Court decided State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Overruling Rayfield, supra, the Supreme Court held charging a jury pursuant to section 16-3-657 of the South Carolina Code was "confusing and violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of a case." Stukes, 416 S.C. at 499, 787 S.E.2d at 483. The South Carolina Constitution forbids judges from charging juries "in respect to matters of fact," and limits judges to "declar[ing] the law." S.C. Const. art. V, § 21. Thus, "it is not within the province of the court to express an opinion to the jury on its view of the facts." Stukes, 416 S.C. at 499, 787 S.E.2d at 483. "By addressing the veracity of a victim's testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak." Id.

The Supreme Court found the state had not satisfied its burden of showing the error was harmless beyond a reasonable doubt because the "case hinged on credibility." Id. at 500, 787

S.E.2d at 483. The Court was not dissuaded that the error was harmless even where two witnesses testified to seeing the alleged victim shortly after the sexual encounter and claimed to see “a handprint” on her face or neck “matching” her version of events and witnesses describing the alleged victim’s demeanor as “afraid,” “withdrawn,” “nervous and tearful,” and “visibly upset and crying.” Id. at 501, 787 S.E.2d at 484. The case against Stukes included a DNA match and his inconsistent statements to authorities – at first, denying he knew the alleged victim and then claiming consensual sex. Id. Nevertheless, the Court held the error was not harmless in light of the confusing nature of the charge and the entire case boiling down to credibility. Id. at 483, 787 S.E.2d at 500.

Less than one month later, this Court rendered its opinion in State v. McBride, 416 S.C. 379, 786 S.E.2d 435 (Ct. App. 2016).⁴ The trial judge presiding over McBride’s trial also charged the jury pursuant to section 16-3-657 of the South Carolina Code that a victim’s testimony need not be corroborated in a sexual assault case. Id. This Court held the charge was erroneous. Id. However, this Court found the state satisfied its burden of showing the error was harmless beyond a reasonable doubt. Id. This Court distinguished the evidence presented at McBride’s trial from that presented at Stukes’ trial. Id. According to this Court, “there was corroborating evidence” presented against McBride. Id. “The victim’s mother testified she smelled men’s cologne and saw the stain on the victim’s shirt. The mother’s sister testified she confronted McBride and he said he did not mean to do it, and ‘tr[ie]d to compromise with [her].’ The sister described it as McBride’s confession.” Id. (alterations in original).

⁴ Proceeding *pro se*, Mr. McBride filed a petition for writ of certiorari seeking review in the South Carolina Supreme Court on August 22, 2016. The state filed its return on October 11, 2016. The case is ready for consideration.

Without question, the trial judge erred in charging the jury that Minor 1's testimony need not be corroborated in light of the Supreme Court's decision in Stukes, supra. The only question that remains is whether the state can satisfy its burden that the error was not harmless beyond a reasonable doubt. The state simply cannot do so in this case. The entirety of the state's case depended upon the credibility of Minor 1. There was no corroborating evidence presented. Although Minor 1's testimony indicated that at least some corroborating evidence could have been found – the pornographic magazines, sperm/semen on items where it should not have been – the state presented none. Minor 1 even indicated that his sister witnessed the incidents of sexual assault, but the state did not call sister to testify despite the fact that she was Minor 1's older sister, and presumably competent to testify. The state presented the jurors with contradictory evidence from Minor 1 and asked the jury to trust them through the use of the "no corroboration" charge. Minor 1's testimony before the jury differed significantly from his prior statement in a prior hearing and from his statements during his forensic interview. He even claimed the date of the last sexual encounter was different. He changed the type of abuse occurring and the locations for the abuse. Without question, the state's case against Appellant depended solely upon Minor 1's credibility, which was called into question by his forensic interview and the cross-examination revealing his inconsistent statements. It was only the judge's instruction to the jury – a victim's testimony regarding criminal sexual conduct need not be corroborated – that could have saved the state's case.

The state's argument regarding the statute was peculiar as well. The state told the jury that the statute concerned the testimony of child witnesses who allege criminal sexual conduct. According to the state, when a child claimed to be the victim of criminal sexual conduct, the child's testimony need not be corroborated by other evidence. While the statute provides that the

testimony of an alleged victim of criminal sexual conduct need not be corroborated, the statute does not carve out any special treatment for children and does not apply only to children. This aspect of the state's argument is particularly important when analyzed in conjunction with the judge's instructions to the jury. The judge charged the jury with instructions specific to testimony from children. In fact, the charge instructed the jury to evaluate the credibility of children using a different standard than the one applied to all other witnesses. This specific charge was followed immediately by the "no corroboration" instruction. Coupling the placement of the charge to the jury as following the child-specific (and different) instruction on credibility with the solicitor's argument that the General Assembly has promulgated legislation to permit jurors to consider testimony from child witnesses who allege sexual abuse without corroboration demonstrates the additional prejudice Appellant suffered due to this erroneous charge. One of the last things the jury heard before the administrative matters of the verdict form were that credibility of child witnesses is determined under a different standard, testimony of victims alleging sexual abuse need not be corroborated, and then the reading of the indictment, which alleged that Appellant had committed sexual battery. Despite the inconsistencies and the dearth of evidence, the jury was left with but one option – to convict – based upon the judge's instructions.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and remand for a new trial.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of May, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 15, 2017

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APP'X 366

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ARCHIE CREWS, IV,

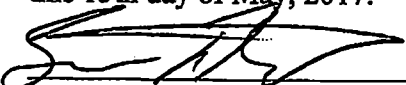
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of May, 2017.


Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of May, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

APP'X 367

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-000670

THE STATE,

Respondent,

v.

JAMES ARCHIE CREWS, IV,

Appellant.

FINAL BRIEF OF RESPONDENT

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APP'X 368

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STATEMENT OF ISSUES ON APPEAL

Following our Supreme Court's decision in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), which was reached after Appellant's trial, any error stemming from the trial court charging the jury pursuant S.C. Code Ann. § 16-3-657 regarding non-corroboration was an insubstantial error not affecting the result of Appellant's trial and is therefore harmless.

STATEMENT OF THE CASE

During its December 2015 term, the Dorchester County Grand Jury indicted Appellant James Archie Crews, IV for first-degree criminal sexual conduct with a minor following an investigation into allegations he orally and anally penetrated his nine-year-old stepson (Victim). On March 14, 2016, Appellant proceeded to a jury trial in the Dorchester County Court of General Sessions with the Honorable Diane S. Goodstein, circuit court judge, presiding. On March 18, 2016, the jury convicted Appellant as indicted. Judge Goodstein sentenced Appellant to life imprisonment. Thereafter, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

In November of 2013, Victim's mother and Appellant were experiencing marital discord over Appellant's desires to dress as a woman and had recently separated while still living in the same home. (R. 148-49, 156). On November 12, 2013, Appellant asked Victim's mother if she would be willing to work on their marriage and then left the home to go to school. (R. 70, 148-50). Once Appellant left, Victim, who was nine years old at the time, approached his mother and asked to speak with her. (R. 70, 149-50). Victim revealed to his mother Appellant had been sexually assaulting him; specifically, Appellant had been orally and anally penetrating him with his penis. (R. 70, 150). Victim's mother began crying and called the police along with Victim's father. (R. 70, 150-51, 156). She next took Victim and his older sister to the Summerville Police Department. (R. 151, 156).

Two days later, Victim, accompanied by his father, went to the Dorchester County Children's Center for a physical examination and a forensic interview. (R. 71). Victim's physical examination was performed by Ashleigh Benda, a register nurse practitioner with specialized training in child abuse pediatrics. (R. 163-68). Victim's father gave Benda her son's medical background before she started her physical examination of Victim. (R. 168-69). During the physical examination, Benda noted Victim was very shy, nervous, and timid and wanted to keep his body covered. (R. 170). Victim initially reported that Appellant had touched him inappropriately, but eventually told Benda that Appellant had orally and anally penetrated him. (R. 171-72). Benda did not find any physical signs of sexual abuse, which is common for juvenile male victims of sexual assault—especially if the last instance of abuse was more than seventy-two hours prior to the examination. (R. 171-75).

On November 14, 2013, Victim also participated in a forensic interview at the Dorchester County Children's Center with Millicent Walker. (R. 238, State's Ex. No. 4). During this videotaped forensic interview, Victim disclosed Appellant had orally and anally penetrated him several times, with the last instance of abuse occurred on October 31, 2013. (State's Ex. No. 4). Victim described some of the instances of abuse to Walker, including where in the home the abuse occurred and Appellant's conduct before, during, and after the abuse. (State's Ex. No. 4).

Appellant was arrested and indicted for first-degree criminal sexual conduct with a minor. Appellant proceeded to a jury trial on March 14, 2016. Victim testified Appellant had been sexually abusing him multiple times a week for as long as he could remember. (R. 68, 92). Victim testified Appellant would frequently orally and anally penetrate him with his penis, as well as occasionally have Victim perform oral and anal sex on him. (R. 57-60, 82, 99). Victim reported that the abuse happened when his mother was not home and typically occurred in his sister's bedroom, which faced the driveway, but also happened on the living room couch, in the shed, and once in the bathroom while Appellant was taking a bath. (R. 57, 66-68). Victim also recounted that Appellant wore a short, cheetah-pattered dress-type garment during some of the sexual encounters. (R. 72-73). Appellant told Victim to keep it a secret, and Victim complied and participated in the abuse out of fear. (R. 60, 90). Victim testified his sister often saw the abuse. (R. 99). However, his sister was not called as a witness at trial.

At the conclusion of the evidentiary portion of the trial, the State requested a non-corroboration jury charge pursuant to Section 16-3-657. (R. 256). Appellant objected to the instruction and the trial court instructed Appellant to object after the charge was given to preserve the issue for appellate review. (R. 256).

