

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

SEP 06 2015

S.C. SUPREME COURT

MICHAEL RAY ELDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000242

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED FEBRUARY 7 – MARCH 2, 2011.....	1
APPLICATION FOR POST-CONVICTION RELIEF 2012CP3203136	427
RETURN	433
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED AUGUST 14, 2013.....	439
ORDER OF DISMISSAL	503
APPLICATION FOR POST-CONVICTION RELIEF 2014CP3204072	516
RETURN	524
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED APRIL 23, 2015.....	529
ORDER OF DISMISSAL PURSUANT TO <u>AUSTIN V. STATE</u>	535
INDICTMENTS AND SENTENCING SHEETS	540
SCDC SUMMARY REPORT.....	546
ORDER OF DISMISSAL OF DIRECT APPEAL.....	548
 THE FOLLOWING SEALED EXHIBITS FROM AUGUST 14, 2013 PCR HEARING ARE ON FILE WITH THIS COURT:APPLICANT’S EXHIBIT # 1 (VIDEO); APPLICANT’S EXHIBIT # 3 (PHOTO); APPLICANT’S EXHIBIT # 4 (PHOTO); APPLICANT’S EXHIBIT # 5 (PHOTO); APPLICANT’S EXHIBIT # 6 (PHOTO)	

COUNTY OF LEXINGTON

:

;

:

V.

:

:

MICHAEL RAY ELDERS

•

DEFENDANT.

FEBRUARY 7, 28 - MARCH 2, 2011
LEXINGTON, SOUTH CAROLINA

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A JURY.

DEBRA B. MOORE, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

WILLIAM Y. RAST, JR., ESQUIRE
ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1

I N D E X

2

WITNESSPAGE

3

2/7/11 Jury Voir Dire

5

4

2/28/11 Jury Voir Dire

63

5

Danielle McCord (In Camera)

Direct Examination By Ms. Moore

124

6

Cross-Examination By Mr. Rast

127

Minor

(In Camera)

7

Direct Examination By Ms. Moore

132

Lysa Miller-Dupre (In Camera)

8

Voir Dire By Ms. Moore

138

Voir Dire By Mr. Rast

140

9

Direct Examination By Ms. Moore

141

Opening Statement

10

By Ms. Moore

162

Desiree Busko

11

Direct Examination By Ms. Moore

165

Cross-Examination By Mr. Rast

167

12

Minor

Direct Examination By Ms. Moore

169

13

Cross-Examination By Mr. Rast

176

Redirect Examination By Ms. Moore

187

14

Lysa Miller-Dupre

Direct Examination By Ms. Moore

191

15

Cross-Examination By Mr. Rast

204

Redirect Examination By Ms. Moore

209

16

Katelyn Bradley

Direct Examination By Ms. Moore

210

17

Cross-Examination By Mr. Rast

212

Felicia Schwall

18

Direct Examination By Ms. Moore

215

Cross-Examination By Mr. Rast

216

19

Shelly Elders

Direct Examination By Ms. Moore

226

20

Cross-Examination By Mr. Rast

236

Redirect Examination By Ms. Moore

245

21

Danielle McCord

Direct Examination By Ms. Moore

250

22

Cross-Examination By Mr. Rast

256

Robin Baker

23

Direct Examination By Ms. Moore

260

Cross-Examination By Mr. Rast

276

24

Redirect Examination By Ms. Moore

284

25

I N D E X

	<u>WITNESS</u>	<u>PAGE</u>
1		
2		
3	Johnny Hutto	
	Direct Examination By Ms. Moore	289
4	Cross-Examination By Mr. Rast	294
	Redirect Examination By Ms. Moore	298
5	Laurie Caldwell	
	Voir Dire By Ms. Moore	300
6	Voir Dire By Mr. Rast	302
	Re-Voir Dire By Ms. Moore	304
7	In Camera Examination By Ms. Moore	313
	In Camera Examination By Mr. Rast	315
8	Direct Examination By Ms. Moore	324
	Cross-Examination By Mr. Rast	332
9	John Michael Carroll	
	Direct Examination By Mr. Rast	342
10	Cross-Examination By Ms. Moore	347
	Gene Ray Elders, Sr.	
11	Direct Examination By Mr. Rast	349
	Gene Ray Elders, Jr.	
12	Direct Examination By Mr. Rast	354
	Cross-Examination By Ms. Moore	359
13	Ashley Nicole Wooten	
	Direct Examination By Mr. Rast	363
14	Closing Argument	
	By Mr. Rast	372
15	By Ms. Moore	382
16	Charge of the Court	394
17	Verdict of the Jury	417
18	Sentence of the Court	424
19	Certificate of Reporter	426
20		
21		
22		
23		
24		
25		

1		E X H I B I T S		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	DVD	146	202
4	S-2	Letter	249	
5	S-3	Photograph		272
6	S-4	Photograph		272
7	S-5	Photograph		272
8	S-6	Photograph		272
9	D-1	Shelly Elders' Statement		240
10	D-2	Johnny Hutto's Statement		297
11	C-1	Jury Note	148	
12	C-2	Jury Note	221	
13	C-3	Jury Note	413	
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 (The following proceedings were held
2 February 7, 2011.)

3 **THE COURT:** Ladies and gentlemen, I understand
4 that Judge McMahon has drawn his jury. I think that
5 what we're going to do about the check court case is
6 just put everybody on a telephone standby system
7 who's not drawn on the second jury.

8 How many did he take?

9 **THE CLERK:** He took 13, Your Honor. We got 51
10 left.

11 **THE COURT:** What are the strikes, five and
12 five?

13 **MS. MOORE:** Five and ten.

14 **THE COURT:** I don't even know what he's charged
15 with, I'm just asking.

16 What I'm told, ladies and gentlemen, is that
17 there are a few pretrial matters on the case over
18 which I'm presiding that I'm going to have to handle
19 before we can draw our jury and I have to do that
20 outside your presence. So if you're here for jury
21 duty, I need for you to step outside into the common
22 area. As soon as I can, I'll get you back in here
23 and we'll proceed. Don't discuss anything about
24 this case and don't stand there and look inside the
25 windows, okay. Thank you.

1 (The jury panel leaves the courtroom.)

2 **THE COURT:** All right. As I understand it,
3 there have been some indictments that have been
4 recently issued that have not been served on the
5 defendant.

6 **MS. MOORE:** That's right, Your Honor.

7 **THE COURT:** Are you ready?

8 **MS. MOORE:** I am ready. Can I call my case or
9 serve them?

10 **THE COURT:** I think you have to serve the
11 indictments.

12 Mr. Rast, y'all step over there.

13 Is your name Elders?

14 **DEFENDANT:** Yes, sir.

15 **THE COURT:** Go over there by your lawyer,
16 please.

17 Just read out the indictment number and the
18 caption.

19 **MS. MOORE:** Your Honor, the indictment number
20 is 2011-GS-32-364. It's an indictment for lewd act
21 upon a minor.

22 The body alleges that Michael Ray Elders did in
23 Lexington County, South Carolina, between January
24 1st, 2008 and -- I'm sorry, that's -- yes, June
25 28th, 2009, being a person over the age of 14,

1 willfully and lewdly commit or attempt a lewd or
2 lascivious act upon or with the body or its parts of
3 a child under the age of 16 years, to wit: Minor
4 date of birth with the intent
5 of arousing, appealing to or gratifying the lust or
6 passions or sexual desires of the person or of the
7 child, to wit: the defendant touched the victim's
8 genitals.

9 It was true billed by the Lexington County
10 Grand Jury this morning at nine o'clock, February
11 7th, 2011.

12 I provided Mr. Rast a copy of the proposed
13 indictment via fax Tuesday of last week, put him on
14 -- Tuesday or Wednesday, I'm not sure, but put him
15 on notice. We had talked about this the Friday
16 before last.

17 **MR. RAST:** We do not object to it, Judge.

18 **THE COURT:** All right. May I see it?

19 **MS. MOORE:** I have two actually.

20 **THE COURT:** Are you Michael Ray Elders?

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** If you answer by that name, raise
23 your right hand.

24 **DEFENDANT:** (Defendant complies.)

25 **THE COURT:** Thank you, sir.

1 The Solicitor's read out an indictment for
2 committing a lewd act upon a minor under the age of
3 16, which was true billed by the grand jury, signed
4 by the foreman of the grand jury and issued today
5 and has served a copy upon you. You're charged with
6 committing a lewd act upon a minor. And I have to
7 go through an arraignment process with you, so you
8 can confer with your lawyer if you need to at any
9 time. Do you understand the charge against you?

10 **DEFENDANT:** Yes, sir.

11 **THE COURT:** And how do you plead, guilty or not
12 guilty?

13 **DEFENDANT:** Not guilty, sir.

14 **THE COURT:** All right. And how will you be
15 tried? And the typical answer is by God and my
16 country.

17 **DEFENDANT:** By God and my country.

18 **MS. MOORE:** Your Honor, can I -- I did tell you
19 there were two.

20 **THE COURT:** Okay.

21 **MS. MOORE:** Did I or --

22 **THE COURT:** I don't think you did, but go
23 ahead.

24 **MS. MOORE:** Okay. I may not have. Before you
25 go through, I don't want you to go through it twice.

1 **THE COURT:** Well, I'm just about through with
2 this one, so let me just finish this one and then
3 I'll do the next one.

4 All right. Are you ready for trial?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** You don't need any additional time,
7 Mr. Rast?

8 **MR. RAST:** No, Your Honor.

9 **THE COURT:** All right. What's the other
10 indictment?

11 **MS. MOORE:** The second one is 2011-GS-32-365.
12 It is an indictment for committing a lewd act upon a
13 minor. And the same statutory language is in there,
14 but the gratifying the lust or passions or sexual
15 desires of the person or of the child, to wit: the
16 defendant put the victim's hand on his penis, that's
17 the only change to the previous mentioned
18 indictment. That was also true billed by the grand
19 jury on February 7th, 2011, this morning at 9:00
20 a.m. I also provided Mr. Rast a copy of that.

21 In addition to that, Mr. Rast raised an issue
22 this morning about the warrant -- the caption of the
23 warrant is for criminal sexual conduct first degree.
24 The code section is the same. The language in the
25 body of the warrant is of a -- it's statutorily of a

1 CSC with a minor first. The only difference is it
2 says criminal sexual conduct first, but in an
3 abundance of caution, I have a certified, true
4 billed copy of that one as well.

5 **THE COURT:** All right. Hand it up.

6 All right. Mr. Elders, they've handed me two
7 other indictments. One was issued today. It's
8 indictment 2011-GS-32-00365, the State versus
9 Michael Ray Elders, charges you with committing a
10 lewd act upon a minor.

11 The indictment alleges that a Court of General
12 Sessions convened February of 2011, the Grand Jury
13 of Lexington County present under their oath that
14 Michael Ray Elders did in Lexington County, South
15 Carolina, between January 1, 2008 and June 28, 2009,
16 being a person over the age of 14, willfully and
17 lewdly commit or attempt a lewd or lascivious act
18 upon or with the body or its parts of the child
19 under the age of 16 years, to wit: Minor
20 date of birth , with the
21 intent of arousing, appealing to or gratifying the
22 lust or passions or sexual desires of the person or
23 of the child, to wit: the defendant put the
24 victim's hand on his penis, in violation of section
25 16-15-140 of the Code of Laws of South Carolina,

1 1976, as amended against the peace and dignity of
2 the state and contrary to the statute in such case
3 made and provided. This was signed by the foreman
4 of the grand jury February the 7th, 2011.

5 So you're charged with committing a lewd act
6 upon a minor. How -- do you understand the charge
7 against you?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** How do you plead, guilty or not
10 guilty?

11 **DEFENDANT:** Not guilty.

12 **THE COURT:** And how will you be tried, by God
13 and your country?

14 **DEFENDANT:** Yes, sir, by God and my country.

15 **THE COURT:** Are you ready to proceed on this
16 charge?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** Are you ready, Mr. Rast?

19 **MS. MOORE:** Your Honor, I misspoke. Mr. Rast
20 told me that the code section on the warrant is that
21 of CSC with a minor first, but he said he waives
22 that and is ready to go forward. I apologize.

23 **THE COURT:** That's okay.

24 (Mr. Rast conferring with the defendant.)

25 **THE COURT:** Do y'all need additional time to

1 talk?

2 MR. RAST: Judge, can I have about five minutes
3 outside?

4 THE COURT: Certainly. We're at ease.

5 (Brief Recess.)

6 THE COURT: Where are we, Mr. Rast?

7 MR. RAST: We're ready for trial, Judge.

8 THE COURT: All right. Mr. Elders, you don't
9 want any additional time to prepare for this?

10 DEFENDANT: No, sir.

11 THE COURT: Are you sure?

12 DEFENDANT: I'm positive.

13 THE COURT: You've had enough time to meet with
14 your lawyer and discuss things with him so he can
15 represent you properly.

16 DEFENDANT: Yes, sir.

17 THE COURT: That's your own decision, made of
18 your own free will?

19 DEFENDANT: Yes, sir.

20 THE COURT: Now, on the criminal sexual conduct
21 with a minor in the first degree charge, Mr. Rast,
22 your client has either been arraigned or waives
23 arraignment; is that correct?

24 MR. RAST: That's correct.

25 THE COURT: Anything else, Solicitor?

1 **MS. MOORE:** I'm sorry, Your Honor?

2 **THE COURT:** Anything else?

3 **MS. MOORE:** No, sir. While the jury's out, if
4 you want to talk about scheduling and other motions
5 we have, we can do that. It will take two minutes.

6 **THE COURT:** Okay. Y'all have a seat.

7 **MS. MOORE:** We do have a very brief Jackson v.
8 Denno for oral statements he made when he was
9 arrested to Detective McCord. We also have a
10 forensic interview that was taped. And by statute,
11 the State submits that we will be allowed to
12 introduce that and play it for the jury.

13 **THE COURT:** How long is the interview?

14 **MS. MOORE:** Thirty minutes.

15 **THE COURT:** What else? Any other pretrial
16 issues you know about?

17 **MS. MOORE:** No, sir.

18 **MR. RAST:** Judge, I would move to sequester the
19 witnesses is the only thing I would have.

20 **MS. MOORE:** Your Honor, I would only ask that
21 the case officer remain, the victim and her mother.

22 **THE COURT:** They may all stay, those three may
23 stay.

24 **MR. RAST:** Judge, I would object to them having
25 three. The victim and the mother are going to

1 testify.

2 **THE COURT:** Yes, sir. I note your objection.
3 My understanding of the Victim Bill of Rights is the
4 chief investigating officer is permitted to stay and
5 the victim is permitted to stay. When you have a
6 situation where the victim is a minor, I always let
7 one parent stay.

8 **MS. MOORE:** Thank you, Your Honor.

9 **THE COURT:** If I'm wrong, I'm sure I'll find
10 out about it one day.

11 How long will it take y'all to draw 40?

12 **THE CLERK:** We can do it right now, Your Honor.

13 **THE COURT:** How long will it take?

14 **THE CLERK:** About two seconds.

15 **MS. MOORE:** Your Honor, I would only ask that
16 that sequestration be reciprocal.

17 **THE COURT:** Okay. Mr. Rast, if you have
18 witnesses other than the defendant --

19 **MR. RAST:** I do, but they'll be outside. I've
20 already explained to them that that will probably
21 happen.

22 **THE COURT:** Okay. I'm going to narrow this
23 pool to 40, let 11 of them go home. If it turns out
24 that's not enough, we'll try it again tomorrow.

25 You can go ahead and let the jury start coming

1 in.

2 (The jury panel returns to the courtroom.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 thank you very much. We have gone through the
5 matters that I needed to go through at this point.
6 And I'm going to narrow the pool somewhat because
7 I've got more people here than I need for what I
8 need to do, so I'm going to let about a dozen of you
9 go.

10 The only way I can do this is kind of the
11 reverse of what you would think. I have to read to
12 you the ones who have to stay. I'm going to read a
13 list of names in no particular order and I need you
14 to raise your hand when your name is called so that
15 I know that you got word. You can put your hand
16 right back down once I see it, all right.

17 (Whereupon, a list of jurors' names were
18 called.)

19 **THE COURT:** Who didn't get called, raise your
20 hand. You folks with your hands raised, in just a
21 minute, you can go home -- put your hands down --
22 call that number tonight after 6:00 and follow the
23 instructions.

24 Here is what I understand the amended version
25 of the plan is, third amended version. Probably

1 going to be ten amended versions before the week's
2 over. The case that they have that does not involve
3 Judge McMahon or me is a case that will be tried by
4 Judge Jeffcoat. The last discussion I had with
5 them, the attorneys in that case, there may be some
6 issues about trying that case. And what we will do
7 is we will have you call in and if we need the jury
8 for that case, we'll bring you in. If not, as soon
9 as we know we don't need you, there will be a
10 message on there that you're free to go, you're
11 through, all right.

12 Any questions about the call-in system from
13 those 11 or 12 folks?

14 (There was no response.)

15 **THE COURT:** All right. If your name was not
16 called initially and you were one of those who
17 raised your hands last, you can go. Thank you. If
18 you are brought back, it will probably be Wednesday.

19 (Whereupon, the remaining jury panel was
20 excused.)

21 **THE COURT:** All right. Ladies and gentlemen of
22 the jury, we're about to qualify a jury that's going
23 to hear three separate and distinct indictments.
24 Each of these indictments has to be evaluated on its
25 own merit or lack of merit. They are being tried

1 together merely for purposes of convenience.

2 Now, an indictment, ladies and gentlemen, is a
3 charging paper. It has no evidentiary value. You
4 cannot give it any evidentiary value. It's not
5 evidence. It's merely the formal means by which
6 someone is charged and brought to trial.

7 Now, each of these indictments is captioned the
8 State versus Michael Ray Elders. And in one
9 indictment, Mr. Elders is charged with criminal
10 sexual conduct with a minor in the first degree.
11 That indictment alleges that Michael Ray Elders did
12 in Lexington County, South Carolina, on or between
13 January 1, 2008 and June 28, 2008 (sic), commit a
14 sexual battery upon Minor date of birth
15 a minor who was less than 11
16 years of age.

17 Specifically, it's alleged that the defendant
18 penetrated the victim's vagina with his finger,
19 which is alleged to be in violation of section
20 16-3-655 subsection (A) subsection (1) of the Code
21 of Laws of South Carolina, 1976, as amended.

22 Another indictment charges Mr. Elders with
23 committing a lewd act upon a minor. That indictment
24 charges that Michael Ray Elders did in Lexington
25 County, South Carolina, between January 1, 2008 and

1 June 28, 2009, being a person over the age of 14
2 willfully and lewdly commit or attempt a lewd or
3 lascivious act upon or with the body or its parts of
4 a child under the age of 16 years, to wit: Minor

5 date of birth with the
6 intent of arousing, appealing to or gratifying the
7 lust or passions or sexual desires of the person or
8 of the child.

9 Specifically, it's alleged that Mr. Elders
10 touched the genitals of Minor and that is a
11 charge of committing a lewd act on a minor, which is
12 alleged to be in violation of section 16-15-140 of
13 the Code of Laws of South Carolina, 1976, as
14 amended.

15 And I have an indictment that charges
16 committing a lewd act upon a minor. That indictment
17 charges that Michael Ray Elders did in Lexington
18 County, South Carolina, between January 1, 2008 and
19 June 28, 2009, being a person over the age of 14
20 willfully and lewdly commit or attempt a lewd or
21 lascivious act upon or with the body or its parts of
22 a child under the age of 16 years, specifically
23 Minor date of birth , with
24 the intent of arousing, appealing to or gratifying
25 the lust or passions or sexual desires of the person

1 or of the child.

2 Specifically, it's alleged that Mr. Elders put
3 the victim's hand, the hand of Ms. Blanton, on his
4 penis in violation of section 16-15-140 of the Code
5 of Laws of South Carolina, 1976, as amended.

6 So Mr. Elders is charged with criminal sexual
7 conduct with a minor in the first degree and two
8 counts of committing a lewd act upon a minor.

9 Upon his arraignment on these charges,
10 Mr. Elders has entered pleas of not guilty. He is
11 presumed to be innocent. It is incumbent upon the
12 State of South Carolina having brought these charges
13 against Mr. Elders to prove every essential element
14 of each offense charged beyond a reasonable doubt.
15 Mr. Elders has no obligation to prove anything at
16 all.

17 I'm going to be asking you a series of
18 questions. If any of these questions apply to you
19 or you have doubt about whether they apply to you,
20 please stand. Listen carefully to the question I
21 ask of you and answer that question. If I ever ask
22 you anything you prefer to discuss more privately,
23 let me know you want to come down front, we'll talk
24 about it on the side. Remember that you're under
25 oath throughout this process.

1 Now, is Michael Ray Elders in the courtroom?

2 **MR. RAST:** Yes, Your Honor.

3 **THE COURT:** Mr. Elders, I need you to stand,
4 turn around so the jury can see you, please, sir.

5 Thank you very much. Have a seat.

6 Is there any member of the jury panel who is
7 related by blood or marriage or connected by
8 employment with the defendant in these cases,
9 Mr. Michael Ray Elders; if so, please stand?

10 (There was no response.)

11 **THE COURT:** Mr. Elders will be represented by
12 Mr. Bill Rast.

13 Thank you, Mr. Rast.

14 The following persons have been identified as
15 potential witnesses for the State. If any of these
16 people are present, I need for that person to stand
17 as his or her name is called and face the jury. If
18 I mispronounce your name, please don't hesitate to
19 correct me because I'm probably going to
20 mispronounce some of this.

21 Desiree Busko of Cayce Public Safety.

22 **MS. MOORE:** Busko.

23 **THE COURT:** She's not here?

24 **MS. MCCORD:** She's not here.

25 **THE COURT:** Danielle McCord, Cayce Public

1 Safety, thank you; Laurie Caldwell; Shelly Elders,
2 Ms. Elders is over here to my right, would you face
3 the jury, please, thank you; Minor would
4 you do the same, please, ma'am, thank you, Lysa
5 Miller-Dupre, thank you, ma'am; Christy Kirkland,
6 would you stand back up, please, ma'am? You're Ms.
7 Kirkland?

8 **MS. KIRKLAND:** Yes, sir.

9 **THE COURT:** Everybody see her? Thank you.
10 Tommy Hutto, Robin Baker -- Mr. Hutto is back to my
11 right as well.

12 **MR. HUTTO:** Johnny Hutto.

13 **THE COURT:** Johnny Hutto. Is that the right
14 person?

15 **MS. MOORE:** Yes, sir, Your Honor, I'm sorry.

16 **THE COURT:** Robin Baker; Felicia Schwall,
17 S-c-h-w-a-l-l; Katelyn Bradley.

18 Are any of you related by blood or marriage or
19 connected by employment with any of the potential
20 witnesses for the State in the case; if so, please
21 stand?

22 (Jurors stand.)

23 **THE COURT:** Your name, please?

24 **JUROR:** Christine Suit.

25 **THE COURT:** Yes, ma'am.

1 The lawyers may join me on the side and
2 Mr. Elders may if he likes.

3 (Whereupon, the following bench conferences
4 were held on the record.)

5 **THE COURT:** Okay. Ms. Suit, go ahead. 166.

6 **JUROR:** Is there any way that I can find out
7 the first husband -- ex-husband of Danielle because
8 I think our families know each other, but I don't
9 know her new name now?

10 **MS. MOORE:** I don't know if it was her first
11 husband, but she used to be Danielle Belk.

12 **JUROR:** Do you know how many children she has?

13 **MS. MOORE:** Four.

14 **JUROR:** And three of (inaudible) --

15 **COURT REPORTER:** I'm sorry?

16 **THE COURT:** She's got to take down what you
17 say.

18 **JUROR:** I'm sorry. I'm trying to find out
19 if --

20 **MS. MOORE:** Judge, can I ask her?

21 **THE COURT:** Yes.

22 Just give us a second --

23 **JUROR:** I'm so embarrassed because I've got
24 everything cancelled for the week.

25 **THE COURT:** There's nothing to be embarrassed

1 about.

2 (Pause.)

3 **MS. MOORE:** It is.

4 **JUROR:** I'm very close to Kyle Taylor, her
5 first ex, the father of her three children. She had
6 my best friend arrested and I don't know if my
7 feelings would have anything to do with the trial.

8 **THE COURT:** She had your best friend arrested.
9 Okay, I'll set you aside on this case.

10 **JUROR:** Okay. I'm sorry.

11 **THE COURT:** You did exactly what you're
12 supposed do.

13 **JUROR:** I've got 16 years of history.

14 **THE COURT:** Well, the reason we don't bring in
15 13 or 14 people and we bring in 65 is just because
16 of this. You did exactly what you were supposed to
17 do.

18 **JUROR:** Thank you.

19 **THE COURT:** Ms. Suit is 166. She's set aside
20 on the trial of this case.

21 Ms. Stitely.

22 **JUROR:** I know Officer McCord in a social
23 capacity. I do feel that I could be completely
24 impartial, but I do know her in a social capacity.

25 **THE COURT:** If she testifies in the case, would

1 that in any way affect your ability to be a fair and
2 impartial juror?

3 **JUROR:** Not at all.

4 **THE COURT:** Can you decide the case without
5 regard to what she may think of your decision?

6 **JUROR:** Absolutely.

7 **THE COURT:** Have you ever formed in your own
8 mind or expressed any opinion to anyone as to
9 whether she's believable or not?

10 **JUROR:** Not at all, no, sir.

11 **THE COURT:** Any doubt about any of those
12 answers?

13 **JUROR:** Not at all.

14 **THE COURT:** Thanks very much.

15 Ms. Stitely is 162. She's able to serve.

16 (Whereupon, the bench conferences were
17 concluded.)

18 **THE COURT:** All right. The State will be
19 represented by Ms. Debra Moore, who's an Assistant
20 Solicitor with the Eleventh Judicial Circuit.

21 Thank you.

22 Folks, do any of you know anything at all about
23 these matters? Do you have any knowledge whatsoever
24 about these allegations? Has anyone talked to you
25 about them? Have you heard, seen or read anything

1 in the news media about them? Do you know anything
2 whatsoever about these allegations, these matters
3 other than what you've heard me say in this
4 courtroom this morning? If so, please stand.

5 (There was no response.)

6 **THE COURT:** Are any of you members of or
7 financial contributors to any organization that has
8 as one of its primary purposes, the support of law
9 enforcement or assistance with victims' rights or
10 abused or neglected individuals, that would include
11 if you're a member of or financial contributor to
12 any organization or if you volunteer your services
13 for any organization such as Citizens Against
14 Violent Crime, any kind of shelter for abused
15 persons, any similar organization; if so, please
16 stand?

17 (Juror stands.)

18 **THE COURT:** Your name, sir?

19 **JUROR:** Marvin Hutchinson.

20 **THE CLERK:** Number 83, Your Honor.

21 **THE COURT:** And what's your situation,
22 Mr. Hutchinson?

23 **JUROR:** I'm just a member of the National
24 Association of Social Workers. I don't know if that
25 qualifies.

1 **THE COURT:** To the best of your knowledge,
2 would your relationship or experience with that
3 entity affect your ability to be a fair and
4 impartial juror in the case?

5 **JUROR:** (Juror shook head.)

6 **THE COURT:** Sir?

7 **JUROR:** It would not.

8 **THE COURT:** Do you have any doubt in your mind?
9 You have to speak your answers because she takes
10 them down.

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you.

13 Mr. Hutchinson is juror number 83. He's
14 eligible to serve.

15 Now, folks, I've told you the names of various
16 individuals involved in this matter. I've
17 introduced to you Mr. Elders and I've introduced to
18 you Ms. Blanton. And I've read a list of names of
19 potential witnesses for the State, some of them are
20 here, some of them are not right now, that's very
21 typical. We rarely have all -- actually, we have
22 more witnesses here today than we normally have.
23 I've introduced the attorneys to you.

24 Now, what I need for you to do now is this. If
25 you've got any connection of any kind with any of

1 the people involved in this case or any of the
2 entities involved in this case, you need to disclose
3 that to us. So that would include such things as if
4 you attend the same church or civic clubs, if you're
5 neighbors, friends, acquaintances, social
6 acquaintances, if you are current or former clients
7 of the attorneys, if you've ever been on the
8 opposite side of a case to the best of your
9 knowledge involving one of these attorneys, if you
10 have any connection with the case of the Department
11 of Public Safety or the Solicitor's Office of the
12 Eleventh Judicial Circuit --

13 Where is Ms. Baker an RN; do you know? Do you
14 know where Ms. Baker is an RN? It says she's a
15 registered nurse.

16 **MS. MOORE:** Your Honor, she was a registered
17 nurse at Palmetto Health Baptist. She is now a --
18 she is over the school nurses in the Newberry School
19 District.

20 **THE COURT:** Okay. She formerly was with
21 Palmetto Health Baptist and now is with Newberry
22 school system.

23 **MS. MOORE:** Your Honor, also Laurie Caldwell is
24 Laurie Caldwell from the South Carolina Law
25 Enforcement Division commonly known as SLED.

1 **THE COURT:** All right. SLED?

2 **MS. MOORE:** Yes, sir.

3 **THE COURT:** If you've got any connection at all
4 with any of these people or any of these entities
5 that you haven't already told us about, please stand
6 up and disclose it to us.

7 (There was no response.)

8 **THE COURT:** Is there anything at all about the
9 nature of these allegations, the allegations being
10 criminal sexual conduct with a minor in the first
11 degree, committing a lewd act upon a minor two
12 counts, is there anything at all about the mere
13 allegations that affects your ability to be a fair
14 and impartial juror in the case; if so, please
15 stand?

16 (There was no response.)

17 **THE COURT:** All right. Now, I'm going to pose
18 a question. It's a multiple part question and we're
19 going to talk about your responses down front.
20 We're not going to talk about them in front of the
21 whole courtroom.

22 What I need to know is this. If any of you,
23 any of your immediate family members, any of your
24 close, personal friends have ever been accused of
25 committing any type of a sexual misconduct, or have

1 any of you, any of your immediate family members,
2 any of your close, personal friends ever been the
3 victim of any type of sexual misconduct, and that
4 would be whether any charges were actually brought
5 or not, whether it was ever reported or not, whether
6 anyone was ever arrested or not?

7 (Jurors stand.)

8 **THE COURT:** Now, if you folks would form a line
9 right there for me at the rail, I'd appreciate it.
10 We'll bring you up one by one.

11 (Whereupon, the following bench conferences
12 were held on the record.)

13 **BAILIFF:** 97, Your Honor.

14 **THE COURT:** You're Ms. Koon?

15 **JUROR:** Yes, sir.

16 **THE COURT:** What's your situation, please,
17 ma'am?

18 **JUROR:** I was sexually abused as a young girl
19 by an uncle.

20 **THE COURT:** Was he charged with anything?

21 **JUROR:** No.

22 **THE COURT:** You understand the nature of the
23 allegations that I read to you?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Anything about your experience that

1 affects your ability to be a fair and impartial
2 juror in this case?

3 **JUROR:** No, sir.

4 **THE COURT:** Do you have any doubt whatsoever
5 about that?

6 **JUROR:** No.

7 **THE COURT:** Thank you, ma'am.

8 Ms. Koon is juror number 97. She's eligible to
9 serve.

10 Yes, ma'am.

11 **BAILIFF:** 144, Your Honor.

12 **THE COURT:** You're Ms. Say?

13 **JUROR:** Yes, sir.

14 **THE COURT:** What's your situation, please?

15 **JUROR:** My nephew was charged with lewd act
16 with his own daughter.

17 **THE COURT:** Was that here in Lexington County?

18 **JUROR:** No.

19 **THE COURT:** Was it in South Carolina?

20 **JUROR:** No.

21 **THE COURT:** All right. And is there anything
22 at all about that relationship or experience that
23 affects your ability to be a fair and impartial
24 juror in this case?

25 **JUROR:** No.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** No.

3 **THE COURT:** Thank you very much.

4 **MS. MOORE:** Your Honor, can I -- was it lewd
5 act -- I mean, her nephew.

6 **THE COURT:** The nephew was charged. Did I get
7 that right?

8 **JUROR:** Yeah, and I'd almost forgotten about
9 it.

10 **THE COURT:** Did he go to prison?

11 **JUROR:** No. He was going to go to trial and
12 then they didn't. I was not close to the case, so
13 -- it was out of state for me.

14 **MS. MOORE:** When did that happen?

15 **JUROR:** Let me think a minute. It may have
16 been about eight years ago.

17 **THE COURT:** Okay. Thank you, ma'am.

18 Ms. Say is juror number 144. She's eligible to
19 serve.

20 Yes, ma'am.

21 **BAILIFF:** Number 52, Your Honor.

22 **THE COURT:** Ms. Davis?

23 **JUROR:** Yes, sir.

24 **THE COURT:** What's your situation, please?

25 **JUROR:** There are two concerns. In 1997, my

1 mother was involved in an alleged attack in a health
2 care institution. And we were involved in a civil
3 litigation against the health care institution. No
4 charges were brought. He was dismissed for a while
5 and then reinstated.

6 But I was very involved with the Attorney
7 General's Office regarding elder abuse because, at
8 the time, she was in a subacute unit following a
9 stroke. So I had much communication with the
10 Attorney General's Office for some period of time.

11 My other concern is not in this county, but in
12 Sumter County last year, my first cousin's child was
13 involved in several allegations and is serving a 15
14 year sentence. He's in the house arrest stage and
15 was involved in lewd acts on children.

16 **THE COURT:** So your first cousin was --

17 **JUROR:** My first cousin's child.

18 **THE COURT:** -- child was convicted of lewd act
19 in Sumter County?

20 **JUROR:** Right, on many counts and is now
21 serving house arrest.

22 **THE COURT:** Is there anything at all about
23 either of those situations that affects your ability
24 to be fair and impartial in this case?

25 **JUROR:** No, but I just felt as though I needed

1 to, you know, know where I had been with these type
2 things:

3 **THE COURT:** So you can set all that aside and
4 decide the case without regard to any of those
5 issues?

6 **JUROR:** Right.

7 **THE COURT:** Do you have any doubt at all about
8 your ability to be fair and impartial?

9 **JUROR:** No.

10 **THE COURT:** Thank you.

11 Ms. Davis is 52. She's eligible to serve.

12 **BAILIFF:** Number 49, Your Honor.

13 **THE COURT:** Ms. Cox.

14 **JUROR:** Yes.

15 **THE COURT:** What's your situation, please?

16 **JUROR:** My husband was charged with indecent
17 exposure, did not serve any time, but was in
18 pretrial intervention.

19 **THE COURT:** Was that in Lexington County?

20 **JUROR:** Yes, sir.

21 **THE COURT:** How long ago are we talking about?

22 **JUROR:** I think it was '02.

23 **THE COURT:** Anything about that experience that
24 affects your ability to be a fair and impartial
25 juror in the case?

1 **JUROR:** No, sir.

2 **THE COURT:** Any doubt in your mind?

3 **JUROR:** No, sir.

4 **THE COURT:** Thanks very much.

5 Ms. Cox is juror number 49. She's eligible to
6 serve.

7 **BAILIFF:** Number 93, Your Honor.

8 **THE COURT:** Ms. Kepple.

9 **JUROR:** Yes.

10 **THE COURT:** What's your situation, please?

11 **JUROR:** I was a victim of child sexual abuse as
12 a child and I have two cousins that were convicted
13 of sexual abuse of children.

14 **THE COURT:** Was your -- when you were the
15 victim, was that a family member?

16 **JUROR:** Yes.

17 **THE COURT:** Anyone ever charged in that?

18 **JUROR:** No.

19 **THE COURT:** Your cousins, was that in Lexington
20 County?

21 **JUROR:** No, sir, it was in Calhoun County.

22 **THE COURT:** Is there anything at all about your
23 situation of being the victim of sexual abuse as a
24 child that would affect your ability to be fair and
25 impartial?

1 **JUROR:** I don't think so.

2 **THE COURT:** Do you have any doubt at all about
3 your ability to be a fair and impartial juror in the
4 case?

5 **JUROR:** No, sir.

6 **THE COURT:** What about your relationship or
7 experience with your cousins, would any of that
8 affect your ability to be fair and impartial as a
9 juror in the case?

10 **JUROR:** No, sir.

11 **THE COURT:** Okay. Any doubt about that?

12 **JUROR:** No, sir.

13 **THE COURT:** Thanks very much.

14 Ms. Kepple, juror number 93, she's eligible to
15 serve.

16 **BAILIFF:** 183, Your Honor.

17 **THE COURT:** Ms. Williamson.

18 **JUROR:** Yes, sir.

19 **THE COURT:** What's your situation, please?

20 **JUROR:** My daughter was molested by a close
21 (inaudible) --

22 **COURT REPORTER:** I can't --

23 **THE COURT:** Was molested by a close, personal
24 friend.

25 **JUROR:** Charges were brought and (inaudible) --

1 **COURT REPORTER:** I can't hear you.

2 **JUROR:** I'm sorry. My daughter was molested by
3 a close family friend at the age of four. I don't
4 think I'd be good for this.

5 **THE COURT:** Okay. Ms. Williamson, I'll set you
6 aside. Call that number tonight after 6:00 and
7 follow the instructions, okay.

8 **JUROR:** So I can go ahead and go now?

9 **THE COURT:** You're free to go. Thank you.
10 Ms. Williamson is 183. She's set aside from
11 the trial of this case.

12 **BAILIFF:** 161, Your Honor.

13 **THE COURT:** Ms. Bouknight.

14 **JUROR:** Yes.

15 **THE COURT:** What's your situation, please?

16 **JUROR:** My brother's sister, their stepfather
17 was accused and convicted of molesting her. I'm not
18 sure what year it was. It was back in the 90s.
19 He's currently serving a prison sentence in Texas.

20 **THE COURT:** Is there anything about that
21 experience or your relationship with the family that
22 affects your ability to be a fair and impartial
23 juror in the case?

24 **JUROR:** No.

25 **THE COURT:** Any doubt in your mind?

1 **JUROR:** No.

2 **THE COURT:** Thanks very much.

3 Ms. Bouknight is 161. She's eligible to serve.

4 (Whereupon, the bench conferences were
5 concluded.)

6 **THE COURT:** Are any of you, any of your
7 immediate family members, any of your very close,
8 personal friends employed in the field of law
9 enforcement or prosecution in any federal, state,
10 local capacity or military; if so, please stand?

11 (Jurors stand.)

12 **THE COURT:** Your name, sir, in the blue and
13 white?

14 **JUROR:** Christopher Cooper, juror number 45.

15 **THE COURT:** 45, Mr. Cooper. What's your
16 connection, sir?

17 **JUROR:** My father-in-law is a reserve for
18 Lexington County.

19 **THE COURT:** Your father-in-law is a reserve
20 officer with Lexington County Sheriff's Department?

21 **JUROR:** Correct.

22 **THE COURT:** Anything about that relationship
23 that affects your ability to be a fair and impartial
24 juror in this case?

25 **JUROR:** No, sir.

1 **THE COURT:** Any doubt in your mind?

2 **JUROR:** No, sir.

3 **THE COURT:** Thanks very much.

4 Mr. Cooper is 45, eligible to serve.

5 Your name, sir.

6 **JUROR:** Anthony Jacob.

7 **THE COURT:** Jacob?

8 **JUROR:** Yes, sir.

9 **THE CLERK:** He's number 84.

10 **THE COURT:** Mr. Jacob's juror number 84. And
11 what's your situation?

12 **JUROR:** My first cousin is a Lexington County
13 Deputy.

14 **THE COURT:** Anything about that relationship or
15 his experiences that affects your ability to serve
16 as a fair and impartial juror in this case?

17 **JUROR:** No, sir, no doubt.

18 **THE COURT:** Any doubt in your mind at all?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you.

21 Mr. Jacob's 84. He's eligible to serve.

22 Yes, ma'am, your name?

23 **JUROR:** Morgan Carter, 37.

24 **THE COURT:** Ms. Carter is juror number 37.
25 What's your situation, please?

1 **JUROR:** I have a very close friend that works
2 on Lexington Police Department.

3 **THE COURT:** Anything about that relationship or
4 your experiences through that friend that affects
5 your ability to be a fair and impartial juror in
6 this case?

7 **JUROR:** No, sir.

8 **THE COURT:** Any doubt in your mind?

9 **JUROR:** No, sir.

10 **THE COURT:** Thank you.

11 Ms. Carter is 37, eligible to serve.

12 Yes, sir?

13 **JUROR:** Did you say Lexington County?

14 **THE COURT:** Anywhere.

15 **JUROR:** All right.

16 **THE COURT:** Tell me your name again, though, I
17 forgot it. I'm sorry.

18 **JUROR:** Marvin Hutchinson, 83.

19 **THE COURT:** Yes, sir, go ahead.

20 **JUROR:** My son is employed as assistant
21 solicitor in York County.

22 **THE COURT:** Is there anything at all about your
23 relationship with him or experiences that affects
24 your ability to be a fair and impartial juror in the
25 case?

1 **JUROR:** No, sir.

2 **THE COURT:** Any doubt in your mind?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you. Mr. Hutchinson is juror
5 number 83. He's eligible to serve.

6 Have any of you formed or expressed any
7 opinions about these cases; if so, please stand?

8 (There was no response.)

9 **THE COURT:** Are any of you aware of any
10 interest, bias or prejudice that you might have for
11 or against the State, for or against Mr. Elders, for
12 or against anyone or any entity involved in the
13 case; if so, please stand?

14 (There was no response.)

15 **THE COURT:** Can each of you give both the State
16 of South Carolina and Michael Ray Elders, the
17 defendant, a fair and impartial trial? If you know
18 of any reason why you cannot, please stand now.

19 (There was no response.)

20 **THE COURT:** Further questions from the State?

21 **MS. MOORE:** No, Your Honor.

22 **THE COURT:** Defense?

23 **MR. RAST:** None, Your Honor.

24 **THE COURT:** Thank you.

25 The jury's qualified. Strikes are five for the

1 State, ten for the defense; is that correct.

2 MS. MOORE: Yes, sir.

3 THE COURT: All right. Ladies and gentlemen,
4 if you hear your name called -- Gene, would you show
5 them where to go? I think 80 percent of our
6 bailiffs are named Gene, so if I say Gene, I've got
7 a pretty good shot. This is Gene Derrick.

8 What I need for you to do is come down front
9 and just stand there like Mr. Derrick's doing right
10 there and wait until the clerk asks the State's
11 attorney and the defense attorney a question. Based
12 on the responses, the clerk will tell you whether to
13 return to your seat in the courtroom or have a seat
14 over here in the jury box, so that's why you need to
15 bring your personal belongings because the next stop
16 may be over here.

17 Thank you very much, Mr. Derrick.

18 Madame Clerk, give us a jury.

19 THE CLERK: Yes, sir. Number 72, Helen Geyer.

20 (Whereupon, Helen C. Geyer, a white female,
21 was called forward.)

22 THE CLERK: What sayeth for the State?

23 MS. MOORE: I'm sorry, what was the number?

24 THE CLERK: 72.

25 MS. MOORE: Please present Ms. Geyer.

1 **THE CLERK:** What sayeth for the defense?

2 **MR. RAST:** Please excuse this juror, please.

3 **THE CLERK:** Return to your seat, please, ma'am.
4 Number 141, Mark Russell.

5 (Whereupon, Mark S. Russell, a white male,
6 was called forward.)

7 **THE CLERK:** What sayeth for the State?

8 **MS. MOORE:** Please present Mr. Russell.

9 **THE CLERK:** What sayeth for the defense?

10 **MR. RAST:** Swear the juror.

11 **THE CLERK:** Have a seat in the jury box, sir.
12 Number 178, David Washington.

13 (Whereupon, David A. Washington, a black
14 male, was called forward.)

15 **THE CLERK:** What sayeth for the State?

16 **MS. MOORE:** Please present Mr. Washington.

17 **THE CLERK:** What sayeth for the defense?

18 **MR. RAST:** Swear the juror.

19 **THE CLERK:** Have a seat in the jury box, sir.
20 Number 144, Bettina Say.

21 (Whereupon, Bettina Barron Say, a white
22 female, was called forward.)

23 **THE CLERK:** What sayeth for the State?

24 **MS. MOORE:** Please excuse Ms. Say.

25 **THE CLERK:** Return to your seat, please, ma'am.

1 Number 157, Pamela Spires.

2 (Whereupon, Pamela F. Spires, a white
3 female, was called forward.)

4 **THE CLERK:** What sayeth for the State?

5 **MS. MOORE:** Please present Ms. Spires.

6 **THE CLERK:** What sayeth for the defense?

7 **MR. RAST:** Excuse this juror, please.

8 **THE CLERK:** Return to your seat, please, ma'am.

9 Number 68, John Friedel.

10 (Whereupon, John L. Friedel, a white male,
11 was called forward.)

12 **THE CLERK:** What sayeth for the State?

13 **MS. MOORE:** Please present Mr. Friedel.

14 **THE CLERK:** What sayeth for the defense?

15 **MR. RAST:** Swear the juror.

16 **THE CLERK:** Have a seat in the jury box, sir.

17 Number 12, Judd Bell.

18 (Whereupon, Judd T. Bell, a white male, was
19 called forward.)

20 **THE CLERK:** What sayeth for the State?

21 **MS. MOORE:** Please present Mr. Bell.

22 **THE CLERK:** What sayeth for the defense?

23 **MR. RAST:** Swear the juror.

24 **THE CLERK:** Have a seat in the jury box, sir.

25 110, Courtney Mayers.

1 (Whereupon, Courtney M. Mayers, a black
2 female, was called forward.)

3 **THE CLERK:** What sayeth for the State?

4 **MS. MOORE:** Please present Ms. Mayers.

5 **THE CLERK:** What sayeth for the defense?

6 **MR. RAST:** Swear the juror.

7 **THE CLERK:** Have a seat in the jury box, ma'am.
8 Number 143, Larry Sanders.

9 (Whereupon, Larry K. Sanders, Jr., a white
10 male, was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Mr. Sanders.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Swear the juror.

15 **THE CLERK:** Have a seat in the jury box, sir.
16 49, Amanda Cox.

17 (Whereupon, Amanda D. Cox, a white female,
18 was called forward.)

19 **THE CLERK:** What sayeth for the State?

20 **MS. MOORE:** Please excuse Ms. Cox.

21 **THE CLERK:** Return to your seat, please, ma'am.
22 Number 11, Wesley Behrend.

23 (Whereupon, Wesley Behrend, a Hispanic male,
24 was called forward.)

25 **THE CLERK:** What sayeth for the State?

1 **MS. MOORE:** Please present Mr. Behrend.

2 **THE CLERK:** What sayeth for the defense?

3 **MR. RAST:** Swear the juror.

4 **THE CLERK:** Have a seat in the jury box, sir.
5 Number 106, Brett Lowell.

6 (Whereupon, Brett A. Lowell, a white male,
7 was called forward.)

8 **THE CLERK:** What sayeth for the State?

9 **MS. MOORE:** Please present Mr. Lowell.

10 **THE CLERK:** What sayeth for the defense?

11 **MR. RAST:** Excuse the juror, please.

12 **THE CLERK:** Return to your seat, please, sir.
13 113, Michael McLemore.

14 (Whereupon, Michael T. McLemore, a white
15 male, was called forward.)

16 **THE CLERK:** What sayeth for the State?

17 **MS. MOORE:** Please present Mr. McLemore.

18 **THE CLERK:** What sayeth for the defense?

19 **MR. RAST:** Swear the juror.

20 **THE CLERK:** Have a seat in the jury box, sir.
21 93, Jennifer Kepple.

22 (Whereupon, Jennifer A. Kepple, a white
23 female, was called forward.)

24 **THE CLERK:** What sayeth for the State?

25 **MS. MOORE:** Please present Ms. Kepple.

1 **THE CLERK:** What sayeth for the defense?

2 **MR. RAST:** Excuse the juror, please.

3 **THE CLERK:** Return to your seat, please, ma'am.
4 123, Laurie O'Neill.

5 (Whereupon, Laurie O'Neill, a white female,
6 was called forward.)

7 **THE CLERK:** What sayeth for the State?

8 **MS. MOORE:** Please present Ms. O'Neill.

9 **THE CLERK:** What sayeth for the defense?

10 **MR. RAST:** Excuse this juror, please.

11 **THE CLERK:** Return to your seat, please, ma'am.
12 159, Darrell Stackleather.

13 (Whereupon, Darrell W. Stackleather, a white
14 male, was called forward.)

15 **THE CLERK:** What sayeth for the State?

16 **MS. MOORE:** Please present Mr. Stackleather.

17 **THE CLERK:** What sayeth for the defense?

18 **MR. RAST:** Excuse the juror, please.

19 **THE CLERK:** Return to your seat, sir.

20 138, Nancy Revels.

21 (Whereupon, Nancy J. Revels, a white female,
22 was called forward.)

23 **THE CLERK:** What sayeth for the State?

24 **MS. MOORE:** Please present Ms. Revels.

25 **THE CLERK:** What sayeth for the defense?

1 **MR. RAST:** Swear the juror.

2 **THE CLERK:** Have a seat in the jury box, ma'am.

3 87, James Jones.

4 (Whereupon, James C. Jones, a white male,
5 was called forward.)

6 **THE CLERK:** What sayeth for the State?

7 **MS. MOORE:** Please present Mr. Jones.

8 **THE CLERK:** What sayeth for the defense?

9 **MR. RAST:** Excuse the juror, please.

10 **THE CLERK:** Return to your seat, sir.

11 84, Anthony Jacob.

12 (Whereupon, Anthony C. Jacob, a white male,
13 was called forward.)

14 **THE CLERK:** What sayeth for the State?

15 **MS. MOORE:** Please present Mr. Jacob.

16 **THE CLERK:** What sayeth for the defense?

17 **MR. RAST:** Swear the juror.

18 **THE CLERK:** Have a seat in the jury box, sir.

19 97, Karen Koon.

20 (Whereupon, Karen B. Koon, a white female,
21 was called forward.)

22 **THE CLERK:** What sayeth for the State?

23 **MS. MOORE:** Please present Ms. Koon.

24 **THE CLERK:** What sayeth for the defense?

25 **MR. RAST:** Excuse the juror, please.

1 **THE CLERK:** Return to your seat, please, ma'am.
2 45, Christopher Cooper.

3 (Whereupon, Christopher R. Cooper, a white
4 male, was called forward.)

5 **THE CLERK:** What sayeth for the State?

6 **MS. MOORE:** Please present Mr. Cooper.

7 **THE CLERK:** What sayeth for the defense?

8 **MR. RAST:** Swear the juror.

9 **THE CLERK:** Have a seat in the jury box, sir.
10 Number 20, Mark Breit.

11 (Whereupon, Mark E. Breit, a white male, was
12 called forward.)

13 **THE CLERK:** What sayeth for the State?

14 **MS. MOORE:** Please present Mr. Breit.

15 **THE CLERK:** What sayeth for the defense?

16 **MR. RAST:** Swear the juror.

17 **THE CLERK:** Have a seat in the jury box, sir.
18 Alternate, Your Honor?

19 **THE COURT:** Draw an alternate. Strikes are one
20 for the State, two for the defense.

21 **THE CLERK:** Number 19, Timothy Breci.

22 (Whereupon, Timothy A. Breci, a white male,
23 was called forward.)

24 **THE CLERK:** What sayeth for the State?

25 **MS. MOORE:** Please excuse Mr. Breci.

1 **THE CLERK:** Return to your seat, please, sir.

2 Number 52, Barbara Davis.

3 (Whereupon, Barbara W. Davis, a white
4 female, was called forward.)

5 **THE CLERK:** What sayeth for the State?

6 **MS. MOORE:** Please present Ms. Davis.

7 **THE CLERK:** What sayeth for the defense?

8 **MR. RAST:** Swear the juror.

9 **THE CLERK:** Have a seat in the jury box.

10 **THE COURT:** Draw another alternate. Strikes
11 are one for the State, two for the defense.

12 **THE CLERK:** Yes, sir. Number 170, Peggy Tober.

13 (Whereupon, Peggy M. Tober, a white female,
14 was called forward.)

15 **THE CLERK:** What sayeth for the State?

16 **MS. MOORE:** Please present Ms. Tober.

17 **THE CLERK:** What sayeth for the defense?

18 **MR. RAST:** Excuse the juror, please.

19 **THE CLERK:** Return to your seat, please, ma'am.
20 105, John Long.

21 (Whereupon, John T. Long, a white male, was
22 called forward.)

23 **THE CLERK:** What sayeth for the State?

24 **MS. MOORE:** Please present Mr. Long.

25 **THE CLERK:** What sayeth for the defense?

1 **MR. RAST:** Excuse the juror, please.

2 **THE CLERK:** Return to your seat, sir.

3 Number 22, Ronald Brewer.

4 (Whereupon, Ronald L. Brewer, a white male,
5 was called forward.)

6 **THE CLERK:** What sayeth for the State?