During its jury charge, the trial court gave the following instruction pertaining to how the jury should evaluate the credibility of juvenile witnesses:

Now, during this trial you heard testimony from a child.¹ Where a witness is a child you must determine as with any witness whether that testimony is believable. In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts and the child's ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions asked.

(R. 314-15).

Immediately after that instruction was given, the trial court instructed the jury regarding non-corroboration of a victim's testimony pursuant to Section 16-3-657:

Now, ladies and gentlemen, I further charge you that the testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 and I further charge you that this offense is alleged to be a violation of Section 16-3-655.

(R. 316).

Following the conclusion of all jury instructions, Appellant objected to the non-corroboration charge, arguing it would confuse the jury. (R. 323-24). The trial court denied Appellant's objection. (R. 324). Thereafter, deliberations began at 12:12 p.m. (R. 324-25).

After nearly forty minutes of deliberation, the jury sent the trial court a note inquiring as to whether either the State or defense counsel could have called Victim's sister as a witness. (R.

¹ Notably, the only juvenile witness who testified during trial was Victim.

325, 336). The trial court responded the jury had all the information necessary to make its decision. (R. 325, 336). The jury next asked to watch the forensic interview again and the jury was called back into the courtroom to watch the video. (R. 325-27, 339). The jury reached its verdict at 2:26 p.m., convicting Appellant of first-degree criminal sexual conduct with a minor. (R. 328-29).

ARGUMENT

Following our Supreme Court's decision in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), which was reached after Appellant's trial, any error stemming from the trial court charging the jury pursuant S.C. Code Ann. § 16-3-657 regarding non-corroboration was an insubstantial error not affecting the result of Appellant's trial and is therefore harmless.

During its jury charge, the trial court instructed the jury that the victim's testimony in a first-degree criminal sexual conduct with a minor case need not be corroborated.² Specifically, the trial court charged:

Now, ladies and gentlemen, I further charge you that the testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 and I further charge you that this offense is alleged to be a violation of Section 16-3-655.

(R. 316). At the time of Appellant's trial, this particular jury instruction had been deemed an appropriate charge consistent with the legislature's remedial intent pursuant to the Supreme Court's decision in State v. Rayfield, 369 S.C. 106, 117-18, 631 S.E.2d 244, 250 (2006).

Less than two months after Appellant's trial, the Supreme Court determined the statutory non-corroboration charge was confusing and unconstitutional in State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). In that case, the trial court instructed the jury on the statutory non-corroboration language from S.C. Code Ann. § 16-3-657. During its deliberations, the jury sent the trial court a note, asking: "[T]he South Carolina law that the victim's testimony in CSC . . . does not need to be corroborated, . . . does that law imply that the victim's testimony must be accepted as being true?" Rather than respond directly to the jury's question, the trial court recharged the general law on credibility. The jury immediately returned a guilty verdict. Stukes, 416 S.C. at 497, 787 S.E.2d at 482. On appeal, the Supreme Court concluded the non-corroboration charge was "confusing and violative of the constitutional provision prohibiting

² S.C. Code Ann. § 16-3-657 provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." Instructing the jury on this statute was first found acceptable in State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

courts from commenting to the jury on the facts of a case.” Id. at 493, 787 S.E.2d at 483 (citing S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”)). The Court further instructed:

[I]t is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim’s testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury. The charge invites the jury to believe the victim, explaining that to confirm the authenticity of her statement, the jury need only hear her speak.

Id. The Supreme Court observed “it is inescapable that this charge confused the jury” as “illustrated by the jury’s query as to whether our law implies a victim’s testimony **must** be accepted as being true.” Id. at 499, 787 S.E.2d at 483 (emphasis in original).

Addressing the trial court’s reaction to the jury note, the Supreme Court explained, “In our view the trial court’s decision to merely recharge credibility, as opposed to answer the question in the negative, did nothing to inform the jury on this issue.” Id. Reviewing for harmless error, the Supreme Court found the instruction was prejudicial because “th[e] case hinged on credibility. [The v]ictim said it was rape; [the defendant] said it was consensual.” Id.

Weeks later, this Court addressed the propriety of the statutory non-corroboration charge in State v. McBride, 416 S.C. 379, 394, 786 S.E.2d 435, 442 (Ct. App. 2016). Referencing the Supreme Court’s recent decision in Stukes, this Court agreed the charge was erroneous. Id. However, this Court found the error harmless beyond a reasonable doubt and declined to grant McBride a new trial. Id. This Court reasoned:

“[u]nlike the situation in Stukes, there was corroborating evidence in this case. The victim’s mother testified she smelled men’s cologne and saw the stain on the victim’s shirt. The mother’s sister testified she confronted McBride and he said he did not mean to do it, and “tr[ie]d to compromise with [her].” The sister described it as McBride’s confession. Thus, although the jury was erroneously

charged section 16–3–657, we find the error was harmless beyond a reasonable doubt.

Id.

In the present case, Appellant asserts the trial court’s non-corroboration charge is unconstitutional in light of Stukes and constitutes reversible error entitling him to a new trial. Appellant argues this error cannot be harmless because the State’s case hinged entirely on the minor victim’s credibility without any corroborating evidence. Furthermore, Appellant contends the minor victim’s trial testimony “differed significantly” from his prior sworn testimony and forensic interview, thereby heightening the prejudicial effect of the trial court’s erroneous charge. Appellant concludes the jury was left with only one option—to convict Appellant of first-degree criminal sexual conduct with a minor—based on the trial court’s non-corroboration charge. While the State is not disputing Appellant’s assertion that the trial court’s jury instruction was erroneous in light of the subsequently-issued Stukes decision, under the specific facts and circumstances of Appellant’s case, any error that resulted from the presentation of the non-corroboration charge was harmless beyond a reasonable doubt and did not render Appellant’s trial so fundamentally unfair as to warrant a new trial.

Importantly, after an error is discovered, an appellate court must determine whether the error was harmless before reaching a decision in a criminal appeal. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) (“Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless.”). An error is considered to be harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). “No definite rule of law governs this finding; rather,

the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010). Critically, appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); see State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.”).

Here, any error resulting from the trial court’s decision to instruct the jury on the statutory non-corroboration language was harmless because it could not have had any impact on the verdict. Initially, the jury’s inquiry as to whether Victim’s sister would or could have testified establishes the jury was considering (and perhaps searching for) corroboration to support Victim’s testimony, which demonstrates the jury thoroughly evaluated the credibility of the Victim’s testimony—including in regard to whether it was sufficiently corroborated—even after being presented with the non-corroboration charge. See Court’s Ex. No. 4. (R. 336). In light of that fact, it is illogical to assume that the non-corroboration charge would have resulted in the jury’s guilty verdict. Beyond that key factor, the present case is highly distinguishable from Stukes, where the jury was clearly confused and appeared to “inescapably” misunderstand the instruction based on its note to the trial court. Unlike the jury in Stukes, the jury in Appellant’s case did not send a question expressing confusion over the non-corroboration instruction, but rather, appeared to ignore the instruction altogether based on the jury note it did submit, which appeared to question the absence of testimony that could have potentially corroborated Victim’s claims of sexual abuse. Similarly, aspects of Victim’s testimony were corroborated, including Appellant dressing in female clothing. Moreover, aside from the testimony and evidence

presented by the State, Appellant—unlike the defendant in Stukes—elected not to testify in his own defense during his trial, did not refute Victim’s testimony about what had occurred, and did not offer any explanation or theory in regard to why Victim would fabricate a claim of repeated sexual assaults. Therefore, in this case, unlike in Stukes, the non-corroboration charge was harmless beyond a reasonable doubt and reversal is not warranted. See McBride, 416 S.C. at 394, 786 S.E.2d at 442 (finding any error in the trial court’s non-corroboration charge was harmless).

Furthermore and most importantly, any purported prejudice Appellant suffered from the trial court’s non-corroboration instruction was significantly outweighed and effectively eliminated by the enormous benefit Appellant derived from the trial court’s presentation of an extensive improper charge on evaluating the credibility of juvenile witnesses, which encouraged the jury to give heightened scrutiny to the testimony of Victim, who was the lone juvenile witness to testify during trial. This improper charge, which the trial court gave directly before the non-corroboration charge, singled out Victim and conveyed to the jury that his testimony should be more heavily scrutinized than all the other witnesses who testified at trial. In particular, this charge suggests juvenile witnesses are less likely to remember things accurately, are less likely to know the difference between a truth and a lie, are less likely to appreciate the seriousness of the proceedings, and are more easily lead. This charge is a misleading and incorrect statement of law as these are issues that could potentially plague all witnesses regardless of their age.³ Moreover, by commenting on the veracity of juvenile witnesses, the trial court erroneously gave an impermissible and unconstitutional charge on the facts that invaded the province of the jury. See S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to

³ Notably, juvenile witnesses are presumed to be competent like any other witness in South Carolina unless a showing to the contrary is made. See Rule 601, SCRE (“Every person is competent to be a witness except as otherwise provided by statute or these rules.”); see also 32 S.C. Jur. Witnesses § 6 (“Under the current rule, children are presumed to be competent unless it is shown otherwise.”).

matters of fact, but shall declare the law.”); Stukes, 416 S.C. at 499, 787 S.E.2d at 483 (“[I]t is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim’s testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury.”); State v. Cheeks, 401 S.C. 322, 329, 737 S.E.2d 480, 484 (2013) (“[W]e hold that the ‘strong evidence’ charge is improper as an expression of the judge’s view of the weight of certain evidence.”); State v. Collins, 266 S.C. 566, 225 S.E.2d 189 (1976) (“Any further instruction on [whether the witness is fearful of retribution or has any hope of leniency from the prosecution] might have invaded the province of the jury to draw inferences from the evidence.”); State v. Thorne, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960) (“The Judge must be careful to avoid expressing, or even intimating, any opinion, as to the facts, and if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury is the exclusive judge of the facts, and the true meaning and real object is that the jury must be left to form its own judgment, unbiased by any expressions, or even intimations, of opinion by the Judge.”). In light of the vast benefit Appellant received from the trial court’s unconstitutional charge pertaining to the credibility of juvenile witnesses, any error stemming from the court’s non-corroboration charge is harmless beyond a reasonable doubt.