7 **MS. MOORE:** Please present Mr. Brewer.

8 **THE CLERK:** What sayeth for the defense?

9 **MR. RAST:** Swear the juror.

10 **THE CLERK:** Have a seat in the jury box, sir.

11 That's alternate number two, Your Honor.

12 **THE COURT:** Thank you.

13 Are there any matters to take up including
14 composition of the panel prior to the jury being
15 sworn, from the State?

16 **MS. MOORE:** Beg the Court's indulgence.

17 **THE COURT:** Yes, ma'am.

18 (Pause.)

19 **MS. MOORE:** Nothing from the State.

20 **THE COURT:** From the defense?

21 **MR. RAST:** Nothing, Your Honor.

22 **THE COURT:** Thank you.

23 Mr. Washington, I want you to be the foreman of
24 the jury. When you come back in, just be the last
25 person to come in, have a seat on the end of the

1 front row here on my right.

2 The two alternates will sit in one of those two
3 chairs on the end on this side. It doesn't matter
4 which one.

5 The rest of you folks may sit anywhere you like
6 during the trial. I'm going to ask you, please, not
7 to walk across one another. We did have an incident
8 in the old courthouse where a lady broke her ankle
9 and I don't want that happening to any of you. So
10 if you've got a favorite chair that you develop
11 during the trial, space yourselves out here to the
12 side and then ask your fellow juror if you can slip
13 in and get your favorite chair.

14 In a few moments, I'm going to send you back
15 into the jury room and then I'll bring you back out
16 and tell you where we're going from there. Do not
17 discuss this case in any way at all, don't talk
18 about the people involved in it, the type of case
19 it's alleged to be, nothing about the case, don't
20 talk about anything related to the case.

21 All right. If you'll follow the bailiff, he'll
22 take you back to the jury room.

23 (The jury retires to the jury room.)

24 **THE COURT:** Ladies and gentlemen, if you were
25 not selected on either of these juries, you're going

1 to be on that telephone call-in system.. If
2 everything goes according to plan, the only possible
3 trial that I know about would be a check court or
4 transfer court trial which would be tried on
5 Wednesday. And what they normally do is they will
6 bring you back to have the judge, most likely it
7 will be Judge Jeffcoat, who would draw the jury and
8 select the jury.

9 As soon as I know that we don't need you
10 anymore -- well, technically, I guess, either Judge
11 McMahon or I know that we don't need you anymore,
12 we'll put on the message that you're through, you
13 don't have to call in or come back anymore.

14 You have an exemption from State Court Jury
15 Duty in 2011, 12 and 13. They will mail you the
16 little check. I call it Happy Meal money. You'll
17 get it about ten days from when the term ends. You
18 will have a slip in that envelope that will certify
19 the days you were actually up here. If your boss
20 won't wait ten days for that, you can check with the
21 clerk's office and they'll get you what you need.

22 I don't know exactly what the clerk explained
23 to you, what Ms. Frick told you before I came in, so
24 I may be redundant in what I'm saying, but just a
25 couple of things that have been kind of problems and

1 embarrassment in the past. I have had jurors before
2 who get paid by their employer when they're on jury
3 duty and even though we might turn the jury loose on
4 Tuesday, they decide to take the rest of the week
5 off and tell their boss that they were on jury duty
6 and then they get upset with me because I won't back
7 them up. I'm telling you in advance I'm not going
8 to back you up. I know none of you would think
9 that, but if anybody tries to put that bug in your
10 ear, it's a bad idea, it won't work.

11 If you've got questions, comments, criticisms
12 or complaints, you can let us know about them. I
13 really can't talk to you now since we're in the
14 middle of the term, but as soon as the term is over,
15 I'll be happy to talk to you about anything you may
16 have experienced, good, bad or indifferent.

17 Any questions before I let you go?

18 (There was no response.)

19 **THE COURT:** If I do not see you again, thank
20 you very much. I appreciate the fact that you were
21 here.

22 Very quickly, it's very easy for you to find
23 yourself in a dispute. If you're ever in a dispute,
24 you'll be very grateful that people like you came
25 away from everything else they had to do in their

1 lives so we can resolve our disputes in a room like
2 this and not like you're going to see on your
3 television sets when you watch the news tonight.
4 The only thing that separates us from those other
5 countries is you. That's no mere platitude, I
6 believe that with all my heart and soul, so thank
7 you. I'll shut up now and let you go.

8 (The remaining jury panel was excused.)

9 **THE COURT:** Do y'all want to try to bring this
10 jury back today?

11 **MR. RAST:** Judge, I hate to say it, but for the
12 first time in my life, I feel sorry for somebody in
13 the Solicitor's office. I think she ought to go to
14 a doctor.

15 **THE COURT:** I know she should go to a doctor.
16 You really do need to go, Ms. Moore.

17 **MR. RAST:** Whatever the Court decides.

18 **MS. MOORE:** If we -- that would be fine if we
19 start in the morning.

20 **THE COURT:** All right. Well, are you going to
21 go ahead to the doctor now or you want me to do the
22 pretrial matters before you go or what? Do you want
23 to call your doctor and see?

24 **MS. MOORE:** If I can come in. I hate to go to
25 Doctor's Care, but I need to ice it.

1 **THE COURT:** You need to do something. I don't
2 know what you need to do. You might need to cast
3 it. And if they're going to put you on some sort of
4 strong narcotic pain killer, I need to know that
5 before I swear this jury.

6 Let's do this. Hope, can they call before they
7 come back in today?

8 **THE CLERK:** Yes, sir.

9 **THE COURT:** All right. Let me just do
10 something like I said. Even if I'm wrong, I'll do
11 something and then you all can tell me and we can
12 adjust on the fly, all right.

13 **MS. MOORE:** And I'm not -- this hadn't happened
14 before, but do you want to go -- can you look at the
15 video prior to --

16 **THE COURT:** Sure. I've taken videos home at
17 night and looked at them.

18 **MS. MOORE:** That may be a good way to handle it
19 and then we can have Ms. Miller-Dupre testify and
20 that way you won't have to go back into chambers and
21 that'll cut out some time.

22 **THE COURT:** Is it on a VCR or is it on a DVD?

23 **MS. MOORE:** It's on DVD and it's 30 minutes at
24 best.

25 **THE COURT:** That's okay. I just want to make

1 sure I had whatever I needed to play it.

2 **MS. MOORE:** You can play it on your computer
3 and at home on your T.V.

4 **THE COURT:** Okay.

5 **MS. MOORE:** Thank you, Judge.

6 **THE COURT:** All right. Bring the jury in,
7 please.

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. Ladies and gentlemen,
10 there's always pretrial matters that the judge has
11 to take up in every criminal trial. And we -- the
12 way that things work out, and I'll be happy to
13 explain things to you at the end of the trial if you
14 want to know, we wait until we get the jury drawn
15 and then we do those pretrial matters. Some of
16 those issues take a long time, some don't.

17 After conferring with the attorneys, it appears
18 that we might be able to start with you all, after I
19 give everybody a chance to eat lunch, we might be
20 able to start with you around 4:00 or so, maybe a
21 little later and I'm not going to do that. I'm just
22 going to bring you back tomorrow. And I'll stay
23 here and review the things and I'll take home
24 whatever I may need to take home with me tonight and
25 review it.

1 So what I'm going to do is I'm going to give
2 you an instruction, some instructions, that you have
3 to follow and then I'm going to have you call in to
4 that number tonight and I need you to follow the
5 instructions for the case of State versus Elders,
6 that's the case you're on, State versus Elders. So
7 listen to those instructions and it will tell you
8 when to come in.

9 Now, there is one other issue going on here and.
10 I don't think anybody minds me telling you this.
11 Ms. Moore hurt her foot. And she, I think, has hurt
12 it pretty badly and I'm insisting that she go to a
13 doctor to see about her foot. And depending on what
14 they find -- she's been trying to tough it out. And
15 I've got all this gray hair on my head and I just am
16 going to exercise my authority, and Mr. Rast agrees
17 with me, she needs to go see about that. It
18 happened over the weekend and then I think again
19 this morning she reinjured it.

20 So depending on what they do with her, I'll
21 know whether we're going to go forward with the
22 trial or not. If everything goes fine, I'll
23 probably see you in the morning around ten o'clock,
24 maybe a little later, don't know. If there's an
25 issue, we'll tell you on there to call back at

1 another time or what to do, but that's what's going
2 on. I'm not trying to hide anything from you nor is
3 anybody else, things happen like this when you deal
4 with as many people as we deal with.

5 Now, here are the instructions that I have to
6 give you -- give every jury before they leave. You
7 are not to discuss this case in any way among
8 yourselves until I tell you to. Don't talk about
9 anything related to the people in the case or the
10 type of case it's alleged to be. Don't discuss this
11 case with anybody else, family member, friend,
12 anybody until the case is completely over, you've
13 been discharged from this jury, then you can talk
14 all you want to, but don't talk to anybody else
15 about this matter in any way until I tell you that
16 you're through with the case completely.

17 Now, you can -- to give you an example of what
18 I mean, you can tell a family member, a spouse, a
19 friend that you're on a jury or your boss, but you
20 can't discuss the case. You can't tell them what
21 kind of case it is or who's involved in it. If
22 anybody attempts to contact you and discuss the case
23 with you, report that to me so that I can deal with
24 it.

25 Now, I never know if there's going to be media

1 coverage of the trial unless the T.V. stations ask
2 to set up cameras. I haven't had any such requests.
3 I don't anticipate media coverage of the trial, but
4 I never know what they're going to cover. They
5 cover some that I think they would not and some that
6 I think that they would be all over, they don't have
7 any interest in. So I don't expect media coverage
8 of this trial, but if there should be any, get away
9 from it if you're exposed to it and report to me at
10 the first opportunity what you may have seen, heard
11 or read through the media.

12 Now, you are not to do any independent
13 investigation of the case. When you come back,
14 you'll be placed under an oath. And in that oath,
15 you're going to promise us that you will decide the
16 cases based on the evidence and the law and those
17 things are going to come to you in this courtroom.

18 So it's really important that you understand
19 that you are perfectly equipped to do the job that
20 you're going to be asked to do. Everything's going
21 to be given to you in the courtroom. We want you to
22 use your common sense, you bring that with you, we
23 don't want you to leave that at home, but don't do
24 any independent investigation.

25 And what I mean by that as examples of

1 independent investigation is don't go on the
2 Internet and look up law. It's my job to decide the
3 law that applies to the case and tell it to you at
4 the end of the trial. Don't go try to do any kind
5 of searches on the Internet. I often tell people
6 that once they find out where something is alleged
7 to have happened, don't go out there and look
8 around. Don't do any independent investigation.

9 Now, with the advent of smart phones and all of
10 the connections that can be made so instantaneously
11 now, our Supreme Court in South Carolina has
12 actually stepped in and they have given us an
13 instruction that we're supposed to read to you. It
14 incorporates most of what I've just told you in my
15 more common language, but I'm going to read it to
16 you because the Chief Justice says to. So I'm going
17 to read these things to you and then shortly after
18 that, I'm going to let you go for the day.

19 Now, you are not -- until your jury service is
20 concluded, you are not to discuss the case with
21 others including other jurors except as authorized
22 by the Court. You're not to read or listen to any
23 news reports about the case. You're not to use a
24 computer, a cell phone or any other electronic
25 device with communication capabilities while

1 attending the trial or during deliberations. You
2 may use those devices during lunch breaks or
3 extended breaks, but you cannot use them to obtain
4 or disclose information that's prohibited by the
5 court.

6 You cannot use a computer, a cell phone or
7 another electronic device with communication
8 capabilities or any other method to obtain or
9 disclose information about the case when you're not
10 in court.

11 Now, information about a case includes, but is
12 not limited to, the following types of things:
13 Information about a party, a witness, an attorney or
14 a court officer, any news accounts of a case, any
15 information collected through juror research on any
16 topics raised or any testimony offered by a witness,
17 information collected through juror research on any
18 other topic that the juror might think would be
19 helpful in deciding the case. So that's what the
20 Supreme Court says I'm supposed to tell you.

21 Now, folks, if you have some true emergency
22 that prevents you from being here at the designated
23 time, please have somebody call the clerk's office
24 and tell us what's going on because until you 14
25 folks are here, I can't start unless I know that I

1 can seat one of the alternates in your place or
2 something like that. So if I get here and the time
3 comes and you're not here, I send people to get you,
4 so make sure you have somebody let us know if
5 there's a problem. We'll call first. We'll try to
6 find you by phone, but if we can't find you by
7 phone, then we start looking. So please have
8 somebody call us if there's a true emergency.

9 I'll be happy to be fair with you about all of
10 that unless you're like a lady in another county
11 whose emergency was she couldn't leave her cat at
12 home alone. I couldn't go along with that one, but
13 -- now I'm an animal lover, don't think I'm down on
14 animals.

15 Okay. Folks, call that number, everybody has
16 the card, call the number tonight after 6:00, follow
17 the instructions for the State versus Elders. I
18 hope you have a very pleasant evening. I'll give
19 you more information when you get here tomorrow.

20 When you come back, don't come in the
21 courtroom, come directly to the jury room. The
22 bailiff will show you where to report as you leave.
23 Thank you.

24 (The jury was excused for the day.)

25 **THE COURT:** All right. Where is the DVD?

1 All right. Just let us know how you come out
2 and --

3 **MS. MOORE:** Will you be here all day, Judge?

4 **THE COURT:** I have drug court tonight in
5 Edgefield at 6:30. I may leave a little bit early,
6 but I plan to stay here as long as I can. Mr. Rast,
7 make sure we've got all the contact information we
8 need for you.

9 All right. Court's in recess until some time
10 in the morning.

11 (The proceedings were concluded for February
12 7, 2011.)

13 (COURT REPORTER'S NOTE: Due to an injury to
14 the Solicitor, the trial could not continue. A new
15 jury panel was impaneled as follows.)

16 *****

17 (The following proceedings were held on
18 February 28, 2011.)

19 **THE COURT:** All right. Ladies and gentlemen of
20 the jury, we're now going to change our focus and
21 we're going to start selecting a jury to serve as
22 the jury pool for the particular cases that are
23 being called for trial. What we're about to do is
24 going to look a lot like what we just did as far as
25 how it works, but the focus is different. The

1 purpose for these questions that I'll be posing to
2 you now is for us to have a jury serving that is
3 fair and impartial. And if you keep those goals in
4 mind, I think the questions might make more sense to
5 you.

6 Basically, what I'm going to be doing is posing
7 questions to you that are designed to allow us to
8 find out if you've got any connection with anybody
9 in the case, if you or anyone close to you has ever
10 been through something similar, if there's any
11 possible interest, bias or prejudice that you might
12 have related to the case or anybody in it, those
13 sorts of things, that's what we're trying to find
14 out.

15 Again, it's really important that you give us
16 the information and let us decide whether it's
17 important, so if you've got doubt about whether any
18 of these things apply to you, it's always better to
19 discuss it with us and let us resolve the doubt.
20 Even if that may seem silly, it's always better to
21 give us the information.

22 Also, remember that you're under oath once
23 again and remember that we're taking down everything
24 that's said, so the first thing I'm going to have to
25 get you to do if you stand when I call on you is

1 identify yourself by your name and your juror
2 number. If you don't know your juror number, that's
3 okay, we'll look it up, but if you remember it,
4 things will go quicker and you will get out of here
5 sooner.

6 All right. The first case that's been called
7 for trial actually involves three separate and
8 distinct indictments. An indictment is a charging
9 paper as I'm going to explain to you in more detail
10 in a moment. These separate charges are being tried
11 for purposes of convenience, but each of them
12 maintains its separate identity and each of them has
13 to be evaluated on its own merit or lack of merit.

14 All of these cases, all of these indictments
15 are captioned as the State versus Michael Ray
16 Elders. One indictment charges Mr. Elders with
17 criminal sexual conduct with a minor in the first
18 degree. That indictment alleges that Michael Ray
19 Elders did in Lexington County, South Carolina, on
20 or between January 1, 2008 and June 28, 2009, commit
21 a sexual battery upon Minor whose date of
22 birth is alleged to be , a
23 minor who is less than 11 years of age, to wit:
24 It's alleged that Mr. Elders penetrated the vagina
25 of Ms. Blanton with his finger, which is alleged to

1 be in violation of section 16-3-655 subsection
2 (A)(1) of the Code of Laws of South Carolina, 1976,
3 as amended.

4 Another indictment charges Mr. Elders with
5 committing a lewd act upon a minor. That indictment
6 charges that Michael Ray Elders did in Lexington
7 County, South Carolina, between January 1, 2008 and
8 June 28, 2009, being a person over the age of 14,
9 willfully and lewdly commit or attempt a lewd or
10 lascivious act upon or with the body or its parts of
11 a child under the age of 16 years, specifically
12 Minor date of birth , with
13 the intent of arousing, appealing to or gratifying
14 the lust or passions or sexual desires of the person
15 or of the child. It's alleged that Mr. Elders
16 touched the victim's genitals in violation of
17 section 16-15-140 of the Code of Laws of South
18 Carolina.

19 And the third indictment charges Mr. Elders
20 with committing a lewd act upon a minor. That
21 indictment alleges that Michael Ray Elders did in
22 Lexington County, South Carolina, between January 1,
23 2008 and June 28, 2009, being over the age of 14,
24 willfully and lewdly commit or attempt a lewd or
25 lascivious act upon or with the body or its parts of

1 a child under the age of 16 years, specifically
2 Minor date of birth with
3 the intent of arousing, appealing to or gratifying
4 the lust or passions or sexual desires of the person
5 or of the child. It's alleged that Mr. Elders put
6 Ms. Blanton's hand on his penis in violation of
7 section 16-15-140 of the Code of Laws of South
8 Carolina, 1976, as amended.

9 Now, these indictments then allege one count of
10 criminal sexual conduct with a minor in the first
11 degree and two counts of committing a lewd act upon
12 a minor.

13 Upon his arraignment on these charges,
14 Mr. Elders has entered pleas of not guilty. He is
15 presumed to be innocent. It is incumbent upon the
16 State of South Carolina having brought these charges
17 against Mr. Elders to prove every essential element
18 of each offense charged beyond a reasonable doubt.

19 An indictment is not evidence. It has no
20 evidentiary value and you may not give it any. An
21 indictment is a charging paper. It is merely the
22 formal means by which someone is charged and brought
23 to trial.

24 I'll be asking you a series of questions. If
25 any of these questions apply to you or you have

1 doubt about whether they apply to you, you need to
2 stand, listen carefully to the question I ask of
3 you, once we get you identified for the record, and
4 then answer that question. If you need to come down
5 front to discuss your answer, that's fine if you're
6 more comfortable doing it that way. And once again
7 make sure that you err, if there is any err, that
8 you err on the side of disclosing the information to
9 us and that you not withhold it from us.

10 All right. Is Michael Ray Elders in the
11 courtroom? I need for you to stand, turn and face
12 the jury, please.

13 Thank you very much, sir. You may be seated.

14 Is there any member of the jury panel who is
15 related by blood or marriage or connected by
16 employment with Mr. Michael Ray Elders, the
17 defendant, in these cases; if so, please stand?

18 (Juror stands.)

19 **THE COURT:** Your name, sir?

20 **JUROR:** Eric Herringshaw, juror number 80.

21 **THE COURT:** All right. Mr. Herringshaw is
22 juror number 80. Would you come down front for me,
23 please?

24 The attorneys may join me on the side,
25 Mr. Elders may if he'd like.

1 (Whereupon, the following bench conference
2 was held on the record.)

3 **THE COURT:** What's your situation?

4 **JUROR:** I was a previous detention officer at
5 the Lexington County Detention Center the year he
6 was there.

7 **THE COURT:** I'm going to excuse you from the
8 trial of this case, okay. You need to stay with us,
9 but don't discuss any of that with your fellow
10 jurors. You need to stay until I let the jury go so
11 that you'll know --

12 **JUROR:** So just stay here?

13 **THE COURT:** Yeah, just stay here, but don't
14 discuss anything with your fellow jurors.

15 (Whereupon, the bench conference was
16 concluded.)

17 **THE COURT:** Juror number 80 is excused from the
18 trial of this case.

19 Mr. Elders will be represented by Mr. Bill
20 Rast.

21 Thank you very much, Mr. Rast.

22 Now, ladies and gentlemen, I'm going to read to
23 you a list of names of potential witnesses for the
24 State. If any of these people are present, I need
25 for that person to stand as his or her name is

1 called and face the jury. Now, some of you -- they
2 may be behind you, so if somebody stands, I'll tell
3 you that -- to turn and look.

4 Now, folks, don't make me call you out. If
5 somebody's standing, you need to look at them.
6 You'd be surprised how many times I have to tell the
7 jury, turn around and look. They just keep looking
8 straight ahead and that's not the purpose of it. I
9 either have to bring the person down front or you
10 need to look because I'm going to be asking you some
11 questions about them.

12 And if I mispronounce anybody's name, which I'm
13 sure to do, please let me know and correct it.

14 Desiree Busko with the Cayce Public Safety
15 Department; Danielle McCord, over here to my right,
16 with the Cayce Public Safety Department; Laurie
17 Caldwell; Shelly Elders, Ms. Elders is over here to
18 my right, thank you, ma'am; Minor , she's
19 over here to my right, thank you, ma'am; Lysa Marie
20 Dupre.

21 **MS. DUPRE:** Miller-Dupre.

22 **THE COURT:** I got Elvis on my mind I guess.

23 Lysa Miller-Dupre, thank you, ma'am; Christy
24 Kirkland; Johnny Hutto, over here to my right, thank
25 you; Robin Baker who's a registered nurse; Felicia

1 Schwall, S-c-h-w-a-l-l; Katelyn Bradley, Ms.
2 Bradley's over here to my right. Thank you very
3 much.

4 Is there any member of the jury panel who is
5 related by blood or marriage or connected by
6 employment with any of the potential witnesses for
7 the State; if so, please stand?

8 (There was no response.)

9 **THE COURT:** The State of South Carolina will be
10 represented by Assistant Solicitor Debra Barry
11 Moore. Ms. Moore is with the Solicitor's office of
12 the Eleventh Judicial Circuit.

13 Thank you, ma'am.

14 Now, folks, do any of you know anything at all
15 about this matter? Has anybody talked to you about
16 it? Have you overheard any conversations? Have you
17 heard, seen or read anything through news media or
18 any other source? Do you have any knowledge
19 whatsoever about this case, this matter? If so,
20 please stand?

21 (There was no response.)

22 **THE COURT:** Now, I've asked you if you are
23 related by blood or marriage or connected by
24 employment with various individuals. Now, what I
25 need for you to do now is tell me if you've got any

1 connection of any kind with any of the people or any
2 of the entities involved in the case.

3 Now, that would include such things as if
4 you're a neighbor, if you're a friend, if you're a
5 social acquaintance, if you attend the same church
6 or civic clubs, if you've ever been a client of one
7 of these attorneys or anyone with whom they're
8 affiliated, if you've ever been on the opposite side
9 of the case represented by one of these attorneys or
10 anybody with whom they're affiliated, if you've got
11 any connection with any of the entities that might
12 be involved, the Cayce Department of Public Safety
13 or the Solicitor's office in the Eleventh Judicial
14 Circuit, for example, or Mr. Rast's law firm. If
15 you've got any connection of any kind with any of
16 the people or any of the entities involved in the
17 case, please stand.

18 (Jurors stand.)

19 **THE COURT:** Your name, please, ma'am, in the
20 white?

21 **JUROR:** Jennifer Blyther, juror number 10.

22 **THE COURT:** Okay. Ms. Blyther is juror number
23 10. What's your connection, ma'am?

24 **JUROR:** I know William Rast from years have
25 gone by.

1 **THE COURT:** Would you describe him as a friend,
2 an acquaintance? Did he do work for you? What was
3 the connection?

4 **JUROR:** Family knew him, introduced me to him,
5 acquaintance.

6 **THE COURT:** Is there anything at all about your
7 experiences or relationship with Mr. Rast that in
8 any way would affect your ability to be a fair and
9 impartial juror in this case?

10 **JUROR:** None.

11 **THE COURT:** Do you have any doubt in your mind
12 about that?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you very much.

15 Ms. Blyther is juror number 10. She's eligible
16 to serve.

17 Your name, please, ma'am?

18 **JUROR:** Misty Barr, juror number 5.

19 **THE COURT:** Ms. Barr's juror number 5. What's
20 your situation, please?

21 **JUROR:** Mr. Rast represented me in my divorce.

22 **THE COURT:** And this is probably a silly
23 question, but I have to say it. Has that ended? Is
24 that case over?

25 **JUROR:** Yes, it was in 2002.

1 **THE COURT:** Okay. Is there anything at all
2 about your relationship or experience with Mr. Rast
3 that would affect your ability to be a fair and
4 impartial juror in this case?

5 **JUROR:** None.

6 **THE COURT:** Do you have any doubt at all about
7 that?

8 **JUROR:** No, sir.

9 **THE COURT:** Thanks very much.
10 Ms. Barr is juror number 5. She's eligible to
11 serve.

12 Yes, sir, your name, please?

13 **JUROR:** Craig Busby, juror number 17.

14 **THE COURT:** Mr. Busby's 17. And what's your
15 situation, please?

16 **JUROR:** I'm a client of Mr. Rast.

17 **THE COURT:** Current?

18 **JUROR:** Yes, sir.

19 **THE COURT:** I'm going to set you aside on this
20 case.

21 Juror number 17 is currently a client of the
22 defense attorney, set aside.

23 You stay with us though, please, Mr. Busby, for
24 further instructions.

25 Are any of you members of or financial

1 contributors to any organization that has as a
2 primary purpose, the support of law enforcement or
3 the advancement of victims' rights or the assistance
4 of abused persons, that would include organizations
5 like Citizens Against Violent Crime, Mothers Against
6 Drunk Driving, Students Against Drunk Driving, any
7 type of shelter for victims of spousal abuse,
8 women's shelters typically they were called when I
9 was growing up, but I guess that's sexist now, but
10 shelters, any kind of relationship with any
11 organization that has as one of its primary
12 purposes, the advancement of victims' rights or the
13 support of law enforcement; if so, please stand?

14 (Jurors stand.)

15 **JUROR:** Southern Poverty Law Center --

16 **THE COURT:** Your name, sir?

17 **JUROR:** 158, Thomas Stahl.

18 **THE COURT:** Mr. Stahl is juror number 158. And
19 what's your connection with the Southern Poverty Law
20 Center?

21 **JUROR:** Just a contributor.

22 **THE COURT:** It's in Alabama or Mississippi?

23 **JUROR:** I would guess Alabama, but I'm not
24 sure.

25 **THE COURT:** Is there anything at all about your

1 relationship with that entity that affects your
2 ability to be a fair and impartial juror in the
3 case?

4 **JUROR:** No.

5 **THE COURT:** Any doubt in your mind?

6 **JUROR:** I'm sorry?

7 **THE COURT:** Any doubt in your mind about that?

8 **JUROR:** No.

9 **THE COURT:** Thanks very much.

10 Ms. Stahl is 158. He's eligible to serve.

11 Yes, ma'am.

12 **JUROR:** Amanda Fields, juror 57.

13 **THE COURT:** Ms. Fields is juror number 57.

14 What's your situation, please?

15 **JUROR:** Can I discuss it on the side?

16 **THE COURT:** Certainly.

17 What's your name, sir?

18 **JUROR:** Bob Hawfield, juror number 78.

19 **THE COURT:** What's your situation,

20 Mr. Hawfield?

21 **JUROR:** My wife and I contribute to a number of
22 shelters.

23 **THE COURT:** You contribute to a number of what?

24 **JUROR:** Women shelters.

25 **THE COURT:** Is there anything at all about your

1 connection with those organizations that affects
2 your ability to be a fair and impartial juror in
3 this case?

4 **JUROR:** No, sir.

5 **THE COURT:** You have any doubt in your mind?

6 **JUROR:** No.

7 **THE COURT:** Thanks very much.

8 Mr. Hawfield is juror number 78. He's eligible
9 to serve.

10 The lawyers may join me on the side if you
11 like, Mr. Elders may, too.

12 (Whereupon, the following bench conference
13 was held on the record.)

14 **THE COURT:** Okay. Ms. Fields, what's your
15 situation?

16 **JUROR:** I was a victim of domestic violence.

17 **THE COURT:** Do you feel that that would affect
18 your ability to be a fair and impartial juror in
19 this case?

20 **JUROR:** Maybe in this one.

21 **THE COURT:** You have some doubt?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Okay. I'll set you aside on this
24 case. You stay with us for other instructions,
25 okay.

1 **JUROR:** Thank you.

2 (Whereupon, the bench conference was
3 concluded.)

4 **THE COURT:** Ms. Fields is juror number 57.
5 She's set aside on the trial of this case.

6 Do any of you work in any capacity in the field
7 of law enforcement or any prosecutor's office or any
8 firm that does criminal defense work or do you have
9 any immediate family members or close, personal
10 friends who are so employed; if so, please stand?

11 (Juror stands.)

12 **THE COURT:** Your name, sir?

13 **JUROR:** Erby Howard, number 85. My son's a
14 sergeant with Lexington County Police Force.

15 **THE COURT:** The sheriff's office?

16 **JUROR:** Yes.

17 **THE COURT:** He's a deputy?

18 **JUROR:** He's a sergeant in the south district.

19 **THE COURT:** Is the sheriff's office involved in
20 this case or is it just Cayce?

21 **MS. MOORE:** Just Cayce, Your Honor.

22 **THE COURT:** Okay. Is there anything at all
23 about your relationship or experiences with your son
24 that affects your ability to be a fair and impartial
25 juror in the case, Mr. Howard?

1 **JUROR:** No, sir.

2 **THE COURT:** Any doubt in your mind?

3 **JUROR:** No, sir.

4 **THE COURT:** Thanks very much.

5 85 is eligible to serve.

6 In the gray right there, your name, please,
7 ma'am?

8 **JUROR:** Rose Trisko.

9 **THE COURT:** Say that again.

10 **JUROR:** Rose Trisko, 169.

11 **THE COURT:** Ms. Trisko is juror number 169.

12 And what's your situation, please?

13 **JUROR:** My son-in-law is a detective, but he's
14 not down here, he's in Michigan. I just didn't know
15 if that was considered or not.

16 **THE COURT:** Yes, ma'am. Is there anything at
17 all about your relationship with him or his
18 experiences that affect your ability to be a fair
19 and impartial juror in this case?

20 **JUROR:** No, sir.

21 **THE COURT:** Any doubt in your mind?

22 **JUROR:** No, sir.

23 **THE COURT:** Thanks very much.

24 Ms. Trisko's 169, eligible to serve.

25 Your name, please, ma'am?

1 **JUROR:** Lori Hall, juror number 73.

2 **THE COURT:** Ms. Hall is juror number 73. And
3 your husband is a police officer with Columbia?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Anything else that you need to tell
6 me about?

7 **JUROR:** No, sir.

8 **THE COURT:** Is there anything about your
9 relationship or experience with him that affects
10 your ability to be a fair and impartial juror in
11 this case?

12 **JUROR:** No, sir.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No, sir.

15 **THE COURT:** Thanks very much.

16 Ms. Hall's juror number 73, eligible to serve.
17 Your name?

18 **JUROR:** Robert Schiesser, 139.

19 **THE COURT:** Mr. Schiesser is 139. Go ahead,
20 please.

21 **JUROR:** Prior to entering the field of
22 education, I was a parole and probation officer in
23 Richland County. I've maintained my close circle of
24 friends with people that works with them. They're
25 scattered, some are with Richland County Sheriff's

1 Department, some are still with the probation,
2 parole department and one individual works at
3 Lexington County.

4 **THE COURT:** Anything about your relationship
5 with any of those people or with that agency or your
6 experiences that would affect your ability to be a
7 fair and impartial juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** Any doubt in your mind?

10 **JUROR:** No, sir.

11 **THE COURT:** Thank you very much.

12 139, Mr. Schiesser, is eligible to serve.

13 Your name, please, ma'am?

14 **JUROR:** Tammy O'Berry, 119.

15 **THE COURT:** Okay. Ms. O'Berry, 119, your
16 husband works with PPP?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Anything else you need to tell me
19 about?

20 **JUROR:** No, sir.

21 **THE COURT:** Now, he's in the IT department?

22 **JUROR:** Yes, sir.

23 **THE COURT:** At the main office in Columbia?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Is there anything at all about your

1 relationship with him or his experiences that
2 affects your ability to be a fair and impartial
3 juror in the case?

4 **JUROR:** No, sir.

5 **THE COURT:** Any doubt in your mind?

6 **JUROR:** No, sir.

7 **THE COURT:** Thanks very much.

8 Ms. O'Berry is 119, is eligible to serve.

9 Now, is there anything at all about the nature
10 of these allegations themselves that affects your
11 ability to be a fair and impartial juror and affects
12 your ability to decide these cases based on the law
13 and the evidence? Is there anything about your
14 particular situation that just by virtue of the very
15 nature of the allegations, you feel that you may be
16 affected in being a fair and impartial juror; if so,
17 please stand?

18 (Jurors stand.)

19 **THE COURT:** Your name, please?

20 **JUROR:** Kimberly Minico, juror number 111.

21 **THE COURT:** 111, Ms. Minico, is set aside on
22 the trial of this case.

23 Just stay with us for other instructions, all
24 right.

25 **JUROR:** Yes, sir.

1 **THE COURT:** And your name, please?

2 **JUROR:** Laura Stevens, juror number 160.

3 **THE COURT:** Ms. Stevens is juror number 160.
4 She's excused from the trial of this case.

5 Just stay with us for other instructions,
6 please, ma'am.

7 All right. Now, I'm going to try to pose the
8 next question with multiple parts coming from both
9 sides. When I say both sides, I mean both
10 directions. I don't mean anything about sides in
11 this particular case. I'm making these questions up
12 as I go along.

13 If any of you, any of your immediate family
14 members, any of your close, personal friends have
15 ever been the victim of any sort of sexual abuse,
16 whether it's adult or a child, or if any of you, any
17 of your immediate family members, any of your close,
18 personal friends have ever been accused of
19 committing an act of sexual abuse, adult or a child,
20 whether any charges were ever brought or not in
21 either side of that, you need to talk to me about
22 it.

23 Now, we're not going to talk in front of
24 everybody, I'm going to bring you down front. But
25 if you, an immediate family member or a close,

1 personal friend has ever been the victim of any type
2 of sexual abuse or ever been accused of any type of
3 sexual abuse, whether any charges were brought or
4 not, you need to talk with me about that, please
5 stand.

6 (Jurors stand.)

7 **THE COURT:** Would you form a line over here,
8 please?

9 Attorneys may join me on the side. Mr. Elders
10 may join me on the side if he likes.

11 (Whereupon, the following bench conferences
12 were held on the record.)

13 **BAILIFF:** 137, Your Honor.

14 **THE COURT:** Sarbok?

15 **JUROR:** Yes.

16 **THE COURT:** 137, Ms. Sarbok. What's your
17 situation, please?

18 **JUROR:** My stepdaughter was recently, I guess,
19 raped.

20 **THE COURT:** How old is she?

21 **JUROR:** She's 16. By a close family member.

22 **THE COURT:** Any charges brought?

23 **JUROR:** No.

24 **THE COURT:** You understand the nature of the
25 allegations in this case?

1 **JUROR:** Yes, I do.

2 **THE COURT:** Anything about your situation that
3 affects your ability to be a fair and impartial
4 juror?

5 **JUROR:** No, sir.

6 **THE COURT:** Do you have any doubt in your mind?

7 **JUROR:** No doubt.

8 **THE COURT:** Thanks very much.

9 Ms. Sarbok's 137, eligible to serve.

10 Yes, ma'am.

11 **BAILIFF:** Juror number 109, Your Honor.

12 **THE COURT:** You're Ms. Miller?

13 **JUROR:** Yes.

14 **THE COURT:** What's your situation?

15 **JUROR:** I was molested when I was five years
16 old, which has been over 50 years ago. And my
17 ex-husband, 30 years ago, was convicted of molesting
18 a child.

19 **THE COURT:** Did they bring any charges against
20 anybody for molesting you?

21 **JUROR:** No. Like I said, it was over 50 years
22 ago.

23 **THE COURT:** Family member or a friend?

24 **JUROR:** It was a family member.

25 **THE COURT:** Or a stranger?

1 **JUROR:** A family member.

2 **THE COURT:** Anything at all about that
3 experience that affects your ability to be fair and
4 impartial?

5 **JUROR:** None.

6 **THE COURT:** Any doubt in your mind?

7 **JUROR:** None.

8 **THE COURT:** Okay. What about your situation
9 with your ex-husband?

10 **JUROR:** I never spoke to him again.

11 **THE COURT:** Now, the person that he was accused
12 of molesting was that a family member, also?

13 **JUROR:** No, I didn't know the child.

14 **THE COURT:** Was that prosecuted in Lexington
15 County?

16 **JUROR:** No, it was in Michigan.

17 **THE COURT:** And were you involved in the case
18 in any way?

19 **JUROR:** No, none.

20 **THE COURT:** So is there anything about that
21 experience or your relationship with him that
22 affects your ability to be fair and impartial?

23 **JUROR:** None.

24 **THE COURT:** Any doubt in your mind?

25 **JUROR:** No.

1 **THE COURT:** Thanks very much.

2 109, Ms. Miller, is eligible to serve.

3 Yes, ma'am.

4 **BAILIFF:** Number 142, Your Honor.

5 **THE COURT:** Ms. Sharpe.

6 **JUROR:** Yes, sir.

7 **THE COURT:** What's your situation?

8 **JUROR:** I don't know if this is immediate
9 enough, but three of my third cousins were molested
10 and he was sent to trial and it was a big deal in
11 our family about it.

12 **THE COURT:** Who was sent to trial?

13 **JUROR:** He was -- they're my third cousin, but
14 it was my second cousin's husband that molested
15 them.

16 **THE COURT:** Was that in Lexington County?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Is the case ongoing or is it over?

19 **JUROR:** It's over with now.

20 **THE COURT:** What happened to him?

21 **JUROR:** He was sent to prison.

22 **THE COURT:** These third cousins, were they
23 children?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Do you remember the name of the

1 person that was sent to prison?

2 JUROR: Bruce Steele.

3 THE COURT: Roughly, how long ago are we
4 talking about?

5 JUROR: I think it started in 2006 is when it
6 all came out and it didn't wrap up for a couple
7 years, 2008 or 2009.

8 THE COURT: Is there anything at all about that
9 situation that affects your ability to be a fair and
10 impartial juror?

11 JUROR: No, sir.

12 THE COURT: Do you have any doubt in your mind
13 about that?

14 JUROR: No, sir.

15 THE COURT: Were you involved in the case in
16 any way?

17 JUROR: No, sir.

18 THE COURT: If you're sitting on this jury, is
19 there anything about your family dynamic, you said
20 the family's kind of upset about --

21 JUROR: Well, it was a deal for our family
22 obviously.

23 THE COURT: Is there anything about that that
24 would affect your ability to be fair and impartial?

25 JUROR: No, sir.

1 **THE COURT:** Do you have any doubt about that?

2 **JUROR:** No, sir.

3 **THE COURT:** All right. So you can decide the
4 case without regard to what any of your family
5 members might think?

6 **JUROR:** Yes, sir.

7 **THE COURT:** Thanks very much.

8 Ms. Sharpe is 142 and eligible to serve.

9 Yes, sir.

10 **BAILIFF:** Number 78, Your Honor.

11 **THE COURT:** Mr. Hawfield.

12 **JUROR:** Yes, sir.

13 **THE COURT:** What's your situation?

14 **JUROR:** My sister was in an abusive
15 relationship for a number of years before she got
16 divorced. I did not find out about it until after
17 the divorce.

18 My niece, five years ago, was involved in an
19 abusive relationship. We didn't find out about that
20 until later, which is probably a good thing.

21 **THE COURT:** Were charges brought on either of
22 those people?

23 **JUROR:** No, they were not.

24 **THE COURT:** And when you say abusive, did it
25 extend to sexual abuse?

1 **JUROR:** I'm not aware of whether it was or not
2 in my sister's case. In my niece's case, it was
3 physical abuse from what I understand.

4 **THE COURT:** Is there anything at all about your
5 relationship with your sister or niece or those
6 experiences that affect your ability to be fair and
7 impartial as a juror in the case?

8 **JUROR:** I'm just extremely angry that these
9 situations come up at all, have an affect on being a
10 fair and impartial juror.

11 **THE COURT:** Do you have some doubt?

12 **JUROR:** I have some doubt, yes, sir.

13 **THE COURT:** I'll set you aside. Maybe one day
14 we can get you to serve on a different kind of jury.

15 **JUROR:** You put me under oath, I told you the
16 truth.

17 **THE COURT:** That's all I wanted you to do.
18 Thank you.

19 Mr. Hawfield is juror number 78. He's set
20 aside on this trial.

21 **BAILIFF:** Number 119, Your Honor..

22 **THE COURT:** Ms. O'Berry.

23 **JUROR:** Yes, sir.

24 **THE COURT:** What's your situation?

25 **JUROR:** My sister has three foster children

1 that have been in her care for about a year and at
2 least one of the -- the dad or the stepdad has been
3 accused of sexually abusing the daughters.

4 **THE COURT:** Do you know if he's got charges
5 pending against him?

6 **JUROR:** I don't think so --

7 **THE COURT:** Don't know -- you don't know?

8 **JUROR:** No.

9 **THE COURT:** You don't think so?

10 **JUROR:** I don't think so. I think they might
11 not have had enough evidence, but they did take the
12 kids away.

13 **THE COURT:** All right. And is there anything
14 at all about that relationship with those
15 individuals or your experience that affects your
16 ability to be a fair and impartial juror in the
17 case?

18 **JUROR:** No, sir.

19 **THE COURT:** You have any doubt?

20 **JUROR:** No, sir.

21 **THE COURT:** Thanks very much.

22 Ms. O'Berry is 119. She's eligible to serve.
23 Yes, ma'am.

24 **BAILIFF:** Number 10, Your Honor.

25 **THE COURT:** Okay. Ms. Blyther, what's your

1 situation?

2 **JUROR:** My father's brother's son was -- I
3 don't know what happened. He was on T.V. and it was
4 alleged that he touched a child.

5 **THE COURT:** Was that in Lexington County?

6 **JUROR:** No, Richland County.

7 **THE COURT:** So they brought charges against
8 him?

9 **JUROR:** To my knowledge, yes.

10 **THE COURT:** Do you know anything about the
11 status of the case?

12 **JUROR:** No.

13 **THE COURT:** Anything about that experience or
14 your relationship with those people that affects
15 your ability to be fair and impartial as a juror in
16 the case?

17 **JUROR:** No, sir.

18 **THE COURT:** Any doubt in your mind?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you.

21 Ms. Blyther is juror number 10 and eligible to
22 serve.

23 Yes, ma'am.

24 **BAILIFF:** Number 120, Your Honor.

25 **THE COURT:** Ms. Oswald.

1 **JUROR:** Uh-huh.

2 **THE COURT:** What's your situation?

3 **JUROR:** I have a niece and two young cousins
4 that were sexually molested as children.

5 **THE COURT:** Were charges brought?

6 **JUROR:** Yes, and a conviction.

7 **THE COURT:** Lexington County?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Who -- was it the same perpetrator?

10 **JUROR:** Uh-huh.

11 **THE COURT:** Do you know his name?

12 **JUROR:** I cannot remember his name. It's been
13 probably 15 years ago now.

14 **THE COURT:** And what happened to him; do you
15 know that?

16 **JUROR:** He was incarcerated. He's still in
17 prison.

18 **THE COURT:** Is there anything at all --

19 **JUROR:** His wife owned a daycare center and
20 these children went to the daycare center.

21 **THE CLERK:** Is that Shealy out of
22 Batesburg-Leesville?

23 **JUROR:** He was a teacher.

24 **THE COURT:** I think I remember the case you're
25 talking about because I think I was the judge.

1 **JUROR:** It was about five or six young children
2 involved.

3 **THE COURT:** I think Mr. Breibart represented
4 him if it's the same person.

5 **MR. MOBLEY:** It was before my time.

6 **THE COURT:** I know that. I'm just telling you
7 in case your case comes up.

8 **THE CLERK:** Mr. Breibart did represent this
9 person.

10 **THE COURT:** If it's the same person. I should
11 be able to remember his name.

12 **JUROR:** Me, too, and it has just slipped my
13 mind.

14 **THE COURT:** Is there anything at all about
15 those experiences that affect your ability to be a
16 fair and impartial juror in the case?

17 **JUROR:** No, sir.

18 **THE COURT:** Any doubt in your mind?

19 **JUROR:** No, sir.

20 **THE COURT:** Thanks very much.

21 Ms. Oswald is 120, eligible to serve.

22 **THE CLERK:** Judge, I think his last name was
23 Metts not Shealy.

24 **THE COURT:** What's your name, ma'am?

25 **JUROR:** Phyllis King, number 97.

1 **THE COURT:** Okay. Ms. King, what's your
2 situation?

3 **JUROR:** I was raised with ten siblings, seven
4 of them being brothers. And I had a father that was
5 -- had the concept that men ruled women and women
6 were whores and sluts. And sexual abuse took place
7 in our home not necessarily by my father, but by my
8 brothers and it was something that just, you never
9 talk about and we don't communicate to this day.

10 **THE COURT:** Would any of that affect your
11 ability to be fair and impartial?

12 **JUROR:** Oh, yes.

13 **THE COURT:** Ms. King, I'll set you aside. Just
14 stay with us for further instructions about other
15 cases, okay.

16 **JUROR:** Okay.

17 **THE COURT:** Thanks very much.

18 Ms. King is juror number 97. She's excused
19 from the trial of this case.

20 **BAILIFF:** Number 13, Your Honor.

21 **THE COURT:** Mr. Brown, what's your situation?

22 **JUROR:** I have a sister who was raped. It was
23 many years ago, more than 30 years ago.

24 **THE COURT:** And were any charges brought?

25 **JUROR:** Yes.

1 **THE COURT:** Was this a family member or --

2 **JUROR:** A younger sister -- oh, I'm sorry, no,
3 not related. It was a stranger.

4 **THE COURT:** And what happened to the charges?

5 **JUROR:** I think he went to jail on it. It was
6 a long time ago, more than 30 years ago.

7 **THE COURT:** Anything about that experience that
8 affects your ability to be a fair and impartial
9 juror?

10 **JUROR:** I still tend to get emotional even
11 after all of these years. And I have a 15-year-old
12 niece, also. To be honest, before I came in here, I
13 was thinking I could be impartial, but until I found
14 out, I'm not sure now.

15 **THE COURT:** That's why we ask all of these
16 questions, if you've got doubt. That's why we bring
17 in more than 14 people. We'll set you aside on this
18 case, just stay with us for other instructions.

19 Mr. Brown is juror number 13. He's set aside
20 in the trial of this case.

21 **BAILIFF:** Number 18, Your Honor.

22 **THE COURT:** Ms. Byers.

23 **JUROR:** Yes.

24 **THE COURT:** What's your situation?

25 **JUROR:** 2005 to 2009, I worked for a daycare

1 and the couple that owned it are good friends of
2 mine from my church. And her father, who's also a
3 friend of mine from my church, was accused of
4 molesting two of our three-year-olds and that
5 happened in 2003 before I worked there, but I knew
6 him at that time from church.

7 **THE COURT:** And what happened to him?

8 **JUROR:** Just before it went to trial, he
9 pleaded guilty.

10 **THE COURT:** Is there anything about your
11 relationship with those folks, that daycare center,
12 your experiences, anything at all that would affect
13 your ability to be fair and impartial?

14 **JUROR:** No, sir.

15 **THE COURT:** Any doubt in your mind?

16 **JUROR:** No, sir.

17 **THE COURT:** Thank you, ma'am.

18 18, Ms. Byers, is eligible to serve.

19 Yes, sir.

20 **BAILIFF:** Number 56, Your Honor.

21 **THE COURT:** Mr. Felder.

22 **JUROR:** Yes, sir.

23 **THE COURT:** What's your situation, please?

24 **JUROR:** A close, personal friend of mine, his
25 son who was about 17 at the time was charged, not

1 charged, but accused by a neighbor of something
2 similar with a minor child. I don't know the gory
3 details, but that's the only reference. They -- no
4 charges filed or anything like that, but they ended
5 up moving away.

6 **THE COURT:** Is there anything about that
7 relationship or experience that affects your ability
8 to be a fair and impartial juror in this case?

9 **JUROR:** No, Your Honor.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No, Your Honor.

12 **THE COURT:** Thanks a lot.

13 Mr. Felder is 56. He's eligible to serve.

14 Yes, ma'am.

15 **BAILIFF:** Number 100, Your Honor.

16 **THE COURT:** Ms. Lesuer.

17 **JUROR:** Yes.

18 **THE COURT:** What's your situation?

19 **JUROR:** My husband's niece was sexually
20 assaulted by her grandfather. He has been indicted.
21 The trial is either still ongoing or has maybe
22 finished last week. I don't know any results, but
23 she was --

24 **THE COURT:** Where did that take place?

25 **JUROR:** In Illinois.

1 **THE COURT:** Anything about that relationship or
2 experience that affects your ability to be fair and
3 impartial as a juror in this case?

4 **JUROR:** Possibly because I have two daughters
5 as well.

6 **THE COURT:** I understand. I'll set you aside
7 on this case, just stay with us for other
8 instructions, okay.

9 **JUROR:** Okay.

10 **THE COURT:** Ms. Lesuer is juror number 100.
11 She's set aside on the trial of this case.

12 Yes, ma'am.

13 **BAILIFF:** Number 165, Your Honor.

14 **THE COURT:** Ms. Sweatt.

15 **JUROR:** Yes, sir.

16 **THE COURT:** What's your situation?

17 **JUROR:** It's not really mine, it's my
18 mother-in-law. She was assaulted as a child and she
19 was telling me about it. And I don't know if that
20 has any relation with this or not.

21 **THE COURT:** Was she assaulted by a family
22 member or --

23 **JUROR:** Yes, sir.

24 **THE COURT:** Do you know the relationship?

25 **JUROR:** I think it was her father or her

1 stepfather, I'm not sure. It's when she was a
2 child, so she doesn't really talk about it.

3 **THE COURT:** I understand. Is there anything at
4 all about your relationship with her or that
5 experience that affects your ability to be a fair
6 and impartial juror in this case?

7 **JUROR:** No, sir.

8 **THE COURT:** Do you have any doubt in your mind?

9 **JUROR:** No, sir.

10 **THE COURT:** Thanks very much.

11 165, Ms. Sweatt is eligible to serve.

12 (Whereupon, the bench conferences were
13 concluded.)

14 **THE COURT:** Have any of you formed or expressed
15 any opinions about these cases; if so, please stand?

16 (There was no response.)

17 **THE COURT:** Are any of you aware of any
18 interest, bias or prejudice that you might have for
19 or against the State, for or against the defendant,
20 Mr. Elders, for or against anyone or any entity
21 involved in the case; if so, please stand?

22 (There was no response.)

23 **THE COURT:** Can each of you give both the State
24 of South Carolina and the defendant, Michael Ray
25 Elders, a fair and impartial trial? If you know of

1 any reason why you cannot, please stand now.

2 (There was no response.)

3 **THE COURT:** Further questions from the State?

4 **MS. MOORE:** Not from the State, Your Honor.

5 **THE COURT:** Further questions from the defense?

6 **MR. RAST:** None, Your Honor.

7 **THE COURT:** Thanks very much. The jury panel
8 is qualified.

9 All right. Ladies and gentlemen, how many of
10 you have been set aside, raise your hand?

11 Would you move over onto the back rows on that
12 side for me, please?

13 (Pause.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 the way this works is that the clerk is going to
16 call a name. If it is your name, you need to gather
17 your personal belongings, come down front, stand
18 right there where Mr. Pathel is standing, face that
19 direction.

20 When you get down here, the clerk is going to
21 ask questions of the State's attorney and the
22 defense attorney and based on their responses,
23 you'll be told whether to have a seat in the jury
24 box or return to your seat in the courtroom, that's
25 why you need to bring your personal belongings

1 because your next stop may be over here in the jury
2 box.

3 Thank you, Lawrence.

4 All right. The strikes are five for the State
5 and ten for the defense.

6 Madame Clerk, if you're ready, give us a jury.

7 **THE CLERK:** Yes, sir.

8 Number 58, Katherine Frick.

9 (Whereupon, Katherine M. Frick, a white
10 female, was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Ms. Frick.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Swear the juror.

15 **THE CLERK:** Have a seat in the jury box, ma'am.

16 Number 171, Amanda Underhill.

17 (Whereupon, Amanda F. Underhill, a white
18 female, was called forward.)

19 **THE CLERK:** What sayeth for the State?

20 **MS. MOORE:** Please present Ms. Underhill.