Accordingly, based on the foregoing, the trial court’s presentation of a jury instruction on the statutory non-corroboration language could not have had any impact on the outcome of Appellant’s case. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 (“Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained.”); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) (“Given the abundant evidence of Tench’s guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt.”); cf. State v. Jenkins, 412 S.C. 643, 651-653, 773 S.E.2d 906, 910-911 (2015) (concluding any

error resulting from the admission of DNA evidence linking Jenkins's to a sexual assault to be entirely harmless and rejecting a conclusion "the case boiled down to a credibility contest" in light of the fact the victim's account of the sexual assault was supported by abundant independent evidence, including testimony regarding the victim's injuries, the presence of semen in the victim's body, the condition of the victim's home following the reported assault, the fingerprint evidence connecting Jenkins to the victim's home, the discovery of Jenkins in close proximity to the victim's home, and the victim's positive identification of Jenkins as her attacker). As a result, any error in the presentation of the recently-invalidated statutory non-corroboration jury instruction was entirely harmless in Appellant's case, and Appellant did not sustain actual prejudice from its presentation to the jury such that the harsh remedy of a reversal of his convictions was warranted on appeal. See United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"); see also Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)); State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."). Appellant's convictions should be affirmed.⁴

⁴If this Court should grant Appellant a new trial based on the unconstitutional nature of the non-corroboration charge, this Court should also declare the trial court's credibility of juvenile witnesses unconstitutional and bar its use during Appellant's retrial or any other future trials.

CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment and conviction of the lower court.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

April 27, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-000670

THE STATE,

Respondent,

v.

JAMES ARCHIE CREWS, IV,

Appellant.

CERTIFICATE OF COUNSEL

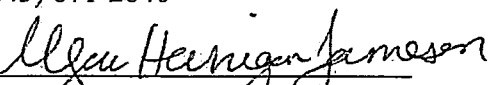
The undersigned certifies this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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ATTORNEYS FOR RESPONDENT

April 27, 2017

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-000670

THE STATE,

Respondent,

v.

JAMES ARCHIE CREWS, IV,

Appellant.

PROOF OF SERVICE

I, Keely Carter, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
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I further certify that all parties required by Rule to be served have been served.

This 27th day of April, 2017.


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APP'X 387

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

James Archie Crews, IV, Appellant.

Appellate Case No. 2016-000670

Appeal From Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Unpublished Opinion No. 2018-UP-339
Submitted June 1, 2018 – Filed July 25, 2018

REVERSED AND REMANDED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Megan Harrigan Jameson, both of
Columbia, and Solicitor David Michael Pascoe, Jr., of
Orangeburg, for Respondent.

PER CURIAM: James Archie Crews appeals his conviction for first-degree criminal sexual conduct (CSC) with a minor, arguing the trial court erred in charging

the jury that victim's testimony need not be corroborated by other evidence in contravention of *State v. Stukes*.¹ We agree.

I.

We find the trial court erred by instructing the jury that victim's testimony need not be corroborated by other evidence. "In reviewing jury charges for error, this [c]ourt considers the trial court's jury charge as a whole and in light of the evidence and issues presented at trial." *State v. Logan*, 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013). "In criminal cases, this court reviews errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous." *State v. McBride*, 416 S.C. 379, 385, 786 S.E.2d 435, 438 (Ct. App. 2016). "Regardless of whether the charge is a correct statement of law, instructions which confuse or mislead the jury are erroneous." *Stukes*, 416 S.C. at 498, 787 S.E.2d at 482.

II.

The State's case-in-chief consisted of three main witnesses—victim, his mother, and Ashleigh Benda, the nurse who performed the physical examination on the victim. Both victim's mother and Benda testified as to what victim disclosed to them about the alleged abuse. The State also called Millicent Walker, who was responsible for conducting the forensic interview with victim at the Dorchester Children's Center. Walker's testimony was limited to laying a foundation for the forensic interview video to be introduced into evidence. Additionally, the State called Kendra Twitty, a forensic interviewer and therapist at Hope Haven, a children's advocacy center, as an expert witness in the field of child-abuse dynamics.² The State offered no physical or forensic evidence, other than introducing the video of victim's forensic interview into evidence.

Throughout her closing argument, the assistant solicitor repeatedly told the jury victim's testimony "need not be corroborated." The State also acknowledged its case depended entirely on the jury believing victim's testimony, stating "I want you to think about this. In this case it is black and white. You either believe [victim] or you think he's lying"

¹ 416 S.C. 493, 787 S.E.2d 480 (2016).

² Twitty had never met victim, and did not offer any evidence to corroborate his testimony.

During its jury charge, the trial court instructed the jury that victim's testimony in a first-degree CSC with a minor case need not be corroborated, citing S.C. Code Ann. § 16-3-657, which provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." (Supp. 2017). Specifically, the trial court charged:

I further charge you that the testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 and I further charge you that this offense is alleged to be a violation of Section 16-3-655.

At the time of Crews' trial, this jury instruction had been approved by our supreme court in *State v. Rayfield*, 369 S.C. 106, 117–18, 631 S.E.2d 244, 250 (2006). However, a short time after Crews' trial, our supreme court deemed it "confusing and violative of the constitutional provision prohibiting courts from commenting to the jury on the facts of a case." *Stukes*, 416 S.C. at 493, 787 S.E.2d at 483 (citing S.C. Const. art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law.")).

Stukes held the State had not satisfied its burden of showing the error was harmless beyond a reasonable doubt because the "case hinged on credibility" and the jury seemed confused on whether it was obligated to accept the victim's testimony as truth. *Id.* at 500, 787 S.E.2d at 483. Our supreme court reaffirmed *Stukes* in *State v. Witherspoon*, finding the erroneous jury instruction was not harmless "given the centrality of the issue of credibility . . . and the absence of other overwhelming evidence of [the defendant]'s guilt." 418 S.C. 641, 643, 795 S.E.2d 685, 686 (2016).

Shortly after *Stukes*, this court decided *State v. McBride*, holding the "non-corroborating" jury charge was erroneous, but that the State satisfied its burden of showing the error was harmless beyond a reasonable doubt. 416 S.C. at 394, 786 S.E.2d at 442. This court stated, "there was corroborating evidence shown against McBride because "[t]he victim's mother testified she smelled men's cologne and saw the stain on the victim's shirt. The mother's sister testified she confronted McBride and he said he did not mean to do it, and 'tr[ie]d to compromise with [her]'. The sister described it as McBride's confession." *Id.*

Here, we find the jury instruction was not harmless because the case boiled down to credibility. As in *Stukes* and *Witherspoon*, there was no independent testimony from any other witness with firsthand knowledge as to the abuse—the only evidence was victim's testimony and witnesses who recounted the abuse as disclosed to them. As

the State conceded during closing argument, its case depended entirely upon the jury believing victim's testimony. In contrast from *McBride*, there was no compelling corroborating evidence in this case.

Thus, because the State's case rested exclusively on victim's testimony and the testimony of others who recounted the abuse as disclosed to them, we find the trial court's error was not harmless, and accordingly, we reverse Crews' conviction and sentence and remand for a new trial.

REVERSED.³

SHORT, THOMAS, and HILL, JJ., concur.

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-000670
Unpublished Opinion No. 2018-UP-339

THE STATE,

Respondent,

v.

JAMES ARCHIE CREWS, IV,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On July 25, 2018, this Court issued an unpublished opinion in which it reversed Appellant James Archie Crews, IV's conviction for first-degree criminal sexual conduct with a minor and remanded his case for a new trial. State v. James Archie Crews, IV, Op. No. 2018-UP-339 (Ct. App. filed July 25, 2018). In reversing Crews's convictions, this Court held the trial court erred by instructing the jury that the victim's testimony need not be corroborated by other evidence in light of our supreme court's decision of State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016), which was reached following Appellant's trial. This Court recognized this particular jury instruction had been approved by our supreme court at the time of Appellant's trial pursuant to State v. Rayfield, 369 S.C. 106, 117-18. 631 S.E.2d 244, 250 (2006). Furthermore, this Court held it could not conclude the trial court's instruction was not harmless because the case hinged on credibility, noting a lack of independent testimony from other witnesses with firsthand

knowledge of the abuse. Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because the State believes this Court misapprehended and overlooked its argument regarding the harmlessness of any error in light of the record before this Court, including the trial court's improper jury instruction on evaluating the credibility of juvenile witnesses, which encouraged the jury to give heightened scrutiny to the testimony of Victim, who was the lone juvenile witness to testify during trial.

During its jury charge, the trial court gave the following instruction pertaining to how the jury should evaluate the credibility of juvenile witnesses:

Now, during this trial you heard testimony from a child. Where a witness is a child you must determine as with any witness whether that testimony is believable. In deciding believability you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, the child's ability to observe and remember facts and the child's ability to understand and answer questions. Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness at this criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way the questions are asked. It is up to you to decide whether the child understood the questions asked.

(Tr. 396-97) (emphasis added).

Immediately after that instruction was given, the trial court instructed the jury regarding non-corroboration of a victim's testimony pursuant to Section 16-3-657:

Now, ladies and gentlemen, I further charge you that the testimony of the victim need not be corroborated in prosecutions under Sections 16-3-652 through 16-3-658 and I further charge you that this offense is alleged to be a violation of Section 16-3-655.

(Tr. 398).

Following the conclusion of all jury instructions, Appellant objected to the non-corroboration charge, arguing it would confuse the jury. (Tr. 406-07). The trial court denied Appellant's objection. (Tr. 407). Thereafter, deliberations began at 12:12 p.m. (Tr. 407-08).