21 **THE CLERK:** What sayeth for the defense?

22 **MR. RAST:** Excuse the juror from this trial,
23 please.

24 **THE CLERK:** Return to your seat, please, ma'am.

25 Number 105, Perry Loonam.

1 (Whereupon, Perry E. Loonam, a white female,
2 was called forward.)

1 male, was called forward.)

2 **THE CLERK:** What sayeth for the State?

3 **MS. MOORE:** Please present Mr. Schiesser.

4 **THE CLERK:** What sayeth for the defense?

5 **MR. RAST:** Excuse the juror from this trial,
6 please.

7 **THE CLERK:** Return to your seat, please, sir.
8 165, Ashley Sweatt.

9 (Whereupon, Ashley Z. Sweatt, a white
10 female, was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Ms. Sweatt.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Excuse the juror from this trial,
15 please.

16 **THE CLERK:** Return to your seat, please, ma'am.
17 174, Katherine Warren.

18 (Whereupon, Katherine F. Warren, a white
19 female, was called forward.)

20 **THE CLERK:** What sayeth for the State?

21 **MS. MOORE:** Please present Ms. Warren.

22 **THE CLERK:** What sayeth for the defense?

23 **MR. RAST:** Swear the juror.

24 **THE CLERK:** Have a seat in the jury box, ma'am.
25 108, Russell Mellette.

1 (Whereupon, Russell C. Mellette, a white
2 male, was called forward.)

3 **THE CLERK:** What sayeth for the State?

4 **MS. MOORE:** Please present Mr. Mellette.

5 **THE CLERK:** What sayeth for the defense?

6 **MR. RAST:** Swear the juror.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 120, Donna Oswald.

9 (Whereupon, Donna Oswald, a white female,
10 was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Ms. Oswald.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Please excuse the juror from this
15 trial, please.

16 **THE CLERK:** Return to your seat, please, ma'am.
17 183, Sheryl Wood.

18 (Whereupon, Sheryl D. Wood, a white female,
19 was called forward.)

20 **THE CLERK:** What sayeth for the State?

21 **MS. MOORE:** Please present Ms. Wood.

22 **THE CLERK:** What sayeth for the defense?

23 **MR. RAST:** Excuse the juror, please.

24 **THE CLERK:** Return to your seat, please, ma'am.
25 167, Darrell Taylor.

1 (Whereupon, Darrell Taylor, a black male,
2 was called forward.)

3 **THE CLERK:** What sayeth for the State?

4 **MS. MOORE:** Please present Mr. Taylor.

5 **THE CLERK:** What sayeth for the defense?

6 **MR. RAST:** Swear the juror.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 138, Marjorie Saville.

9 (Whereupon, Marjorie G. Saville, a white
10 female, was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Ms. Saville.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Swear the juror.

15 **THE CLERK:** Have a seat in the jury box.
16 Number 137, Marsha Sarbok.

17 (Whereupon, Marsha H. Sarbok, a white
18 female, was called forward.)

19 **THE CLERK:** What sayeth for the State?

20 **MS. MOORE:** Please present Ms. Sarbok.

21 **THE CLERK:** What sayeth for the defense?

22 **MR. RAST:** Excuse the juror from this trial,
23 please.

24 **THE CLERK:** Return to your seat, please, ma'am.
25 85, Erby Howard.

1 (Whereupon, Erby E. Howard, a white male,
2 was called forward.)

3 **THE CLERK:** What sayeth for the State?

4 **MS. MOORE:** Please present Mr. Howard.

5 **THE CLERK:** What sayeth for the defense?

6 **MR. RAST:** Excuse the juror from this trial,
7 please.

8 **THE CLERK:** Return to your seat, please, sir.
9 Number 16, Teresita Buckles.

10 (Whereupon, Teresita Buckles, a Asian
11 female, was called forward.)

12 **THE CLERK:** What sayeth for the State?

13 **MS. MOORE:** Please present Ms. Buckles.

14 **THE CLERK:** What sayeth for the defense?

15 **MR. RAST:** Swear the juror.

16 **THE CLERK:** Have a seat in the jury box, ma'am.
17 Number 66, Robert Golden.

18 (Whereupon, Robert T. Golden, a white male,
19 was called forward.)

20 **THE CLERK:** What sayeth for the State?

21 **MS. MOORE:** Please present Mr. Golden.

22 **THE CLERK:** What sayeth for the defense?

23 **MR. RAST:** Swear the juror.

24 **THE CLERK:** Have a seat in the jury box, sir.
25 Number 31, Robert Conger.

1 (Whereupon, Robert J. Conger, a white male,
2 was called forward.)

3 **THE CLERK:** What sayeth for the State?

4 **MS. MOORE:** Please present Mr. Conger.

5 **THE CLERK:** What sayeth for the defense?

6 **MR. RAST:** Swear the juror.

7 **THE CLERK:** Have a seat in the jury box, sir.
8 109, Patty Miller.

9 (Whereupon, Patty D. Miller, a white female,
10 was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Ms. Miller.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Swear the juror.

15 **THE CLERK:** Have a seat in the jury box, ma'am.
16 Number 5, Misty Barr.

17 (Whereupon, Misty M. Barr, a white female,
18 was called forward.)

19 **THE CLERK:** What sayeth for the State?

20 **MS. MOORE:** Please excuse Ms. Barr.

21 **THE CLERK:** Return to your seat, please, ma'am.
22 38, John Croft.

23 (Whereupon, John F. Croft, a white male, was
24 called forward.)

25 **THE CLERK:** What sayeth for the State?

1 **MS. MOORE:** Please excuse Mr. Croft.

2 **THE CLERK:** Return to your seat, please, sir.

3 128, Jeffrey Rodgers.

4 (Whereupon, Jeffrey W. Rodgers, a white
5 male, was called forward.)

6 **THE CLERK:** What sayeth for the State?

7 **MS. MOORE:** Please present Mr. Rodgers.

8 **THE CLERK:** What sayeth for the defense?

9 **MR. RAST:** Swear the juror.

10 **THE CLERK:** Have a seat in the jury box, sir.
11 Alternates, Your Honor?

12 **THE COURT:** Draw an alternate, strikes are one
13 for the State, two for the defense.

14 **THE CLERK:** Number 119, Tammy O'Berry.

15 (Whereupon, Tammy P. O'Berry, a white
16 female, was called forward.)

17 **THE CLERK:** What sayeth for the State?

18 **MS. MOORE:** Please present Ms. O'Berry.

19 **THE CLERK:** What sayeth for the defense?

20 **MR. RAST:** Excuse the juror from this trial,
21 please.

22 **THE CLERK:** Return to your seat, please, ma'am.
23 Number 25, Michael Cassidy.

24 (Whereupon, Michael P. Cassidy, a white
25 male, was called forward.)

1 **THE CLERK:** What sayeth for the State?

2 **MS. MOORE:** Please present Mr. Cassidy.

3 **THE CLERK:** What sayeth for the defense?

4 **MR. RAST:** Swear the juror.

5 **THE COURT:** Draw another alternate, strikes are
6 one for the State, two for the defense.

7 **THE CLERK:** Yes, sir.

8 Number 170, Tyler Tucker.

9 (Whereupon, Tyler A. Tucker, a white male,
10 was called forward.)

11 **THE CLERK:** What sayeth for the State?

12 **MS. MOORE:** Please present Mr. Tucker.

13 **THE CLERK:** What sayeth for the defense?

14 **MR. RAST:** Excuse Mr. Tucker, please.

15 **THE CLERK:** Return to your seat, please, sir.

16 161, William Stewart.

17 (Whereupon, William Aaron Stewart, Jr., a
18 white male, was called forward.)

19 **THE CLERK:** What sayeth for the State?

20 **MS. MOORE:** Please present Mr. Stewart.

21 **THE CLERK:** What sayeth for the defense?

22 **MR. RAST:** Excuse Mr. Stewart, please.

23 **THE CLERK:** Return to your seat, please, sir.

24 Number 6, Joanne Barrett.

25 (Whereupon, Joanne R. Barrett, a white

1 female, was called forward.)

2 **THE CLERK:** What sayeth for the State?

3 **MS. MOORE:** Please present Ms. Barrett.

4 **THE CLERK:** What sayeth for the defense?

5 **MR. RAST:** Swear the juror.

6 **THE CLERK:** Have a seat in the jury box, ma'am.

7 That's alternate number two, Your Honor.

8 **THE COURT:** Thank you.

9 Are there any matters to take up including
10 composition of the panel, from the State?

11 **MS. MOORE:** Nothing from the State.

12 **THE COURT:** From the defense?

13 **MR. RAST:** Nothing from the defense, Judge.

14 **THE COURT:** Thank you very much.

15 Mr. Conger, you're going to be the foreman of
16 the jury, be the last one to come back into the
17 courtroom when the jury returns, please. Have a
18 seat on the front row on this end, stay in that seat
19 throughout the trial.

20 The two alternates, one of those two seats on
21 the end, you need to be in one of those two seats
22 throughout the trial unless I substitute you in for
23 one of the 12.

24 Now, folks, the rest of you can sit anywhere
25 you like in the jury box. I do ask you, though,

1 please, if you develop a favorite chair, that you
2 not make people walk across you. And we had a
3 situation in the old building years ago where a lady
4 broke her ankle. I don't want that happening to any
5 of you, so if you're like every other jury I've ever
6 had and some of you have a favorite chair that you
7 develop throughout the trial, please space -- step
8 to the side out here before you go in the jury box,
9 space yourselves accordingly and slip in there and
10 get your favorite chair.

11 I'm not knocking favorite chairs. If you come
12 to the Edgefield United Methodist Church, you're
13 going to find me in the same place every time and
14 it's right where my dad sat when he was alive, so we
15 tend to be creatures of habit and that's fine with
16 me.

17 Now, I'm going to send you back in the jury
18 room while I find out what I have to do before we
19 can get started with you folks. There's always
20 preliminary matters in every case.

21 Do not discuss this case in any way among
22 yourselves, don't talk about the people involved,
23 don't talk about the subject matter of the case,
24 don't talk about anything whatsoever that relates to
25 the case.

1 Do any of you have cell phones on you?

2 **JUROR:** I do.

3 **THE COURT:** Do not use your cell phone in any
4 way at all. I'm going to have to give you an
5 instruction when you come back. I only give it to
6 you the one time, but just don't use your cell
7 phone, don't call anybody, don't look anything up.
8 If it's a smart phone, don't go on and do any
9 searches.

10 All right. If you'll step back in the jury
11 room, follow the bailiff, I'll get you out
12 momentarily.

13 (The jury retires to the jury room.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 my understanding is that the clerk explained the
16 call-in system to you before I came on the bench.
17 You can also access it through the Internet if you
18 like, that's going to be our way of staying in touch
19 with you throughout the week.

20 I promise you that I know you have other things
21 to do and other places to be. And as soon as I know
22 that I don't need you anymore, I promise you I'll
23 tell the clerk to put the message on that you are
24 through for the week. You won't have to call in or
25 come back or check anymore after that message is

1 given, but it's too early in the week for me to do
2 that.

3 Sometimes things happen in these cases, I hope
4 I'm not embarrassing Ms. Moore, but we actually
5 started this trial once before and Ms. Moore broke
6 her foot and sprained her ankle and we had to stop.
7 She was being hardheaded and trying to walk around
8 in high heel shoes and try the case. And the old
9 man in me made her go to the doctor. So things
10 happen, victims have issues sometimes or witnesses
11 get sick, any number of things can happen.

12 So they have a backup case for me to try or
13 preside over and, also, I still haven't gotten
14 clarification about the transfer court. What we
15 would probably do if they do have transfer court is
16 we would narrow the pool down. We will just read a
17 list of names to come in and you would report to a
18 courtroom on the third floor, if that happens at
19 all. If something were to happen in this case and I
20 needed to come in and draw a jury for the second
21 case, I'd have to bring all of you back in. But as
22 soon as I can, I'll cut you loose.

23 Now, if I do not see you again, I want to thank
24 you. I'm not the kind of person that's going to sit
25 up here and repeatedly say thank you. I know that

1 this is inconvenient for you.

2 I also know that it's very easy to find
3 yourself in a dispute like these folks are in. And
4 if you're ever in one, you'll be very grateful that
5 people like you came away from everything else they
6 had to do in their lives and came to this room so
7 that we can resolve our disputes in a civil fashion
8 and not like you're going to see on your television
9 sets when you watch the news tonight. That's what
10 separates us from a lot of countries in this world.

11 We're very blessed to live in this country and
12 have that system. And I'm not just saying that to
13 try to suck up to any of y'all. I believe that with
14 all of my heart and soul. It doesn't work if you're
15 not sitting there, so thank you.

16 Now, just a couple of points to follow up on
17 what Ms. Frick probably told you this morning. If I
18 turn you loose and you're one of those people that
19 gets paid by your employer when you're on jury duty,
20 we're only going to give you an excuse for the days
21 you were actually up here.

22 I have had more than one situation where people
23 decided to take the rest of the week off even though
24 I might have turned the jury loose on Tuesday and
25 then get really mad at me because I wouldn't approve

1 of giving them an excuse for the entire week. It's
2 not going to happen. I know none of you would think
3 that way, but if anybody tries to plant that bug in
4 your ear, tell them that's not a good idea, it won't
5 work.

6 If you work a third shift job or you're a long
7 distance truck driver or something like that, I do
8 need you to be able to come in and not be dead on
9 your feet. So while I've got you on call, I need
10 you to be able to do that for me. So if you have
11 one of those positions, if you'll stay around and
12 talk to me, I'll tell you how we normally deal with
13 third shift workers and long distance truck drivers
14 and we'll see if we can't work something out with
15 you.

16 All right. The transfer court is not going to
17 happen, so the only way you're going to come back in
18 is if this case doesn't go as it's planned. If it
19 goes as it's planned, it's going to take four days
20 to try and we're not going to be able to try another
21 case, draw a jury and try it in a day, so I doubt
22 that I will see you, have you come back up here.

23 But if I knew for sure, I wouldn't have you
24 call, so call. You wouldn't believe how many people
25 don't call and then when I send the sheriff to get

1 them, they say, well, you said you didn't think we'd
2 come back up here. And I said, I didn't think, but
3 I was wrong, you had to come back up here.

4 All right. That's enough. I'll shut my mouth
5 now. Thank you very much, folks. If you work third
6 shift or something like that, stay around, talk to
7 me, otherwise you're free to go. Thank you.

8 (The remaining jury panel was excused.)

9 **THE COURT:** All right. It's almost noon. Are
10 we going to need a Denno hearing?

11 **MS. MOORE:** Yes, sir, we need a Denno hearing
12 and then the admissibility of the video.

13 **THE COURT:** All right. I've watched the DVD,
14 so I've already done that, of the forensic
15 interview.

16 Mr. Rast, do you have any other matters that
17 you know of that we're going to have to address
18 before the jury gets started?

19 **MR. RAST:** No, Your Honor.

20 **THE COURT:** Do y'all think I can do both of
21 them in an hour?

22 **MS. MOORE:** I do.

23 **THE COURT:** All right. Mr. Cartin, how about
24 ask the jury to step back in here for me, please?

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. Ladies and gentlemen,
2 it looks like what I need to do is to ask you folks
3 to be back at 2:30. I know that's an extended lunch
4 break, but the matters that I have to address, that
5 should give me time to stay here and do that. And
6 I'm going to try to avoid having you just sitting
7 back there in that little room when you could be
8 out. Right now you've got nice weather.

9 Now, I've got to give you a few instructions
10 before you go. And whenever we start into the trial
11 with you, I'll expand upon these somewhat. You are
12 not to discuss this case in any way among yourselves
13 until I tell you to, so don't talk about the people
14 involved in it, the type of case it's alleged to be,
15 don't talk about this case among yourselves at all
16 until I tell you to begin your deliberations at the
17 very end of the trial. Don't discuss this case with
18 family members or friends or anybody else until you
19 have been completely discharged from the jury, in
20 other words, the case is completely over.

21 Now, to give you an example of what you can and
22 cannot do, it's okay for you to tell a spouse or a
23 friend that you got drawn on a jury, but you cannot
24 tell them what kind of case it's alleged to be or
25 who's in it or anything about it. If anybody

1 attempts to contact you and discuss the case with
2 you, you need to report that to me so that I can
3 deal with it.

4 I never know if there's going to be any media
5 coverage of the trial unless television stations ask
6 to set up cameras. And so far as I know, there's
7 not going to be any media coverage of this trial,
8 but if there is any, you're exposed to it, get away
9 from it, report at the first opportunity that you
10 have what you may have been exposed to through the
11 media, what you may have heard, seen or read through
12 the media.

13 Do not do any independent investigation. Now,
14 I'm going to read something to you that the Chief
15 Justice has instructed us to read to you because
16 this has become an issue. It's always had some
17 issue like -- to give an example of what I'm talking
18 about independent investigation, in years past, we
19 had some situations where once somebody on a jury
20 learned where something allegedly took place, they
21 got in their car and drove out there and looked
22 around, that's independent investigation, don't do
23 it. We had people go to the law library or go to
24 the library and look up law, well, don't do that.
25 I'm here to tell you the law.

1 You are perfectly equipped to do the job that
2 you're going to be asked to do. And when you take
3 your oath, you're going to be promising us that you
4 will decide the cases based on the evidence and the
5 law and those things are going to come to you here
6 in the courtroom.

7 Now, we want you to use your common sense. I'm
8 not saying leave that at home, but with the advent
9 of the Internet, it's become even more of a problem,
10 not so much in South Carolina, but you may have read
11 in other states where they had these long trials,
12 they had jurors actually tweeting about the trials
13 during it and planning to write books and things
14 and, you know, it's just gotten completely out of
15 hand.

16 So the Chief Justice, before it become a
17 problem here in South Carolina, she came up with
18 something I'm supposed to read to you, but it's just
19 common sense and it just goes hand-in-hand with what
20 I've told you about don't do independent
21 investigation.

22 I am supposed to instruct you that you are not
23 to discuss the case with others including other
24 jurors except as authorized by the Court. You're
25 not to read or listen to any news reports about the

1 case. You're not to use a computer, a cell phone or
2 another electronic device with communication
3 capabilities while attending the trial or during
4 deliberations. You can use those devices during
5 lunch breaks or extended breaks, but not to obtain
6 or disclose information, that's prohibited in my
7 instructions to you.

8 You're not to use a computer, a cell phone or
9 any other electronic device with communication
10 capabilities or any other method to obtain or
11 disclose information about a case when you're not in
12 court. And information about a case includes, but
13 is not limited to, the following things:
14 information about a party, a witness, an attorney or
15 a court officer, news accounts of the case,
16 information collected through juror research on any
17 topics raised or testimony offered by any witness,
18 information collected through juror research on any
19 other topic that the juror might think would be
20 helpful in deciding the case.

21 Now, I'm not going to read that to you again
22 when you come back, but I'll use the shorthand,
23 don't do independent investigation.

24 They may take up your cell phones, give them
25 back to you each day or when you go to lunch. I'll

1 leave that to the discretion of the bailiffs and the
2 security personnel.

3 All right. For planning purposes, ladies and
4 gentlemen, here's what I think is going to happen
5 and I'll try to keep you abreast of what I think is
6 going to happen as the trial goes on. Just realize
7 when we deal with as many people as we deal with,
8 there's always going to be changes.

9 I think you're going to come back -- I think
10 I'll be ready for you pretty close to 2:30. We'll
11 get you in here, I'll give you my opening comments
12 and then we'll get started in the trial of the case
13 and we'll break for the day right around 5:00.
14 We'll probably start back in the morning at 9:30 and
15 we'll go as long as we can.

16 I told you that we may have an issue tomorrow
17 afternoon that you won't have to be here for and so
18 we may pick back up -- you may have a shorter day
19 tomorrow is what I'm saying, okay, but I'll let you
20 know as soon as I know.

21 Any questions before I let you go to lunch?

22 (There was no response.)

23 **THE COURT:** You're on your own for lunch.

24 We're not buying your lunch, I'm sorry.

25 Okay. When you come back, don't come in the

1 courtroom, come directly to the jury room. The
2 bailiff's going to show you how to enter the secured
3 area back here as you go. Thank you very much. I
4 look to see you at 2:30.

5 If you have some emergency during the break,
6 you make sure somebody calls and lets us know
7 because we can't do anything until you're all here.
8 Thank you.

9 (The jury was excused for lunch.)

10 **THE COURT:** All right. We're going to take a
11 short break. I'm going to ask you, though, if you
12 need to go to the restroom or something, give the
13 jurors a few minutes to clear out so that we don't
14 have any issue about anybody having contact with a
15 juror because it takes them a few minutes to get in
16 the elevators to go down. Very short break, five
17 minutes and then we'll get started.

18 Do y'all need to set up the equipment or
19 anything? I don't think you do unless somebody
20 needs to see it other than me.

21 **MS. MOORE:** I wasn't planning to.

22 **THE COURT:** All right. We're in recess for
23 five minutes.

24 (Brief Recess.)

25 **THE COURT:** All right. Call your witness.

1 **MS. MOORE:** State calls Detective Danielle
2 McCord.

3 DANIELLE MCCORD,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat. Once you're seated,
6 state your full name, spelling your last for the
7 record, please, ma'am.

8 **THE WITNESS:** Investigator Danielle McCord,
9 M-c-C-o-r-d.

10 DIRECT EXAMINATION

11 BY MS. MOORE:

12 **Q** Investigator McCord, where are you employed?

13 **A** City of Cayce Police Department.

14 **Q** And how long have you been employed?

15 **A** Almost ten years.

16 **Q** What are your duties and responsibilities at
17 the Cayce Police Department?

18 **A** I'm an investigator. I handle most of our
19 domestic violence crimes, sex crimes, child abuse
20 cases.

21 **Q** How long have you been doing that?

22 **A** Investigations for almost seven years.

23 **Q** Did you investigate a case involving a victim
24 by the name of Minor

25 **A** I did.

1 Q And did you have an occasion to obtain warrants
2 on a suspect in that case?

3 A I did.

4 Q Who was the suspect in that case?

5 A Michael Ray Elders.

6 Q What date did you serve the warrant on
7 Mr. Elders?

8 A The date of service on the warrant was July the
9 15th, 2009.

10 Q Do you recall where you served him?

11 A At his home on .

12 Q Did you advise him of his rights,
13 constitutional rights?

14 A We did not.

15 Q Was he in custody at that time?

16 A We went there primarily to serve the warrant on
17 him.

18 Q What, if anything, did you say to Mr. Elders
19 when you served the warrant on him?

20 A That we had an arrest warrant for criminal
21 sexual conduct first degree and that he was being
22 taken into custody at that time.

23 Q And was he taken into custody?

24 A He was.

25 Q Was he in handcuffs?

1 **A** He was after we got him outside to the
2 backyard.

3 **Q** So, at that time, was he free to leave?

4 **A** No, he was not.

5 **Q** Was anyone else present?

6 **A** My lieutenant, Lieutenant Simmons.

7 **Q** What, if anything, did Mr. Elders say when you
8 advised him that he was being arrested for criminal
9 sexual conduct?

10 **A** Well, immediately when we got there, we
11 explained that we had a warrant for his arrest for
12 CSC first degree. He initially said to us, Is this
13 about my daughter, if so, they're liars? Then he
14 invoked his right to counsel. And from that point,
15 we didn't say anything else to him, just explained
16 the warrant to him.

17 The normal procedure would have been to take
18 him back to headquarters, give him the right to talk
19 to us. He had already invoked his right to counsel
20 so we did not. And we would have read -- done an
21 advice of rights written form once we had got back
22 to our department if he wanted to talk to us, but
23 since he had invoked his right to counsel, we did
24 not.

25 **Q** But prior to that when he makes the statement

1 about, Is this about my daughter, was that in
2 response to any question by you or your lieutenant?

3 **A** We asked no questions about the case on the
4 scene. All we did was advise him that we had a
5 warrant for his arrest for criminal sexual conduct
6 first degree.

7 **Q** And he just --

8 **A** Blurted that out.

9 **Q** Voluntarily?

10 **A** Voluntarily.

11 **Q** Not as a result of any questioning?

12 **A** No questioning.

13 **MS. MOORE:** Your Honor, that's all I have.

14 **THE COURT:** Mr. Rast.

15 CROSS-EXAMINATION

16 BY MR. RAST:

17 **Q** You told him that you had a warrant against him
18 for criminal sexual conduct first degree?

19 **A** Correct.

20 **Q** Well, that was the wrong warrant, wasn't it?
21 It should have been criminal sexual conduct with a
22 minor, shouldn't it?

23 **A** Should have been, yes.

24 **Q** But you had the warrant typed up wrong?

25 **A** Yes.

1 Q Did you sign the warrant?

2 A I'd have to look at it, but I do believe so.

3 Q Isn't it unusual for the person who signs the
4 warrant to also serve it?

5 A That's why I took my lieutenant with me.

6 Q Did he serve it or you serve it?

7 A We didn't actually serve the warrant on scene.
8 It's not served till it gets back to our booking
9 department. We just went out to pick him up on the
10 warrant.

11 Q You did not give him the warrant when you
12 picked him up?

13 A I can't remember if we did or we didn't
14 honestly.

15 Q Did you read it to him?

16 A We don't read it to him until they get back to
17 booking.

18 Q Aren't you supposed to let them know
19 immediately what they're being arrested for?

20 A We did let him know immediately what he was
21 being arrested for. We told him what charge he was
22 being charged with and he had the right to ask any
23 questions he wanted to.

24 Q He also had the right to keep his mouth shut,
25 didn't he?

1 **A** He absolutely did.

2 **Q** He didn't say anything to you, did he, other
3 than it's a lie? He didn't say, Is it about my
4 daughter?

5 **A** No. In fact, he did say, Is this about my
6 daughter, they're liars. That's exactly what he
7 said.

8 **MR. RAST:** All right.

9 **THE COURT:** Redirect.

10 **MS. MOORE:** No, Your Honor.

11 **THE COURT:** Thank you, Detective. You may step
12 down.

13 Anything else from the State?

14 **MS. MOORE:** Nothing on this issue, Your Honor.

15 **THE COURT:** Mr. Rast, do you have any?

16 **MR. RAST:** Just one moment, Judge.

17 **THE COURT:** Yes, sir.

18 (Pause.)

19 **MR. RAST:** I have nothing, Judge.

20 **THE COURT:** You don't want to offer any
21 evidence?

22 **MR. RAST:** No, Your Honor.

23 **THE COURT:** Do you have any argument?

24 **MR. RAST:** Judge, they served a warrant which
25 charged him with the wrong crime, criminal sexual

1 conduct in the first degree, that is not with a
2 minor. It's a separate crime altogether. They
3 didn't even give it to him. They arrested him, took
4 him to jail -- they didn't even read him the warrant
5 before he says anything. And I just don't think
6 that is admissible under those circumstances,
7 especially when he immediately invoked his right to
8 an attorney.

9 **THE COURT:** Anything from the State?

10 **MS. MOORE:** Yes, sir, Your Honor. This was a
11 -- his statements were not responsive to any
12 questioning. The detective testified that they just
13 told him what he was being charged with. He
14 provided the fact that it was a minor by his own
15 words, Is this about my daughter? I don't think
16 that's relevant to a Jackson v. Denno hearing. It's
17 just the voluntariness of a statement. This is just
18 a spontaneous statement made by him while he's being
19 detained.

20 **THE COURT:** All right. Anything else,
21 Mr. Rast?

22 **MR. RAST:** Nothing further, Judge.

23 **THE COURT:** If there's nothing further, the
24 Court finds beyond a reasonable doubt that the State
25 has established that the alleged statement made by

1 the defendant which began with a question, Is this
2 about my daughter, if so, they are liars, is
3 admissible.

4 Miranda is not invoked because there was no
5 incustodial questioning or the functional equivalent
6 of incustodial questioning. There was nothing done
7 to cause anyone to believe that -- anyone on law
8 enforcement side to believe that any sort of
9 response would be forthcoming from the defendant.
10 It does not require Miranda. It was not the product
11 of questioning. It was a spontaneous response made
12 by the defendant.

13 Now, I'm not making any ruling about his
14 invocation of his right to counsel. I think you all
15 should try to avoid all of that. So it's admissible
16 assuming a proper foundation is established.

17 All right. What's the next issue?

18 **MS. MOORE:** Your Honor, the next issue is the
19 admissibility of the video tape pursuant to South
20 Carolina Code Section 17-23-175.

21 **THE COURT:** All right. Call your witness.

22 **MS. MOORE:** Your Honor, the State calls Minor
23

24

25

1 Minor

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat right over there. I
4 need you to speak up loud and clear and state your
5 full name, spelling your last on the record, okay.

6 **THE WITNESS:** Minor

7 **THE COURT:** How old are you, Minor

8 **THE WITNESS:** Twelve.

9 **THE COURT:** Twelve, okay. Would you answer Ms.
10 Moore's questions for me, please?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Thank you.

13 DIRECT EXAMINATION

14 BY MS. MOORE:

15 **Q** Minor , what grade are you in?

16 **A** Sixth.

17 **Q** And when is your birth date?

18 **A** .

19 **Q** Who do you live with?

20 **A** My mom, my brothers and my grandpa.

21 **Q** Who is your father?

22 **A** Michael Elders.

23 **Q** Has Mr. Elders always been a part of your life,
24 Minor ?

25 **A** No, ma'am.

1 **Q** How old were you when you began visiting your
2 father?

3 **A** Around eight.

4 **Q** And prior to that, how many times would you see
5 him?

6 **A** Every other weekend.

7 **Q** Before you turned eight, did you go to his home
8 every other weekend?

9 **A** No, ma'am.

10 **Q** Just when you turned eight?

11 **A** Yes, ma'am.

12 **Q** Where would you go visit your father?

13 **A** At his house.

14 **Q** Who lived at that house?

15 **A** His brothers, him and his mom.

16 **THE COURT:** I'm sorry. You would go to your
17 father's house every other weekend?

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** And who was there?

20 **THE WITNESS:** Michael Elders.

21 **THE COURT:** Okay. And who else?

22 **THE WITNESS:** (No response.)

23 **THE COURT:** Did you say other people would be
24 there?

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Okay. I just didn't hear who you
2 said.

3 **THE WITNESS:** His brothers and his --

4 **THE COURT:** Turn toward the microphone. I
5 appreciate you looking at me when you're talking to
6 me, that's what you're supposed to do, but talk into
7 that microphone for me.

8 **THE WITNESS:** His brothers and his mom.

9 **THE COURT:** Your father's brothers or your
10 grandfather's brothers?

11 **THE WITNESS:** My father's brothers.

12 **THE COURT:** Okay. Thank you.

13 BY MS. MOORE:

14 **Q** So those are your uncles?

15 **A** Yes, ma'am.

16 **Q** What are their names?

17 **A** Ray Elders and Georgie.

18 **Q** Was your brother with you?

19 **A** Sometimes.

20 **Q** Did he go visit your dad before you were
21 allowed to go visit your dad? Before you turned
22 eight, was your brother going to see your dad?

23 **A** Yes, ma'am.

24 **Q** But you didn't until you turned eight?

25 **A** Yes, ma'am.

1 Q Why don't you see your dad anymore, Minor ?
2 A Because he touched my private parts.
3 Q And when did that start?
4 A When I was eight or nine.
5 Q So sometime after you first started going to
6 visit him?
7 A Yes, ma'am.
8 Q Where would this happen?
9 A At his house.
10 Q Was anyone else in the house?
11 A Yes, ma'am.
12 Q Did anyone else see this?
13 A No, ma'am.
14 Q How many times can you guess that your dad
15 touched you in your private parts?
16 A I don't know.
17 Q Did it happen every time you went there or just
18 every once in a while?
19 A Almost every time.
20 Q Almost every time. Did he ever make you do
21 anything to him?
22 A Yes, ma'am.
23 Q What did he make you do to him?
24 A He made me touch his private part.
25 Q What did that feel like?

1 **A** Uncomfortable.

2 **Q** Did you ever tell your mom?

3 **A** No, ma'am.

4 **Q** Did your mom ever ask you if your dad touched
5 you?

6 **A** Yes, ma'am.

7 **Q** And did you ever tell her?

8 **MR. RAST:** If Your Honor please, are we having
9 a hearing to see if the video is going to be
10 admissible?

11 **THE COURT:** Yes, sir.

12 **MR. RAST:** Then what is the point in this
13 testimony?

14 **THE COURT:** If you have an objection, I'll rule
15 on it. I don't really know the answer.

16 **MR. RAST:** I object to this testimony because
17 this has got nothing to do with the video. I assume
18 she's going to testify in front of the jury.

19 **THE COURT:** Okay. Solicitor.

20 **MS. MOORE:** Your Honor, I think I need to
21 establish that she went to law enforcement and made
22 a statement to the Dickerson Center before the
23 forensic interviewer.

24 **MR. RAST:** We'll stipulate to that.

25 **MS. MOORE:** Okay.

1 **THE COURT:** Stipulate to what? Let me make
2 sure I've got the stipulation correct.

3 **MR. RAST:** We stipulate that this was a
4 criminal investigation going on as a result of the
5 warrant they had served on my client.

6 **THE COURT:** Is that enough to get what you need
7 in?

8 **MS. MOORE:** I believe so, Your Honor. I need
9 to establish that there was a crime committed, that
10 she did go to the Dickerson Center and that she will
11 testify at trial and be subject to
12 cross-examination.

13 **MR. RAST:** I will stipulate to that.

14 **THE COURT:** You're going to stipulate that a
15 crime was committed?

16 **MR. RAST:** No. We're going to stipulate that
17 there was a criminal investigation.

18 **THE COURT:** And she went to the Dickerson
19 Center?

20 **MR. RAST:** She went to the Dickerson Center.

21 **THE COURT:** All right. Thank you, sir.

22 **MR. RAST:** And she's going to testify in the
23 trial in front of the jury.

24 **THE COURT:** Okay. Thank you. Go ahead.

25 **MS. MOORE:** Thank you, Your Honor. That's all

1 I have.

2 **THE COURT:** Okay. Do you want to ask her any
3 questions right now?

4 **MR. RAST:** I have no questions at this time.

5 **THE COURT:** Okay. Thanks very much. You can
6 step down.

7 Call your next witness.

8 **MS. MOORE:** The State calls Lysa Miller-Dupre.

9 **THE COURT:** Come around, please.

10 LYSA MILLER-DUPRE,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Have a seat, please, ma'am. Once
13 you're seated, state your full name, speak up loud
14 and clear, spelling your last, please.

15 **THE WITNESS:** Lysa Miller-Dupre, M-i-l-l-e-r
16 hyphen D-u-p-r-e.

17 VOIR DIRE

18 BY MS. MOORE:

19 **Q** Ms. Miller-Dupre, where are you currently
20 employed?

21 **A** Community Home Care and Hospice.

22 **Q** Prior to your employment with Community Care
23 and Hospice, where were you employed?

24 **A** At the Dickerson Center for Children in West
25 Columbia.

1 **Q** Approximately how long did you work there?

2 **A** February '08 to November '09.

3 **Q** And what services did you provide at the
4 Dickerson Center?

5 **A** Forensic interviewer.

6 **Q** What's your educational background, begin with
7 your undergraduate degree?

8 **A** I have an AA in human services, a bachelors
9 degree in social work and a masters in social work.
10 And I'm a licensed master social worker in the State
11 of South Carolina.

12 **Q** What types of courses, seminars or other
13 trainings have you attended and completed in
14 forensic interviews for child abuse assessment?

15 **A** To hold a license in South Carolina, you have
16 to have continuing ed courses of 40 hours every two
17 years and I have continued with those hours. And
18 for forensic interviews, I have attended all of the
19 certification training required to do forensic
20 interviews through the Children's Law Office in
21 Columbia, South Carolina.

22 **Q** How many years have you conducted forensic
23 interviews with children?

24 **A** Six years.

25 **Q** Can you estimate the number of interviews that

1 you've conducted?

2 **A** Probably three to five a week give or take.

3 **Q** Over --

4 **A** Since six years.

5 **Q** Have you previously qualified as an expert in
6 the field of forensic interview and testified in
7 court?

8 **A** Yes, I have.

9 **Q** On how many occasions?

10 **A** Approximately ten.

11 **Q** Have you been qualified as an expert in
12 forensic interviewing in child abuse?

13 **A** Yes, I have.

14 **MS. MOORE:** Your Honor, at this time, we would
15 move to qualify Ms. Miller-Dupre as an expert in
16 forensic interviewing and child abuse assessment?

17 **THE COURT:** Any voir dire?

18 **MR. RAST:** Judge, could I ask a couple of
19 questions?

20 **THE COURT:** Yes, sir.

21 VOIR DIRE

22 BY MR. RAST: .

23 **Q** Are you certified as a forensic interviewer?

24 **A** Yes, I am.

25 **Q** When were you certified?

1 **A** The first time was in, I believe, '05 and every
2 year after that until '09.

3 **Q** Do you have to be certified every year?

4 **A** No, you don't, but to go into the trainings,
5 you get a certification.

6 **MR. RAST:** I have nothing further.

7 **THE COURT:** All right. The Court finds that
8 Ms. Miller-Dupre is qualified as an expert and may
9 render opinions in the field of forensic
10 interviewing and child abuse assessment.

11 **MS. MOORE:** Thank you, Your Honor.

12 **THE COURT:** And that's -- I don't think it has
13 to be clear and convincing, but I find it's clear
14 and convincing. Go ahead.

15 **MS. MOORE:** Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. MOORE:

18 **Q** How are forensic interviews conducted to assess
19 possible child abuse?

20 **A** The forensic interview is set up on a protocol
21 that's semi -- semiformal. So it's based on a
22 protocol called RATAAC, which is -- because it's
23 semiformal, doesn't have to be done in that
24 particular order as long as you conduct the
25 interview using all of those protocols.

1 Q What does that stand for?

2 A RATAC stands for rapport building, anatomy
3 identification, touch scenario, abuse scenario and
4 closure.

5 Q Are there any guidelines established for these
6 interviews?

7 A Yes, there is.

8 Q What are those guidelines?

9 A For particular age groups, there might be
10 different guidelines. We do an anatomy
11 identification by showing the child pictures of a
12 boy picture and a girl picture to be able to
13 determine if they can tell the different body parts
14 and to determine what they call particular body
15 parts so the rest of the interview can be based on
16 what the child's words for those parts are.

17 Q Is the child on board with these guidelines?

18 A Yes, they are. Rules -- I'm sorry -- rules are
19 given at the very beginning of the interview.

20 Q What are those rules?

21 A The children is told that they're there to just
22 tell the truth and not to guess, but to just tell me
23 what they know as far as body parts and as far as
24 questions that I'm going to ask them about their
25 family.

1 **Q** Are the parents of the child present during the
2 interview?

3 **A** No, they're not.

4 **Q** And why is that?

5 **A** Children are interviewed alone so they can't be
6 swayed to say something that a parent might want
7 them to say.

8 **Q** What, if any, measures are used to assess a
9 child's level of competency?

10 **A** We ask the child several questions about their
11 family that is information that I already have going
12 into that interview room with the child so I can
13 determine if the child is telling me information
14 that's accurate, where she lives, where she goes to
15 school, who she lives with, those sort of things.
16 And I ask the child to sometimes identify a
17 particular time in her life maybe that -- so she can
18 describe to me in words that can be understandable
19 and are on age level.

20 **Q** Did you have an occasion to interview a young
21 lady by the name of Minor

22 **A** Yes, I did.

23 **Q** And what date did you do that interview?

24 **A** On 7/6/2009.

25 **Q** And where did that take place at?

1 **A** At the Dickerson Center for Children.

2 **Q** Now, is there some way that you document your
3 interview with the child?

4 **A** We do a written report and we do a DVD.

5 **Q** Is the child informed of the DVD?

6 **A** Yes, they are. The camera is in the interview
7 room.

8 **Q** What, if anything, did **Minor** relate to you
9 concerning the timeframe of the sexual assault?

10 **A** I believe she said to me that she was first
11 touched when she first started visiting with her
12 father. She believed it was about a year ago.

13 **Q** Did she say how old she was at the time?

14 **A** I don't believe she mentioned her age. She
15 just did say that -- she was ten at the time I saw
16 her and she said she believed it was about a year
17 ago.

18 **Q** As you're going through your forensic
19 interview, the safeguards we talked about, are they
20 in place? Are there ways for you to determine
21 whether or not a child may be, in your opinion,
22 telling the truth or a lie? Are there ways to tell
23 whether a child that age...

24 **A** It's not my job to determine whether a child is
25 telling the truth or a lie. However, I do have a

1 instrument that we use so I can ask a child
2 questions about a particular picture. Whether she
3 can answer that question appropriately during the
4 interview is one way to determine whether the child,
5 first, is on age level developmentally wise and
6 whether she understands the importance of telling
7 the truth.

8 Q That was done in this case?

9 A Yes, it was.

10 Q What, if anything, did Minor relate to you
11 concerning the place of the sexual assault, where it
12 took place?

13 A At her father's house during a visit.

14 Q In your opinion, was there anything about
15 Minor disclosure that would cause you to believe
16 it was a result of third party influence?

17 A No, ma'am.

18 Q In your opinion, was her disclosure affected by
19 suggestibility or coaching?

20 A I have no indication of that.

21 Q And you said that you did document the child's
22 disclosure in written form, as well as a DVD; is
23 that correct?

24 A Correct.

25 Q Let me show you a DVD and ask if you have

1 previously watched that DVD?

2 **A** Yes, I have.

3 **Q** And how do you know that you have previously
4 watched that?

5 **A** My name is on it..

6 **Q** And --

7 **A** I signed it the last time I was here in court.

8 **Q** Is this a fair and accurate representation of
9 your interview with Minor

10 **A** Yes, it is.

11 **MS. MOORE:** Your Honor, at this time, we'd mark
12 this for I.D.

13 **THE COURT:** Yes, ma'am.

14 (State's Exhibit Number 1, DVD, marked for
15 identification purposes.)

16 **MS. MOORE:** If I can beg the Court's
17 indulgence.

18 **THE COURT:** Yes, ma'am.

19 (Pause.)

20 **MS. MOORE:** Your Honor, that's all I have on
21 this issue. Thank you.

22 **THE COURT:** Mr. Rast.

23 **MR. RAST:** I have no questions at this time,
24 Judge.

25 **THE COURT:** Thank you. You may step down.

1 Any motions?

2 **MS. MOORE:** Sir?

3 **THE COURT:** Are there any motions?

4 **MS. MOORE:** Your Honor, we would ask that
5 pursuant to South Carolina Code Section 17-23-175,
6 that the video tape be admissible. It meets the
7 standard of the child hearsay law that a child's
8 statement be made in an investigative interview.

9 There's a visual and audio recording of this
10 out-of-court statement. The child will be available
11 to testify at trial and be subject to
12 cross-examination. And we believe, based on Ms.
13 Miller-Dupre's admissibility as an expert witness,
14 that the interview has guarantees of
15 trustworthiness.

16 **THE COURT:** Mr. Rast.

17 **MR. RAST:** No objection, Judge.

18 **THE COURT:** All right. Any other pretrial
19 issues?

20 **MS. MOORE:** That's all we have, Judge.

21 **THE COURT:** Anything else, Mr. Rast?

22 **MR. RAST:** Just my motion to sequester the
23 witnesses that I made the last time at trial, Judge.
24 I believe you said you were going to let the victim
25 and the mother stay in.

1 **THE COURT:** My understanding of the Victims'
2 Bill of Rights will allow Minor to stay in the
3 courtroom, her mother, or whomever you all choose to
4 be with her, and the chief investigating officer.

5 **MS. MOORE:** Yes, sir. We would just ask that
6 that be reciprocal.

7 **THE COURT:** Any witnesses that you know of
8 other than the defendant, Mr. Rast?

9 **MR. RAST:** Oh, yes, Judge. I've already told
10 them all they're going to have to stay outside.

11 **THE COURT:** All right. Whenever you all come
12 back, be careful that you don't have any contact
13 with jurors. They may well be coming back the same
14 time you are, so be careful in the elevators, in the
15 common areas of the building.

16 Is Mr. Elders in custody?

17 **MS. MOORE:** Yes.

18 **THE COURT:** All right. Court's in recess till
19 2:30.

20 (Whereupon, there was a luncheon recess.)

21 (Court's Exhibit Number 1, jury note, marked
22 for identification purposes.)

23 **THE COURT:** State ready for the jury?

24 **MS. MOORE:** State's ready.

25 **THE COURT:** Defense?

1 **MR. RAST:** We're ready, Judge.

2 **THE COURT:** During the recess, one of the
3 jurors had informed the bailiff that he needed to
4 let me know that he had a friend in the Cayce Police
5 Department. So it's juror number 108, Russell
6 Mellette. And I told the bailiff to have
7 Mr. Mellette write out what the situation is.

8 And the note reads, I know a Cayce Police
9 Officer by the name of Jamie Summers. I've known
10 Jamie for several years. He's also a volunteer with
11 Lexington County Fire Service. We work -- I think
12 it's supposed to be many, he's got may -- We work
13 scenes together. I think it's supposed to read we
14 work many scenes together.

15 Do you all want me to bring the juror out and
16 inquire into this? Do you want to set him aside?
17 What do you want to do?

18 **MR. RAST:** Judge, I think we should set him
19 aside. If he thought enough about it to bring it to
20 the Court's attention now, it must be bothering him
21 to some extent.

22 **THE COURT:** Does the State want to be heard?

23 **MS. MOORE:** Judge, I think we -- if Your Honor
24 would just ask him the question whether that
25 relationship would impair his ability to be fair and

1 impartial. They tell me that this officer is brand
2 new at the Cayce Police Department.

3 **THE COURT:** All right. I'll bring him out and
4 do the inquiry, but, you know, the difficulty I have
5 and the reason I go to the lengths I go to, which I
6 told them admittedly that some of this stuff sounds
7 silly, but the reason I go to the lengths to say if
8 you've got anything you need to talk to me about, if
9 you think of anything you need to talk to me about,
10 let me know, is for this very reason.

11 Now, I'm not faulting the juror. It might not
12 have really sunk in until he got picked on this jury
13 and started thinking about who he might know. The
14 difficulty it places people in is that you don't
15 have this information when you strike. And he
16 didn't use all of his strikes and I don't know if he
17 would have used one of the strikes just because
18 there was a relationship with somebody with the
19 Cayce Police Department, so I'm inclined to set him
20 aside.

21 Bring Mr. Russell Mellette, 108, ask him to
22 come in.

23 (Juror Russell Mellette enters the
24 courtroom.)

25 **THE COURT:** You can have a seat, any chair is

1 fine. You're Russell Mellette?

2 **JUROR:** Yes, sir.

3 **THE COURT:** I got this note from you. Did you
4 just recall this after you got picked on the jury?

5 **JUROR:** Yes, sir. I mean, I've known Jamie for
6 quite a while, but when that gentleman stood up this
7 morning and said his son was a sergeant, I just kind
8 of drew a blank.

9 **THE COURT:** I'm going to ask you some questions
10 and then I'm going to have to make a decision, but
11 is there anything about the relationship that you
12 feel would affect your ability to be fair and
13 impartial as a juror in this case?

14 **JUROR:** No, sir.

15 **THE COURT:** You can decide the case without
16 regard to what he may -- is that a man, Jamie
17 Summers?

18 **JUROR:** Yes, sir.

19 **THE COURT:** Can you decide it without regard to
20 what he may think of your decision?

21 **JUROR:** Should be able to, yes, sir.

22 **THE COURT:** Do you have any doubt?

23 **JUROR:** No, sir.

24 **THE COURT:** How often do you see him?

25 **JUROR:** A good bit.

1 **THE COURT:** Mr. Mellette, you did the right
2 thing by doing this. This is exactly what you were
3 supposed to do and I appreciate it.

4 The difficulty I have is while I believe you
5 can be fair and impartial, each side has so many
6 strikes they can use and the defense didn't use all
7 of their strikes so they might have just, since they
8 had more strikes to use, they might have just set
9 you aside because of that relationship with somebody
10 in the Cayce Police Department. So I think the safe
11 thing for me to do is to set you aside and use one
12 of the alternates. Just call that number tonight
13 after 6:00 and follow the instructions. I don't
14 think I'll be bringing y'all back, but you never
15 know, okay.

16 **JUROR:** Yes, sir.

17 **THE COURT:** All right. If you'll just -- have
18 you got anything back in the jury room?

19 **JUROR:** No, sir.

20 **THE COURT:** Just give that button to the
21 bailiffs.

22 (The juror was excused.)

23 **THE COURT:** Do y'all want to put anything on
24 the record?

25 **MS. MOORE:** No, sir.

1 **MR. RAST:** Nothing, Your Honor.

2 **THE COURT:** All right. We've got two
3 alternates and the way I understand that we're
4 supposed to do this is that I'm supposed to randomly
5 select between the two now. So I've got juror
6 number 24 -- I'm sorry -- 25, he's 24th on the list,
7 but y'all don't have a list anyway, I'm sorry,
8 Michael Cassidy, juror number 25, is an alternate
9 and Joanne Barrett, juror number 6, is an alternate.

10 So I'm writing 25 on one piece of paper and 6
11 on another, y'all can see, and I'm folding them up
12 and I'm jumbling them up and I'm putting one in one
13 hand, one in the other and I'm putting them behind
14 my back. And, Ms. Frick, you tell me whether you
15 want the right or the left.

16 **THE CLERK:** I'll go with the left. I'm left
17 handed, so.

18 **THE COURT:** All right. You read it.

19 **THE CLERK:** Number 6.

20 **THE COURT:** All right. So the alternate will
21 be the first -- it'll be Ms. Barrett.

22 **THE CLERK:** She was the second one, Your Honor.

23 **THE COURT:** She was the second one, but she
24 just became the first one.

25 **THE CLERK:** Yes, sir, I'm sorry.

1 **THE COURT:** All right. Bring the jury in, tell
2 Ms. Barrett she's one of the 12 now.

3 (The jury returns to the courtroom.)

4 **THE COURT:** Ladies and gentlemen, I had
5 received a note from one of the jurors. And after
6 discussing it with him, we decided to substitute an
7 alternate in his place. What we do in that instance
8 is we randomly draw between the two alternates. And
9 Ms. Barrett, juror number 6, is now one of the 12
10 alternates -- one of the 12 jurors, excuse me. So
11 you will take the place of the juror that I set
12 aside, Mr. Mellette, juror number 108. And
13 Mr. Cassidy will be the alternate.

14 The first order of business is that I have to
15 place you under a different oath, the oath of a
16 trial jury. I need you to stand, raise your right
17 hand, the clerk will administer your oath.

18 (The jury was duly sworn by the Clerk of
19 Court at 2:47 p.m.)

20 **THE CLERK:** Was there any juror not able to
21 take the oath as it was administered under oath?

22 (There was no response.)

23 **THE COURT:** Thank you.

24 All right. Ladies and gentlemen, what I'm
25 going to do is I'm going to start out by explaining

1 to you how the case will begin procedurally. I
2 won't go through the whole thing, but I'll tell you
3 some landmarks you can kind of look for, benchmarks
4 you can look for as we start. Then I'm going to
5 give you some instructions you have to follow
6 throughout the trial.

7 Now, the way the case will begin is that the
8 attorneys will make their opening statements to you.
9 Opening statements are not permitted to extend to
10 what we call argument. An opening statement can be
11 an introduction, an outline, an overview, but it
12 can't go beyond that. It can't go into what we
13 refer to as argument.

14 Once the opening statements are finished, then
15 I will call upon the State to present its case. The
16 State brought these charges and the State has the
17 entire burden of proof. The State must prove every
18 essential element of each charge beyond a reasonable
19 doubt. So I will call upon the Solicitor to present
20 evidence in an attempt to meet that burden.

21 When the State finishes putting up its case in
22 chief, the Solicitor will advise me that the State
23 rests. And, at that point, I will have to send you
24 out of the courtroom regardless of whether you've
25 been in here just a couple of minutes or whether

1 you've been in here an hour or so. Whenever that
2 point comes, I have to send you out of the courtroom
3 and I'll discuss some legal issues with the
4 attorneys. When you come back in after that, I'll
5 tell you where we go from there, but that's how we
6 will get started with the trial of the case.

7 Now, it's really important that you understand
8 some things. That oath that you just took was one
9 in which you've promised us that you're going to
10 decide these cases, I may use the singular "case"
11 sometimes, I may say "cases" sometimes plural, you
12 all understand I'm talking about the same thing, all
13 right, you decide these cases based on the evidence
14 and the law. So you need to know where those things
15 come from.

16 The evidence comes from the sworn testimony of
17 the witnesses. Evidence can also come in the form
18 of exhibits. Now, an exhibit can be anything
19 tangible that's marked in the record. It can be a
20 document, it can be a video, it can be anything
21 tangible.