After nearly forty minutes of deliberation, the jury sent the trial court a note inquiring as to whether either the State or defense counsel could have called Victim's sister as a witness. (Tr. 408, Court's Ex. No. 4). The trial court responded the jury had all the information necessary to make its decision. (Tr. 408, Court's Ex. No. 4). The jury next asked to watch the forensic interview again and the jury was called back into the courtroom to watch the video. (Tr. 408-10, Court's Ex. No. 5). The jury reached its verdict at 2:26 p.m., convicting Appellant of first-degree criminal sexual conduct with a minor. (Tr. 411-12).

Respondent respectfully argues this Court misapprehended and overlooked Respondent's argument regarding the harmlessness of any error. While the State is not disputing this Court's finding that the trial court's jury instruction was erroneous in light of the subsequently-issued Stukes decision, under the specific facts and circumstances of Appellant's case, any error that resulted from the presentation of the non-corroboration charge was harmless beyond a reasonable doubt and did not render Appellant's trial so fundamentally unfair as to warrant a new trial.

Importantly, after an error is discovered, an appellate court must determine whether the error was harmless before reaching a decision in a criminal appeal. See State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). An error is considered to be harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353

S.C. 190, 196, 577 S.E.2d 445, 448 (2003). “No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.” State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010). Critically, appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991); see State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) (“When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result.”).

Here, any error resulting from the trial court’s decision to instruct the jury on the statutory non-corroboration language was harmless because it could not have had any impact on the verdict. Initially, the jury’s inquiry as to whether Victim’s sister would or could have testified establishes the jury was considering (and perhaps searching for) corroboration to support Victim’s testimony, which demonstrates the jury thoroughly evaluated the credibility of the Victim’s testimony—including in regard to whether it was sufficiently corroborated—even after being presented with the non-corroboration charge. See Court’s Ex. No. 4. In light of that fact, it is illogical to assume that the non-corroboration charge would have resulted in the jury’s guilty verdict. Beyond that key factor, the present case is highly distinguishable from Stukes, where the jury was clearly confused and appeared to “inescapably” misunderstand the instruction based on its note to the trial court. Unlike the jury in Stukes, the jury in Appellant’s case did not send a question expressing confusion over the non-corroboration instruction, but rather, appeared to ignore the instruction altogether based on the jury note it did submit, which appeared to question the absence of testimony that could have potentially corroborated Victim’s claims of sexual abuse. Similarly, aspects of Victim’s testimony were corroborated, including Appellant dressing

in female clothing. Moreover, aside from the testimony and evidence presented by the State, Appellant—unlike the defendant in Stukes—elected not to testify in his own defense during his trial, did not refute Victim's testimony about what had occurred, and did not offer any explanation or theory in regard to why Victim would fabricate a claim of repeated sexual assaults. Additionally, this case is also distinguishable from Stukes because the jury was already alerted to give special scrutiny to Victim's testimony with the juvenile witness jury instruction prior to receiving the non-corroboration charge, a situation that was not present in Stukes as no such charge was not given. Therefore, in this case, unlike in Stukes, the non-corroboration charge was harmless beyond a reasonable doubt and reversal is not warranted. See McBride, 416 S.C. at 394, 786 S.E.2d at 442 (finding any error in the trial court's non-corroboration charge was harmless).

Furthermore and most importantly, any purported prejudice Appellant suffered from the trial court's non-corroboration instruction was significantly outweighed and effectively eliminated by the enormous benefit Appellant derived from the trial court's presentation of an extensive improper charge on evaluating the credibility of juvenile witnesses, which incorrectly suggested the testimony of a child required greater scrutiny than other witnesses, which necessarily meant Victim since he was the only juvenile witness. This improper charge, which the trial court gave directly before the non-corroboration charge, singled out Victim and conveyed to the jury that his testimony should be more heavily scrutinized than all the other witnesses who testified at trial. In particular, this charge suggests juvenile witnesses are less likely to remember things accurately, are less likely to know the difference between a truth and a lie, are less likely to appreciate the seriousness of the proceedings, and are more easily lead. This charge is a misleading and incorrect statement of law as these are issues that could potentially

plague all witnesses regardless of their age.¹ Moreover, by commenting on the veracity of juvenile witnesses, the trial court erroneously gave an impermissible and unconstitutional charge on the facts that invaded the province of the jury. See S.C. Const. art. V, § 21 (“Judges shall not charge juries in respect to matters of fact, but shall declare the law.”); Stukes, 416 S.C. at 499, 787 S.E.2d at 483 (“[I]t is not within the province of the court to express an opinion to the jury on its view of the facts. By addressing the veracity of a victim’s testimony in its instructions, the trial court emphasizes the weight of that evidence in the eyes of the jury.”); State v. Cheeks, 401 S.C. 322, 329, 737 S.E.2d 480, 484 (2013) (“[W]e hold that the ‘strong evidence’ charge is improper as an expression of the judge’s view of the weight of certain evidence.”); State v. Collins, 266 S.C. 566, 225 S.E.2d 189 (1976) (“Any further instruction on [whether the witness is fearful of retribution or has any hope of leniency from the prosecution] might have invaded the province of the jury to draw inferences from the evidence.”); State v. Thorne, 237 S.C. 248, 251, 116 S.E.2d 854, 855 (1960) (“The Judge must be careful to avoid expressing, or even intimating, any opinion, as to the facts, and if he does so, whether intentionally or unintentionally, a new trial must be granted. Under our Constitution the jury is the exclusive judge of the facts, and the true meaning and real object is that the jury must be left to form its own judgment, unbiased by any expressions, or even intimations, of opinion by the Judge.”). In light of the vast benefit Appellant received from the trial court’s unconstitutional charge pertaining to the credibility of juvenile witnesses, any error stemming from the court’s non-corroboration charge is harmless beyond a reasonable doubt. Stated differently, to the extent the error regarding the non-