22 If something is an exhibit, you will have it
23 with you in the jury room when you decide the case.
24 And the reason I'm telling you that is because it's
25 not at all unusual for an attorney to have something

1 like a small photograph and hand it into the jury
2 box and ask you to circulate it around so that
3 you're trying to look at this small thing that you
4 have in your hands while you're also trying to pay
5 attention to what's going on up here on the witness
6 stand. So just realize that all of the exhibits
7 will be back with you to look at as much as you need
8 when you're in the jury room.

9 Exhibits and testimony, those things are
10 evidence. What the lawyers say is not evidence. I
11 want you to pay close attention to what they say,
12 but understand that what comes out of the lawyers'
13 mouths is not evidence. The evidence comes from the
14 witnesses and the exhibits.

15 Now, the law comes from me. It's my job to
16 decide what law applies to the case and tell it to
17 you at the end of the trial.

18 It's very important that you understand also
19 that there are two judges in this courtroom. I'm
20 the judge of the law. In addition to what I just
21 told you about telling you the law at the end of the
22 case, it's also my job to preside over the trial, to
23 rule on legal issues as they arise and to maintain
24 order. That's my job.

25 You're the other judge. You have to understand

1 that you are the only judge of the facts. Only you
2 are going to get to decide such things as whether
3 evidence is believable or not. Only you get to
4 decide what weight, if any, to put on evidence.
5 That's entirely your prerogative and I'm not going
6 to invade your province.

7 To explain to you a little bit about our
8 differing roles, I'm going to use an example of
9 objections being raised. We never know going into a
10 trial whether there will be one objection or 101
11 objections. A lot of times when an objection is
12 raised, I'll send you out of the courtroom so I can
13 deal with it.

14 If I do that, don't think anybody's trying to
15 hide anything from you. It's just I can deal with
16 it easier, I can cut to the heart of the matter
17 quicker and make my decision and then you'd be
18 brought back in. So just let me do my job and don't
19 worry about what's going on out here.

20 But these attorneys they've taken an oath just
21 like you and I have taken an oath and if one side or
22 the other feels that something is being put before a
23 jury that's not proper for a jury to consider, the
24 lawyer's got an obligation to stand up and raise an
25 objection. And if that's done, then I have to make

1 a ruling. If I sustain the objection, then that
2 means it doesn't come before you and whatever they
3 were talking about is not proper for you to
4 consider, you put that out of your mind.

5 But if I overrule the objection and I allow it
6 to come before you, please understand that it has
7 not crossed my mind to think about whether that
8 thing is believable or not because that's not my
9 job. I will not have given one second of thought to
10 whether that thing should be given any weight in
11 your decision making because that's not my job.

12 What I've done is looked with tunnel vision to
13 see does that thing fit within the rules for the
14 jury to consider and if I think it does, then I let
15 it come before you and you decide whether it's
16 believable and you decide what weight, if any, to
17 put on it. So that's an example of how our roles
18 interact, but are different. You're the only judges
19 of the facts.

20 Now, while you've promised us that you're going
21 to decide the case based on the evidence and the law
22 and you must do that, please remember what I told
23 you earlier, I am not asking you to leave your
24 common sense at home. We want you to use your
25 common sense, use your sense of logic and reason,

1 use your good judgment. It just makes good common
2 sense that you keep an open mind about the case and
3 you don't make up your mind until you've heard all
4 of the evidence and you know what the law is.

5 So there's a rule that I've mentioned to you
6 previously that I'll go over with you again and it's
7 really hard to follow and that rule is that you are
8 not to discuss this case among yourselves until I
9 tell you to. Also, don't discuss it with family
10 members, friends or anybody else until the case is
11 completely over and you've been discharged from the
12 jury. If anybody attempts to contact you and
13 discuss the case with you, report it to me so that I
14 can deal with it.

15 If there's any media coverage, get away from
16 it, don't allow yourselves to be exposed to it
17 further and report to me what you saw, heard or read
18 through the media.

19 Don't do any independent investigation. I've
20 already read that thing to you, don't do any
21 independent investigation.

22 And the last thing I want to say to you, ladies
23 and gentlemen, is I want to thank you. You won't
24 hear me sit up here repeatedly thanking you because
25 quite frankly I think that cheapens it when I do

1 that. I know full well that all 13 of you have
2 other places to be and other things to do and I know
3 it's an inconvenience, but I am deeply appreciative
4 of the fact that you're sitting in that jury box.

5 Now, I wish I could promise you that there
6 wouldn't be hurry up and wait, can't do that. What
7 I can promise you is this. If you're waiting on us,
8 we're working. There will never be a situation on
9 my watch when you're back there waiting and we're
10 out here goofing off, that's not going to happen.

11 It's just one of my pet peeves if the jury's
12 back there, it's really on my nerves. And if I see
13 that there's going to be something that's going to
14 take us a long time to work through, and a lot of
15 times despite everybody's best preparation, some
16 issue will arise and it just takes a lot longer to
17 resolve than anybody would have thought, if I see
18 that's going to happen or that's happening, I'll try
19 to let you get out of that room and move about.
20 I'll try to gauge how long things will take, tell
21 you accurate times to be here, but, I mean, I don't
22 guess right all the time, but I can promise you
23 people are working.

24 So to honor my commitment to you about not
25 wasting your time and doing all I can not to waste

1 your time, I'll be quiet now. I'm going to invite
2 your close attention while you hear the opening
3 statements.

4 Okay. Ms. Moore, do you want to make your
5 opening statement?

6 **MS. MOORE:** Yes, sir, Your Honor. May it
7 please the Court.

8 **THE COURT:** Yes, ma'am.

9 OPENING STATEMENT

10 **MS. MOORE:** This is a case about trust and
11 betrayal, ladies and gentlemen, the trust that
12 children have in adults, the trust they have for
13 their parents, the betrayal of a parent to a child.

14 We teach our children to trust adults, to obey
15 what they say, but especially obey your parent,
16 trust your parents. And parents, as parents, are
17 charged with protecting and guarding our children,
18 the most precious gift of life, but not everyone
19 lives by the same standards.

20 Michael Elders doesn't live by those standards.
21 Michael Elders took advantage of his little girl.
22 She didn't spend much time with her dad until she
23 was about eight years old. She began seeing him
24 every other weekend. And every other weekend, he
25 took advantage of her trust, her desire for him to

1 love her and he sexually molested his own daughter.
2 He stole her innocence. And he told her not to tell
3 anyone and he preyed on the trust she had in him and
4 her duty to obey him when she didn't tell anyone.

5 This went on for about a year and a half until
6 she finally was woken up in the middle of the night
7 by her mother and she finally told her mother the
8 despicable acts that her father had committed to
9 her. He put his hands down her pants. He put his
10 fingers inside of her vagina and he made her touch
11 his penis somewhere between the ages of nine and ten
12 years old.

13 And that little girl sits here today ready to
14 testify in front of you and tell you the most
15 horrific details of what her own father did to her.
16 Today she has the courage to do that. Think of how
17 hard it would be when you listen to her as an adult
18 to stand in front of a group of strangers and talk
19 about these types of issues. Think about how hard
20 it is for her and how much courage she must have.

21 I know it'll be hard for you to listen to, but
22 I appreciate your attention. These cases are
23 horrible, they're despicable, but it happens, it
24 happens everyday, but not every child is as brave as
25 Minor

1 You're not just going to hear from her, you're
2 going to hear from trained experts in the field of
3 child abuse who interviewed her, she told her story
4 of what happened. You're going to hear from a nurse
5 who examined her and found some injuries on her
6 because she finally told, like, a day and a half,
7 two days after her dad had -- the last time her dad
8 had assaulted her.

9 This case will be hard for you to sit and
10 listen to, ladies and gentlemen, but I ask you to
11 keep an open mind, pay attention and think of how
12 hard it is for her. Thank you.

13 **THE COURT:** Thank you, Solicitor.

14 Mr. Rast, you're recognized for your opening
15 statement.

16 **MR. RAST:** We'll waive opening, Judge.

17 **THE COURT:** All right. Thanks very much.
18 Call your first witness, Solicitor.

19 **MS. MOORE:** Thank you, Your Honor. State calls
20 Desiree Busko.

21 **THE COURT:** Come around to the clerk, please.

22 DESIREE BUSKO,

23 having been duly sworn, testified as follows:

24 **THE CLERK:** Have a seat, please, ma'am. Once
25 you're seated, state your full name on the record

1 spelling your last, please.

2 **THE WITNESS:** My name is Desiree Busko,
3 B-u-s-k-o.

4 DIRECT EXAMINATION

5 BY MS. MOORE:

6 **Q** Officer Busko, where are you employed?

7 **A** City of Cayce Police Department.

8 **Q** And, ma'am, how long have you worked there?

9 **A** Almost three years.

10 **Q** What are your job duties and responsibilities
11 at Cayce?

12 **A** Patrol for the city.

13 **Q** Were you working June 28th, 2009?

14 **A** Yes, I was.

15 **Q** And were you called in to meet with Shelly
16 Elders?

17 **A** I was.

18 **Q** What are your duties when you get to the police
19 department? Can you tell the jury what you do at
20 that point?

21 **A** When I'm called in?

22 **Q** Yes, ma'am.

23 **A** When I get called in, you meet with whoever
24 you're there to meet with. I was advised by
25 dispatch that I had someone in the lobby waiting for

1 me to file a police report. When I got into
2 dispatch area, he had advised me just a little bit
3 about what the complainant, Ms. Elders, had stated
4 to the dispatch officer and I met with her in the
5 headquarter's lobby.

6 Q And from that interview with her, did you
7 determine where the assault had occurred?

8 A Yes. Ms. Elders advised that it happened at
9 Mr. Elders' house and that location is
10 in the City of Cayce.

11 Q What county is that in?

12 A Lexington County.

13 Q Were you given a date that that happened?

14 A Ms. Elders stated that it happened on the 27th,
15 approximately 7:30 p.m. She did come in the next
16 afternoon and filed the police report on the 28th.

17 Q And what, if anything, did you advise her to do
18 at that point?

19 A She was very adamant about taking her daughter
20 to the hospital after she had found out the
21 allegations that were made. I advised her if
22 that's -- that made her feel okay to take her
23 daughter to the hospital, it was not my job to tell
24 her not to. Whatever she felt she had to do, I
25 advised her to go do.

1 **Q** And then what, if anything, do you do with the
2 information that you gathered?

3 **A** All I had to do was write a report. My
4 sergeant does check over it after me and it gets
5 forwarded to the investigator in the case.

6 **Q** Was that the end of your involvement in this
7 case?

8 **A** That is.

9 **MS. MOORE:** Thank you.
10 That's all I have, Judge.

11 **THE COURT:** Cross.

12 CROSS-EXAMINATION

13 BY MR. RAST:

14 **Q** You talked to Ms. Elders?

15 **A** Uh-huh.

16 **Q** Is that right?

17 **THE COURT:** Try to say yes or no.

18 BY MR. RAST:

19 **Q** That is the mother of the victim; is that
20 correct?

21 **A** Yes.

22 **Q** Did she tell you how she found out about this
23 molestation?

24 **A** I do not have it written down in here how she
25 found out. I don't know if the daughter had told

1 her or not.

2 Q Did you file an incident report?

3 A I did.

4 Q Have you got your incident report?

5 A I do.

6 Q And it doesn't say how she found out?

7 A From reading the report, it sounds like she
8 found out from her daughter.

9 Q Did you ever talk to her other than that one
10 time?

11 A Nope.

12 Q Just that one time?

13 A Correct.

14 Q And you don't know what happened at the
15 hospital?

16 A Nope.

17 Q You don't know anything else?

18 A I do not. All I did was take the incident
19 report.

20 MR. RAST: I have nothing further.

21 THE COURT: Redirect.

22 MS. MOORE: Nothing.

23 THE COURT: Thank you, ma'am. You may step
24 down.

25 Call your next witness.

1 **MS. MOORE:** Thank you, Your Honor. May she be
2 excused?

3 **THE COURT:** Any objection to the witness being
4 released?

5 **MR. RAST:** I have no objection, Judge.

6 **THE COURT:** You're free to go. Thank you.

7 MS. MOORE: The State calls Minor

8 **THE COURT:** Come around to the clerk, please.

9	Minor

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat, please, ma'am. Once
12 you're seated, you need to speak up loud and clear
13 stating your name on the record, spelling your last.

14 THE WITNESS: Minor

15 DIRECT EXAMINATION

16 BY MS. MOORE:

17 0 Minor how old are you?

18 **A** Twelve.

19 Q When is your birthday?

20 **A**

21 Q And where do you currently live?

22 **A** In South Congaree.

23 **Q** And who do you live with?

24 **A** My mom, my grandpa and my brothers.

25 9 How many brothers do you have?

1 **A** Three.

2 **Q** Can you tell us their ages and their names?

3 **A** Thirteen, child 1 ; nine, child 3 ;
4 and ten, child 2 .

5 **Q** One older brother and two younger?

6 **A** Yes, ma'am.

7 **Q** You always lived with your mom?

8 **A** Yes, ma'am.

9 **Q** Did you ever live with your mom and dad
10 together?

11 **A** No, ma'am.

12 **Q** When did you first start spending time with
13 your dad?

14 **A** Around eight.

15 **Q** Around eight years old?

16 **A** Yes, ma'am.

17 **Q** Would you go over there by yourself?

18 **A** Sometimes my older brother would go.

19 **Q** Was that the first time he got to spend time
20 with his dad as well or --

21 **A** No, ma'am. He spent time with him before that.

22 **Q** But you did not?

23 **A** No, ma'am.

24 **Q** Was he always over at the house when you were
25 there?

1 **A** No, ma'am.

2 **Q** Who else lived in your dad's house?

3 **A** My grandma and my uncles.

4 **Q** What are your uncles' names?

5 **A** Ray Elders and Georgie.

6 **Q** What's your grandma's name?

7 **A** Betty Hutchinson.

8 **Q** Do you know where she lives? Do you know the

9 street address?

10 **A** I think it's .

11 **Q** So they always lived in the same house?

12 **A** Yes, ma'am.

13 **Q** Do you see your dad anymore?

14 **A** No, ma'am.

15 **Q** When is the last time that you saw your dad?

16 **A** I don't know the exact date.

17 **Q** Why aren't you allowed to see your dad now?

18 **A** Because he touched my private parts.

19 **Q** When did he start touching your private parts?

20 **A** Around the first time I went over there.

21 **Q** And how old would you have been then?

22 **A** Eight.

23 **Q** But you don't really remember specific days, do

24 you?

25 **A** No, ma'am.

1 **Q** How often would it happen that he would touch
2 your private parts?

3 **A** Often.

4 **Q** Did it happen every time you went there?

5 **MR. RAST:** Objection, Your Honor, leading the
6 witness.

7 **THE COURT:** Try to state your question in a
8 nonleading fashion, please. Restate your question.

9 BY MS. MOORE:

10 **Q** Were there times when it didn't happen?

11 **A** Yes, ma'am.

12 **Q** When you say that he touched your private
13 parts, what do you mean by your private parts,

14 Minor

15 **A** Can you rephrase that?

16 **Q** When you use the word private parts, can you
17 tell us what he did with -- what would he touch your
18 private parts with?

19 **A** His hand.

20 **Q** His hand. And where would his hand go?

21 **A** In my pants.

22 **Q** Did he touch you on top of your clothes or
23 under your clothes?

24 **A** Under.

25 **Q** And where would he touch you?

1 **A** In my front private part.

2 **Q** In your front private part. Did he ever touch
3 you anywhere else?

4 **A** No, ma'am.

5 **Q** Did he ever -- did he touch you on the outside
6 of your skin or inside?

7 **A** Both.

8 **Q** Both. Did he ever make you touch him?

9 **A** Once.

10 **Q** Once. And tell us about that.

11 **A** He put my hand down his pants.

12 **Q** Did he ever say anything to you when he was
13 doing this?

14 **A** No, ma'am.

15 **Q** Did he ever tell you about what he was doing?

16 **A** No, ma'am.

17 **Q** Did you ever tell anyone what happened?

18 **A** No, ma'am.

19 **Q** Why not?

20 **A** Because I was scared.

21 **Q** Why were you scared?

22 **A** Because he told me not to tell.

23 **Q** He told you not to tell?

24 **A** Yes, ma'am.

25 **Q** So you didn't?

1 **A** No, ma'am.

2 **Q** But you kept going over to his house?

3 **A** Yes, ma'am.

4 **Q** Did you love your dad?

5 **A** Yes, ma'am.

6 **Q** When you finally told someone, who did you

7 tell?

8 **A** My mom.

9 **Q** And what did you tell her?

10 **A** That he put his hand down my pants.

11 **Q** Did she ask you why you didn't tell?

12 **A** I don't remember.

13 **Q** Did he ever tell you what would happen if you

14 told?

15 **A** Somebody would get hurt.

16 **Q** Did you believe that?

17 **A** No, ma'am.

18 **Q** You didn't believe anyone would get hurt?

19 **A** No, ma'am.

20 **Q** So when you told your mom, did you have to --

21 what did you have to do at that point?

22 **A** She made a lot of phone calls and I went to the

23 police station.

24 **Q** And when you went to the police station after

25 you had told your mom, how soon after the last time

1 your dad touched you was that?

2 A Maybe two days.

3 Q Do you remember the last time that he touched
4 you?

5 A No, ma'am.

6 Q Do you remember the one particular time that
7 sticks out in your mind, the worst time?

8 A No, ma'am.

9 Q Can you even tell us how many times he did this
10 to you?

11 A (No response.)

12 Q If you had to guess.

13 A Maybe ten.

14 Q Do you see your dad in the courtroom today?

15 A Yes, ma'am.

16 Q Can you point him out for the jury?

17 A (Witness complies.)

18 Q Can you describe what he's wearing?

19 A A greenish shirt.

20 MS. MOORE: Your Honor, may the record reflect
21 that she's identified the defendant?

22 THE COURT: It's so noted.

23 BY MS. MOORE:

24 Q Every time that you went over there would he
25 always do the same thing to you?

1 **A** Almost.

2 **Q** And where would everyone be?

3 **A** In different rooms or either sleeping.

4 **Q** Where did you sleep?

5 **A** It depends on what room he was in.

6 **Q** Did you sleep in the room with him?

7 **A** Yes, ma'am.

8 **Q** Did you sleep in the same bed with him?

9 **A** Yes, ma'am.

10 **Q** Is that where it usually happened?

11 **A** Yes, ma'am.

12 **Q** The last time he did this you don't remember

13 specifically what happened that day?

14 **A** No, ma'am.

15 **Q** Are you nervous here today?

16 **A** Yes, ma'am.

17 **MS. MOORE:** Your Honor, that's all I have.

18 **THE COURT:** Thank you.

19 Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. RAST:

22 **Q** Can I call you Minor

23 **A** Sir?

24 **Q** Can I call you Minor ?

25 **A** Yes, sir.

1 **Q** Instead of Ms. Blanton?

2 **A** Yes, sir.

3 **Q** Who lives in the house with you and your
4 mother?

5 **A** My brothers and my grandpa.

6 **Q** How many brothers?

7 **A** Two.

8 **Q** Two brothers. Anybody else live there?

9 **A** My uncle.

10 **Q** Uncle who?

11 **A** His name is Robert.

12 **Q** I'm sorry?

13 **A** His name is Robert.

14 **Q** Robert?

15 **A** Yes, sir.

16 **Q** Anybody else?

17 **A** No, sir.

18 **Q** All right. There had been other people living
19 in that house in the last five years besides the
20 ones you just mentioned?

21 **A** My aunt and her babies.

22 **Q** All right. Now, at your father's house, you
23 said Mike lives there. His mother lives there,
24 also?

25 **A** Yes, sir.

1 Q And his (sic) Uncle Ray. And was Uncle Ray's
2 wife, Christina, also living there?

3 A She lived there on and off.

4 Q Off and on. And another uncle, Georgie?

5 A Yes, sir.

6 Q Anyone else living there?

7 A No, sir.

8 Q Where did you and Mike sleep when you stayed
9 there?

10 A Um...

11 Q How many bathrooms are in the house?

12 A Three.

13 Q Three. And what bedroom did you and your
14 father sleep in?

15 A Usually my Uncle Georgie's.

16 Q You and your father slept in your Uncle
17 Georgie's bedroom?

18 A Yes, sir.

19 Q You, your father and Uncle Georgie?

20 A Yes, sir.

21 Q Who slept in the other bedroom?

22 A My grandma.

23 Q Your grandma. Who slept in the other one,
24 would that be Ray and Christina?

25 A Yes, sir.

1 Q The house at your father's, the rooms do not
2 have doors on them, do they?

3 A My grandma's does.

4 Q Your grandmama does. Uncle Georgie does not
5 and Ray's does not?

6 A No, sir.

7 Q There's no door, so you can't shut the door?

8 A No, sir.

9 Q Do you remember where any of this touching
10 occurred?

11 A In my Uncle Georgie's room.

12 Q In Uncle Georgie's room?

13 A Yes, sir.

14 Q All of it occurred in Uncle Georgie's room?

15 A No.

16 Q Do you remember when it occurred in Uncle
17 Georgie's room?

18 A Almost all the time.

19 Q Almost all of the time?

20 A Yes, sir.

21 Q Do you remember testifying in family court in
22 the DSS case?

23 A Yes, sir.

24 Q Do you remember testifying down there saying it
25 always occurred in your grandmama's room?

1 **A** No, sir.

2 **Q** You don't remember saying that?

3 **A** No, sir.

4 **Q** Do you deny saying that?

5 **A** Yes, sir.

6 **Q** Okay. But you did testify in front of Judge
7 Allen on January the 11th of 2010, wasn't it?

8 **A** I believe so.

9 **Q** Do you remember why you told your mother this
10 occurred?

11 **A** Yes, sir.

12 **Q** Why?

13 **A** Because she asked me.

14 **Q** Didn't you tell her it did not occur the first
15 time she asked you?

16 **A** Can you repeat yourself, please?

17 **Q** Your mother asked you if your father had been
18 molesting you and you told her no at first, right?

19 **A** Yes, sir.

20 **Q** And she kept on and you finally said yes?

21 **A** Yes, sir.

22 **Q** Did she tell you why she was asking you this?

23 **A** Yes, sir.

24 **Q** Why?

25 **A** Because my -- she had heard it from my cousin.

- 1 **Q** Because what?
- 2 **A** Because she had heard it from my cousin.
- 3 **Q** Who is your cousin?
- 4 **A** Katelyn Bradley.
- 5 **Q** Did she tell you when she heard it from her
- 6 cousin -- your cousin, excuse me?
- 7 **A** I believe it was that night.
- 8 **Q** Did she tell you how your cousin found out?
- 9 **A** From my aunt.
- 10 **Q** Who is your aunt?
- 11 **A** Christy.
- 12 **Q** And how did your aunt find out?
- 13 **A** From Johnny Hutto.
- 14 **Q** From Johnny Hutto?
- 15 **A** Yes, sir.
- 16 **Q** What did Johnny Hutto say?
- 17 **A** I'm not sure.
- 18 **Q** Pardon?
- 19 **A** I'm not sure.
- 20 **Q** This all got started because of something
- 21 Johnny Hutto had said?
- 22 **A** I believe so.
- 23 **Q** And you do not remember how many times it
- 24 occurred?
- 25 **A** No, sir.

1 Q You don't remember the first time?

2 A No, sir.

3 Q You don't remember the last time?

4 A No, sir.

5 Q You don't remember any specific time; is that
6 correct?

7 A Yes, sir.

8 Q Do you remember where you were when he told you
9 to touch his penis?

10 A No, sir.

11 Q You don't remember where that occurred?

12 A No, sir.

13 Q You don't remember when that occurred?

14 A No, sir.

15 Q He told you to touch his penis or he made you
16 touch his penis; is that correct or not?

17 A Yes, sir.

18 Q You told the people at the Dickerson Center
19 that he never made you touch him, did he?

20 A Yes, sir.

21 Q Pardon?

22 A Yes, sir.

23 Q So you told them a lie or are you lying today?
24 He never made you touch his penis, did he?

25 A Yes, he did.

1 Q But you don't know when or where?

2 A No, sir.

3 Q For how long did you touch his penis?

4 A I'm not sure.

5 Q Did anything happen after you touched his
6 penis?

7 A I'm not sure.

8 Q Did his penis do anything after you touched it?

9 A I don't know.

10 Q Did he always touch you in your -- on your
11 private parts?

12 A Yes, sir.

13 Q Did he ever insert his finger into your private
14 parts?

15 A Yes, sir.

16 Q When?

17 A It was when my brother was over and we were in
18 my grandma's room.

19 Q In your grandmama's room?

20 A Yes, sir.

21 Q Morning, night?

22 A Night.

23 Q Night. Grandmama in the room, too?

24 A Yes, sir.

25 Q You didn't say anything?

1 **A** No, sir.

2 **Q** Didn't you sleep with your clothes on when you
3 was over at your daddy's house?

4 **A** Yes, sir.

5 **Q** So y'all did not take your clothes off to go to
6 bed, did you?

7 **A** No, sir.

8 **Q** In fact, y'all did not really sleep in a bed,
9 did you?

10 **A** We were on an air mattress.

11 **Q** You were on a mattress beside his (sic)
12 grandmama's bed?

13 **A** It was in the other corner.

14 **Q** In the other corner, but it's in the same room?

15 **A** Yes, sir.

16 **Q** Grandmama was in the bed?

17 **A** Yes, sir.

18 **Q** When this occurred?

19 **A** Yes, sir.

20 **Q** That was the only time it occurred?

21 **A** No, sir.

22 **Q** Do you remember again testifying down in DSS in
23 front of Judge Allen, you said you thought he did it
24 one time because it felt cold; do you remember
25 saying that?

1 **A** Yes, sir.

2 **Q** Is that what you're saying today, you think he
3 inserted his finger because it felt cold?

4 **A** Yes, sir.

5 **Q** And that's the only reason, right?

6 **A** Yes, sir.

7 **Q** You and your mother and your brothers have been
8 involved with DSS several times, have you not?

9 **A** (No response.)

10 **Q** DSS have come out to your house on several
11 occasions, have they not?

12 **A** Yes, sir.

13 **Q** Do you remember talking to a DSS worker not too
14 long ago that told you it would be a good idea to
15 die your hair all one color?

16 **A** Yes, sir.

17 **Q** She told you that, didn't she?

18 **A** (No response.)

19 **Q** Are you looking at your mother?

20 **A** (No response.)

21 **Q** Minor are you looking at your mother?

22 **A** No, sir.

23 **Q** Are you trying to get answers from your mother?

24 **A** No, sir.

25 **Q** The DSS worker told you it would be a good idea

1 for you to die your hair all one color before you
2 came to court, didn't she?