¹ Notably, juvenile witnesses are presumed to be competent like any other witness in South Carolina unless a showing to the contrary is made. See Rule 601, SCRE (“Every person is competent to be a witness except as otherwise provided by statute or these rules.”); see also 32 S.C. Jur. Witnesses § 6 (“Under the current rule, children are presumed to be competent unless it is shown otherwise.”).

corroboration charge (which unquestionably remains a correct statement of law even though it is not a proper jury instruction following Stukes) tipped the scales of justice against Appellant, the juvenile witness instruction (which was and is not a correct statement of law) that instructed the jury to place heightened scrutiny of the testimony of Victim tilted the scales substantially in the opposite direction such that Appellant suffered no prejudice from the trial court's manner of instructing the jury.²

Accordingly, based on the foregoing, the trial court's presentation of a jury instruction on the statutory non-corroboration language could not have had any impact on the outcome of Appellant's case. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); cf. State v. Jenkins, 412 S.C. 643, 651-653, 773 S.E.2d 906, 910-911 (2015) (concluding any error resulting from the admission of DNA evidence linking Jenkins's to a sexual assault to be entirely harmless and rejecting a conclusion "the case boiled down to a credibility contest" in light of the fact the victim's account of the sexual assault was supported by abundant independent evidence, including testimony regarding the victim's injuries, the presence of semen in the victim's body, the condition of the victim's home following the reported assault, the fingerprint evidence connecting Jenkins to the victim's home, the discovery of Jenkins in close

² Additionally, the non-corroboration jury instruction was necessary under the circumstances presented in this case—where the trial court instructed the jury immediately prior that the testimony of the Victim warranted increased scrutiny—which required the giving of the otherwise impermissible charge, akin to when the door is opened to otherwise impermissible evidence. Cf. State v. Page, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008) ("It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence.").

proximity to the victim's home, and the victim's positive identification of Jenkins as her attacker). As a result, any error in the presentation of the recently-invalidated statutory non-corroboration jury instruction was entirely harmless in Appellant's case, and Appellant did not sustain actual prejudice from its presentation to the jury such that the harsh remedy of a reversal of his convictions was warranted on appeal. See United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]"); see also Calderon v. California, 525 U.S. 141, 146 (1998) ("The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error." (citations omitted)); State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) ("While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal."). Respondent respectfully requests this Court reconsider its finding that any error stemming from the non-corroboration jury instruction was not harmless. Moreover, if this Court grants Appellant a new trial based on the unconstitutional nature of the non-corroboration charge, this Court should also declare the trial court's credibility of juvenile witnesses unconstitutional and bar its use during Appellant's retrial or any other future trials.

Accordingly, for the foregoing reasons combined with the all the reasons raised in the Final Brief of Respondent, the State respectfully urges this Court to rehear this matter pursuant to Rule 221, SCACR, reconsider its decision in light of the harmlessness of any error in charging the jury that a victim's testimony need not be corroborated, vacate its previous opinion, and ultimately affirm Appellant's convictions and sentence.

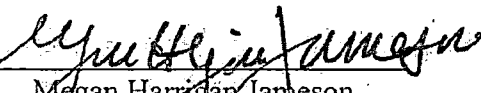
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August 8, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2016-000670

THE STATE,

Respondent,

v.

JAMES ARCHIE CREWS, IV,

Appellant.

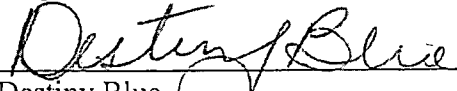
PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Respondent's Petition for Rehearing on Appellant by depositing two copies of the same in the interagency mailbox addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense – Appellate Division
PO Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.

This _____ day of August, 2018.


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APP'X 401

The South Carolina Court of Appeals

The State, Respondent,

v.

James Archie Crews, IV, Appellant.

Appellate Case No. 2016-000670

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr.

J.

Paul W. Hannon

J.

D. Hall

J.

Columbia, South Carolina

cc: Alan McCrory Wilson, Esquire
Susan Barber Hackett, Esquire
Megan Harrigan Jameson, Esquire
David Michael Pascoe, Jr., Esquire
The Honorable Diane Schafer Goodstein

FILED

October 1, 2018

APP'X 402