3 **A** No, sir.

4 **Q** Did she tell you to die your hair all one
5 color?

6 **A** No, sir.

7 **Q** I thought you just told me she did?

8 **A** (No response.)

9 **Q** Did she tell you to talk to the Solicitor about
10 how to dress?

11 **A** No, sir.

12 **Q** She didn't do that?

13 **A** No, sir.

14 **Q** Your brother used to visit with his cousins a
15 lot, did he not?

16 **A** Which cousins?

17 **Q** I don't know. That's what you said downstairs
18 in the DSS hearing that you went over to your
19 daddy's, your brother didn't always go because he
20 went to visit his cousins. Do you remember saying
21 that?

22 **A** Yes, sir.

23 **Q** That's why your brother wasn't there all the
24 time?

25 **A** Yes, sir.

1 **Q** But he was there some of the time?

2 **A** Yes, sir.

3 **Q** Ray was there?

4 **A** Yes, sir.

5 **Q** You didn't tell anybody?

6 **A** No, sir.

7 **Q** Nobody else saw anything, did they?

8 **A** No, sir.

9 **MR. RAST:** Bear with me for a moment, Judge.

10 **THE COURT:** Yes, sir.

11 (Pause.)

12 **MR. RAST:** I have nothing further, Judge.

13 **THE COURT:** Redirect.

14 **MS. MOORE:** Yes, sir, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. MOORE:

17 **Q** Minor has anyone ever touched you other than
18 your dad on your private parts?

19 **A** No, ma'am.

20 **Q** So the only one that has ever touched your
21 private parts is your dad?

22 **A** Yes, ma'am.

23 **Q** And that's the defendant, Michael Elders?

24 **A** Yes, ma'am.

25 **Q** After he started touching your private parts,

1 did you want to keep going to his house?

2 A Yes, ma'am, because I went over there to see my
3 friend.

4 Q Who's your friend?

5 A Heather Woods.

6 Q Did your brother always go with you?

7 A No, ma'am.

8 Q But there were times when your dad told him he
9 couldn't come?

10 A Yes, ma'am.

11 Q Did you want to go when he didn't go?

12 A No, ma'am.

13 Q And why is that?

14 A Because I knew what would happen.

15 Q What would happen?

16 A He would put his hands down my pants.

17 Q When he'd do that, why didn't you scream?

18 A Because I was scared.

19 Q And why were you scared?

20 A I don't know.

21 Q Why didn't you tell your mother?

22 A Because it was embarrassing.

23 Q And when you went for your -- the Dickerson
24 Center and met with the lady and gave your forensic
25 interview and you didn't tell them about him making

1 you touch his penis, did you?

2 **A** No, ma'am.

3 **Q** Why not?

4 **A** Because I was nervous.

5 **Q** Are you nervous today?

6 **A** Yes, ma'am.

7 **Q** Did you always sleep in your uncle's bedroom?

8 **A** Ma'am?

9 **Q** Did you always sleep in your uncle's bedroom?

10 **A** No, ma'am.

11 **Q** Where would you usually sleep?

12 **A** Either in my uncle's bedroom or my grandma's.

13 **Q** Be fair to say it's half and half?

14 **MR. RAST:** Objection, Judge. She's leading the
15 witness.

16 **THE COURT:** Don't lead.

17 BY MS. MOORE:

18 **Q** How often would you sleep in your grandma's
19 room?

20 **A** It depends because sometimes she didn't have a
21 mattress in there and sometimes she did.

22 **Q** But you always slept with him, didn't you?

23 **A** Yes, ma'am.

24 **Q** And he put his hands down your pants?

25 **A** Yes, ma'am.

1 Q Put his finger in your vagina?

2 A Yes, ma'am.

3 Q And made you touch his penis?

4 A Yes, ma'am.

5 Q And you don't know how many times, do you?

6 A No, ma'am.

7 Q Were you keeping a journal of this?

8 A No, ma'am.

9 Q Do you even know if it was wintertime or
10 summertime?

11 A No, ma'am.

12 Q It happened more than once?

13 A Yes, ma'am.

14 Q It happened a lot, didn't it?

15 A Yes, ma'am.

16 MR. RAST: Objection, Your Honor.

17 THE COURT: Yes, sir. Leading?

18 MR. RAST: Leading, yes, Your Honor.

19 THE COURT: Sustained. Disregard the response
20 of the witness, ladies and gentlemen.

21 Rephrase your question.

22 MS. MOORE: That's all I have, Your Honor.

23 THE COURT: Recross.

24 MR. RAST: Not at this time, Judge.

25 THE COURT: Thank you. You can step down now.

1 All right. Ladies and gentlemen, we'll take a
2 ten minute break. Do not discuss the case in any
3 way. Follow the bailiff, please.

4 (The jury retires to the jury room.)

5 **THE COURT:** Court's in recess for ten minutes.

6 (Brief recess.)

7 **THE COURT:** State ready?

8 **MS. MOORE:** Yes, sir.

9 **THE COURT:** Defense ready?

10 **MR. RAST:** We're ready, judge.

11 **THE COURT:** Bring the jury in, please.

12 (The jury returns to the courtroom.)

13 **THE COURT:** Call your next witness.

14 **MS. MOORE:** State calls Lysa Miller-Dupre.

15 **THE COURT:** Come around, please.

16 Lysa MILLER-DUPRE,

17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat, please, ma'am. Once
19 you're seated, state your full name, spelling your
20 last on the record, please.

21 **THE WITNESS:** Lysa Miller-Dupre, M-i-l-l-e-r
22 hyphen D-u-p-r-e.

23 DIRECT EXAMINATION

24 BY MS. MOORE:

25 **Q** Ms. Miller-Dupre, where are you employed

1 currently?

2 **A** At Community Home Care and Hospice.

3 **Q** And what do you do for Community Home Care and
4 Hospice?

5 **A** I'm a social worker.

6 **Q** Prior to your employment there, where were you
7 employed?

8 **A** At the Dickerson Center for Children in West
9 Columbia.

10 **Q** What is the Dickerson Center for children?

11 **A** It's an advocacy center where forensic
12 interviews are conducted for children who are
13 suspected or reported of possibly having been abused
14 sexually or physically.

15 **Q** And how long did you work for the Dickerson
16 Center?

17 **A** From February '08 to November of '09.

18 **Q** In what capacity were you employed there?

19 **A** As a forensic interviewer.

20 **Q** What is your educational background starting
21 with your undergraduate degree?

22 **A** I have a two year degree in human services, a
23 four year degree in social work and a masters in
24 social work and I'm a licensed master social worker
25 for the State of South Carolina.

1 **Q** What type of course and seminars or other
2 trainings have you attended and completed in
3 forensic interview and/or child abuse assessment?

4 **A** Since my degree, I've had to have continuing ed
5 hours of 40 hours every two years, which I have kept
6 up with. And for a forensic interviewer, you have
7 to have a certification through the Children's Law
8 Office and the Assessment Resource Center in
9 Columbia does training for that. Starting in '05, I
10 started that training.

11 **Q** Were you certified in '05?

12 **A** Yes.

13 **Q** How often do you have to be certified?

14 **A** Just one time.

15 **Q** How many years have you conducted forensic
16 interviews?

17 **A** I've done it for six years.

18 **Q** Can you estimate the number of forensic
19 interviews that you've performed in your career?

20 **A** Not total, but in six years, it's -- at
21 full-time, it averages three to five a week.

22 **Q** Have you previously testified in courts of
23 record in South Carolina?

24 **A** Yes, I have.

25 **Q** And have you been qualified as an expert in

1 forensic interviewing --

2 **A** Yes, I have.

3 **Q** -- each of those times?

4 **MS. MOORE:** Your Honor, at this time, I'd move
5 to qualify Ms. Miller-Dupre as an expert in forensic
6 interviewing and child abuse assessment.

7 **THE COURT:** Any voir dire, Mr. Rast?

8 **MR. RAST:** None, Your Honor.

9 **THE COURT:** All right. The witness is so
10 recognized and may render opinions in that field.
11 Go ahead.

12 BY MS. MOORE:

13 **Q** What is a forensic interview?

14 **A** It's a semistructured protocol for interviewing
15 children who have allegedly undergone some kind of
16 abuse.

17 **Q** And what is that semistructure --

18 **A** The structure is based on the -- the training
19 that I have is based on the RATAC protocol, meaning
20 rapport building, anatomy identification, touch
21 scenario, abuse scenario and closure. And being
22 that it is a semistructured protocol, the child
23 leads the interview. So if I start the interview
24 and she's in touch scenario, then that's where we
25 go. So as long as we do the protocol, it doesn't

1 have to be in any particular order and it always
2 changes depending on the age and the developmental
3 level of the child.

4 **Q** What, if any, guidelines are established for
5 the interview?

6 **A** There's a typical protocol that we do for truth
7 and lie and it's a picture book that I use to ask
8 children under the -- ten and under the -- what's
9 going on in the pictures so I can determine whether
10 they're telling me the truth or -- about those
11 pictures. It's not my job to determine whether the
12 child is telling me the truth in the interview, but
13 through this protocol and through these different
14 questionnaires, I can determine if the child is
15 definitely functioning at her age level.

16 **Q** Is the child informed of these guidelines?

17 **A** Yes, they are.

18 **Q** What instructions do you give the children?

19 **A** There's rules to an interview. And I inform
20 the child at the very front end of the interview
21 that the rule is that we don't guess in an
22 interview. And if they don't know, it's okay to say
23 they don't know. And we're just here to talk about
24 the truth and we get them to tell us that they're
25 willing to tell the truth.

1 **Q** And are the parents present during the
2 interview?

3 **A** Parents can come to the advocacy center, but
4 they cannot be present in the room at the time of
5 the interview.

6 **Q** Why is that?

7 **A** Children may not be comfortable speaking the
8 truth in front of their parents.

9 **Q** What, if any, measures do you use to assess a
10 child's level of competency before the interview
11 begins?

12 **A** I'll talk to the child about their family. I
13 give the children, depending on their age, pictures
14 of body parts so they can identify the anatomy for
15 me and I can use their words for different parts of
16 the anatomy so I'm not using someone else's words or
17 my own words. And we tell them about
18 confidentiality. And once again we go over the
19 rules and those kind of things. I ask them about
20 family, who they live with, where they live, where
21 they go to school, those kind of things to see if
22 she can give me accurate information.

23 **Q** Why is that important?

24 **A** If a child is ten years old, she should be able
25 to tell me where she goes to school and who she

1 lives with, those kind of things. And if she
2 couldn't, then it would be evidence that she's
3 probably not able to tell me anything else that's --
4 that could be accurate.

5 **Q** Is there any type of medical history obtained
6 from the child at that point?

7 **A** From my end of a forensic interview, I don't do
8 that, but a child is scheduled through the advocacy
9 center for a medical exam typically.

10 **Q** What type of questioning format do you use when
11 you're doing your forensic interviews?

12 **A** I don't know that there's a set format. It
13 just depends, really, the child leads the interview
14 so I'll just basically start with family history and
15 go from there and let the child lead me.

16 **Q** Why is that important?

17 **A** I want the child to be comfortable. And I
18 don't want any type of agenda on my part to come
19 through so I want the child to have open-ended
20 questions and be able to answer questions
21 comfortably and just know that she's safe, she's in
22 a safe place to do that.

23 **Q** What is meant by the term delayed disclosure?

24 **A** That's because a child can be assaulted or
25 sexually abused or molested or whatever and not

1 disclose until a long time after it happened. And
2 it can be because something reminded her of it or
3 somebody else may have brought it to someone's
4 attention. And when the child feels comfortable,
5 she may disclose, but it may be well after it
6 initially happened.

7 Q In your training and experience, how common is
8 delayed reporting among children, victims of child
9 sexual assault?

10 A Very common.

11 Q And what factors commonly play a role in a
12 child's delayed reporting?

13 A Sometimes it can be fear. Typically, the
14 perpetrator has threatened the child and if it's a
15 close relationship to the child, the child is
16 possibly scared of the person or scared of what
17 might happen to the person if she tells.

18 Q Did you conduct a forensic interview with Minor
19 ?

20 A Yes, I did.

21 Q What date did you conduct this interview?

22 A On 7/6/2009.

23 Q How old was Minor when you met with her?

24 A She was ten.

25 Q So at that age, what, if any, safeguards did

1 you use to determine her competency?

2 **A** I could use the anatomy identification pictures
3 with her, which I did, and find out what she calls
4 private parts. And it also helps if there was -- if
5 there turns out to be a disclosure, we can use those
6 to verify what body part the child is talking about.

7 **Q** In your opinion was **Minor** competent?

8 **A** Yes.

9 **Q** What, if any, safeguards were used when you
10 interviewed **Minor** to prevent any type of influence
11 on your part?

12 **A** I typically will ask the same kind of question
13 later on in the interview. And then at the end of
14 the interview during closure, I will also ask the
15 child if anyone had talked to her before she came
16 there about this or if anyone had spoken to her
17 about what she should say or what she should not
18 say, those kind of things.

19 **Q** What, if anything, did **Minor** relate to you
20 concerning the timeframe of when the sexual assault
21 had occurred?

22 **A** At the beginning of the interview when I asked
23 her why she was here, she said, Because I was
24 sexually assaulted by my dad. She said, He
25 reported -- she reported that he started touching

1 her about a year ago.

2 Q And did she relate to you where this assault
3 had occurred, assaults had occurred?

4 A She said it was at her dad's house in her dad's
5 bed and grandma was sleeping in her room and another
6 time it happened when he slept in another room.

7 Q Did you document the child's disclosure in any
8 form?

9 A I have a written report and it's on DVD.

10 Q So these interviews are video taped?

11 A Correct.

12 Q To be preserved later?

13 A Correct.

14 Q I'll show you what's been marked as State's
15 Exhibit Number 1 for I.D. and ask if you recognize
16 this?

17 A That's the DVD of the interview.

18 Q The interview that you took that day?

19 A Correct.

20 Q Have you had an opportunity to review this?

21 A Yes, I have.

22 Q And is this, in fact, the interview that you
23 conducted on ^{Minor} ?

24 A Yes.

25 MS. MOORE: Your Honor, at this time, we'd move

1 State's Number 1 into evidence.

2 **THE COURT:** Ladies and gentlemen, I want to ask
3 you to step in the jury room for just a few minutes.
4 I'll get you right back out here. Don't discuss the
5 case.

6 (The jury retires to the jury room.)

7 **THE COURT:** Mr. Rast, do you have any objection
8 to this?

9 **MR. RAST:** No, Your Honor, I don't.

10 **THE COURT:** All right. Despite the fact there
11 is no objection, the way the statute reads -- I
12 still have this lingering degree of discomfort, so I
13 want the record to specifically reflect that the
14 Court has carefully reviewed section 17-23-175 of
15 the code that was cited previously in the in camera
16 hearing.

17 I find that the totality of the circumstances
18 surrounding the making of the statement provides
19 particularized guarantees of trustworthiness. I've
20 reviewed the DVD. There did not appear to be any
21 statements elicited by leading questions. The
22 interviewer has a high degree of training in
23 conducting investigative interviews of children.

24 The statement could have been more detailed,
25 but it was sufficiently detailed. It had internal

1 coherence under the statute. And I now have the
2 sworn testimony of both the purported victim and the
3 expert on two occasions. So I just wanted to make
4 sure the record reflected that I, myself, have made
5 those findings outside the presence of the jury.
6 But it is admitted without objection.

7 Anybody need a break?

8 (There was no response.)

9 (State's Exhibit Number 1, DVD, admitted
10 into evidence.)

11 **THE COURT:** All right. If they're ready, bring
12 them back in.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Ladies and gentlemen,
15 at some point in this, they're going to play a DVD,
16 which has now been admitted without objection as
17 State's Exhibit Number 1. The equipment that's
18 built into the courtroom is not functioning properly
19 so they're going to show it to you on that T.V.
20 screen.

21 Any time you're ready, Ms. Moore.

22 **MS. MOORE:** Thank you, Your Honor, just a few
23 more questions.

24 BY MS. MOORE:

25 **Q** Was there anything about Minor disclosure

1 that would cause you to believe that it was the
2 product of third party influence?

3 **A** No, ma'am.

4 **Q** In your opinion, was Minor disclosure
5 affected by suggestibility or any type of coaching?

6 **A** No, ma'am.

7 **Q** And what, if any, recommendations did you make
8 following her disclosures?

9 **A** She was recommended for evidence based therapy
10 at the Dickerson Center.

11 **MS. MOORE:** Your Honor, the State would like to
12 publish the DVD.

13 **THE COURT:** Any time you're ready.

14 (Whereupon, State's Exhibit Number 1 was
15 played for the jury.)

16 BY MS. MOORE:

17 **Q** Just a couple more questions. On that video,
18 you asked her did her dad ever make her do anything
19 to him?

20 **A** Correct.

21 **Q** And she said?

22 **A** No.

23 **Q** Is it common or uncommon for children to add to
24 it later, add to their account of the assault?

25 **A** It's common.

1 **Q** Is there a phrase that you use in your
2 profession for that type of disclosure?

3 **A** That's delayed disclosure.

4 **Q** Even leaving out a part?

5 **A** Absolutely. Sometimes kids just aren't
6 comfortable saying everything and they're still
7 afraid that they might get in trouble, so they're
8 they kind of testing the waters before they say
9 everything that happened to see if anything happens
10 to them.

11 **Q** So that is common?

12 **A** Yes, it is.

13 **MS. MOORE:** Your Honor, that's all I have for
14 Ms. Miller-Dupre.

15 **THE COURT:** Cross-examination.

16 **MR. RAST:** May it please the Court.

17 **THE COURT:** Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. RAST:

20 **Q** This delayed reaction you're talking about, you
21 told her if she thinks of something else, come on
22 back, right?

23 **A** Correct.

24 **Q** She never did come back and tell you that, oh,
25 I just remembered he made me touch his penis?

1 **A** She didn't come back to talk to me.

2 **Q** She didn't come back to talk to anybody, did
3 she, that you know of?

4 **A** Not at the Dickerson Center.

5 **Q** Right. Now, you said it's not your job to
6 determine whether she's telling the truth or lying;
7 is that correct?

8 **A** That's correct.

9 **Q** So you made no determination on that?

10 **A** No, sir.

11 **Q** She said she was sexually assaulted by dad.
12 Sexually assaulted is not terms a ten-year-old uses,
13 is it?

14 **A** Not typically.

15 **Q** They say something else. She got sexually
16 assaulted from somebody else then, didn't she?

17 **A** I think she said that the nurse said that to
18 her.

19 **Q** Uh-huh. Now, you've got a form I believe you
20 filled out on your forensic interview, a place for
21 behavioral changes noted during -- after alleged
22 abuse and disclosure; is that correct?

23 **A** Correct.

24 **Q** What did you check under that as behavioral
25 changes?

1 **A** Anxiety.

2 **Q** That's it? You got something else. No

3 behavioral changes reported, you didn't check that.

4 Trauma reaction, no trauma reactions?

5 **A** What number are you on?

6 **Q** I'm on the first page down at the bottom?

7 **A** Right. I have anxiety checked.

8 **Q** Yeah. It's also got a place for trauma

9 reaction that is not checked?

10 **A** Correct.

11 **Q** She didn't have any trauma reaction?

12 **A** Not during the interview.

13 **Q** No flashbacks, intrusive thoughts?

14 **A** Not during the interview.

15 **Q** No fearfulness?

16 **A** I'm sorry?

17 **Q** Fearfulness?

18 **A** Well, she told me that she was told not to

19 tell.

20 **Q** She also said she wasn't afraid of her daddy,

21 though, didn't she?

22 **A** Right.

23 **Q** No nightmares or sleep problems?

24 **A** Correct.

25 **Q** No change in eating habits?

- 1 **A** Correct.
- 2 **Q** No change in separation difficulties?
- 3 **A** Correct.
- 4 **Q** No aggression?
- 5 **A** No, sir.
- 6 **Q** No conduct, oppositional problems?
- 7 **A** No, sir.
- 8 **Q** No difficulty with peers?
- 9 **A** No, sir.
- 10 **Q** No sexual behavior, play or --
- 11 **A** No.
- 12 **Q** Inappropriate sexual knowledge, none?
- 13 **A** No.
- 14 **Q** She did have pronounced disturbance or mood and
- 15 affect?
- 16 **A** Flat affect is what I reported.
- 17 **Q** What does that mean?
- 18 **A** No emotion, pretty much no laughing, no crying,
- 19 nothing --
- 20 **Q** Her testimony was basically, I think you said
- 21 it was some place kind of flat?
- 22 **A** Flat, flat affect, uh-huh.
- 23 **Q** That's unusual, isn't it?
- 24 **A** It's not unusual for a forensic interview.
- 25 **Q** It's not?

1 **A** No, sir.

2 **Q** No marked distrust in others; is that correct?

3 **A** Correct.

4 **Q** Wouldn't you think that she would be able to
5 express what happened better now at 12 years of age
6 than at 10?

7 **A** I don't know, sir.

8 **Q** She has talked to a lot of people about this,
9 has she not?

10 **A** I believe she -- she was recommended for
11 therapy. I believe she attended therapy after the
12 interview.

13 **Q** She probably talked to the police I assume;
14 would you think so?

15 **A** Probably.

16 **Q** DSS also, they would be involved?

17 **A** They were. I don't think they are anymore.

18 **Q** People at the Dickerson Center other than you?

19 **A** Correct.

20 **Q** Nurses at the hospital?

21 **A** Correct.

22 **Q** She's gone over this with a lot of people,
23 hadn't she?

24 **A** It's possible. I don't know that for a fact.

25 **Q** She should know exactly what happened now,

1 shouldn't she?

2 **A** Everybody's different.

3 **Q** And if she's not telling the truth, that makes
4 it a little more difficult, doesn't it?

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

6 **Q** You don't know.

7 **MR. RAST:** I have nothing further, Judge.

8 **THE COURT:** Redirect.

9 **MS. MOORE:** Just one thing, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. MOORE:

12 **Q** You testified on cross that it was not your job
13 to determine whether they were telling the truth or
14 telling a lie. Did you find her disclosure
15 problematic?

16 **A** No, I did not.

17 **Q** And if you had, would you have reported that?

18 **A** Yes. On number eight, it says, Are there any
19 barriers to the interview for false denial,
20 minimization, retraction or anything of the sort?
21 And I wrote there that they all could be barriers
22 and also due to the fact that her dad told her that
23 there could be consequences if she told.

24 **MS. MOORE:** That's all I have. Thank you, Your
25 Honor.

1 **THE COURT:** Recross.

2 **MR. RAST:** I have nothing further, Judge.

3 **THE COURT:** Thank you, ma'am. You can step
4 down.

5 Do you all have a witness that we can do today
6 or do we need to recess today?

7 **MS. MOORE:** We can do some more today.

8 **THE COURT:** All right. Call your next witness.

9 **MS. MOORE:** Felicia Schwall -- Your Honor, I
10 apologize. I'm going to call Katelyn Bradley.

11 KATELYN BRADLEY,

12 having been duly sworn, testified as follows:

13 **THE CLERK:** Have a seat, please, ma'am. Once
14 you're seated, state your full name, spelling your
15 last. Please speak up loud and clear.

16 **THE WITNESS:** Katelyn Bradley, B-r-a-d-l-e-y.

17 **THE COURT:** Spell your first name, too, okay.

18 **THE WITNESS:** K-a-t-e-l-y-n.

19 **THE COURT:** Thank you. Answer Ms. Moore's
20 questions, please.

21 DIRECT EXAMINATION

22 BY MS. MOORE:

23 **Q** Thank you, Ms. Bradley. How are you related to
24 Minor

25 **A** My cousin.

1 **Q** And how old are you, Katelyn?

2 **A** You said how old am I?

3 **Q** Yes.

4 **A** Nineteen.

5 **Q** Are you working?

6 **A** Not right now.

7 **Q** Back in 2009, June 2009, where were you
8 working?

9 **A** I was working at 321 Bingo.

10 **Q** Specifically, the night of June 27th, early
11 morning June 28th, 2009, did you have a conversation
12 with another family member?

13 **A** Yes.

14 **Q** What was that family member's name?

15 **A** Christy Kirkland.

16 **Q** What did she tell you?

17 **A** She had said that Johnny --

18 **MR. RAST:** If Your Honor pleases, I'm going to
19 object unless she's going to testify, Christy Elders
20 (sic) is going to testify.

21 **THE COURT:** Your objection is on hearsay?

22 **MR. RAST:** Yes, Your Honor.

23 **THE COURT:** Do you have a response?

24 **MS. MOORE:** Your Honor, we're not offering it
25 for the truth of the matter asserted just for the

1 affect on the listener, what she did as a result of
2 what she was told.

3 **THE COURT:** It's hearsay, the objection's
4 sustained. Rephrase your question.

5 BY MS. MOORE:

6 **Q** Without telling us what she told you, what, if
7 anything, did you do?

8 **A** Well, I didn't know if it exactly was true or
9 not and, you know, if it wasn't, I didn't want
10 anybody to be mad at me so I called my mom.

11 **Q** Who is your mom?

12 **A** Felicia Schwall.

13 **Q** And what did you tell her?

14 **A** I told her exactly what I was told. And I told
15 her that I didn't know what to do about it, so
16 that's why I called her to see if maybe she could
17 help.

18 **MS. MOORE:** That's all I have, Your Honor.

19 **THE COURT:** All right. Cross.

20 CROSS-EXAMINATION

21 BY MR. RAST:

22 **Q** I changed my mind. What were you told?

23 **A** I was told that Johnny Hutto had seen Mike
24 feeling on Minor leg and that they had almost
25 fought because of that.

- 1 Q That Johnny Hutto had seen what now?
- 2 A Had seen Mike feeling on Minor leg.
- 3 Q And who told you that?
- 4 A Christy Kirkland.
- 5 Q And how did she know that?
- 6 A She -- I guess she heard it. I don't think she
- 7 told me --
- 8 Q She heard it, too?
- 9 A I guess.
- 10 Q Somebody heard, somebody heard and everybody
- 11 just keeps talking. Is that the first that anything
- 12 came out about Mike molesting his daughter Minor
- 13 A That's the first time that anything has been
- 14 brought out about it, but there's always been, you
- 15 know, thoughts in people's minds about it.
- 16 Q All the people in Shelly's family, right?
- 17 A Yes, sir.
- 18 Q But nobody had ever had any evidence that
- 19 anything had ever happened; is that right?
- 20 A No, sir.
- 21 Q Do you know Mike pretty good?
- 22 A Yes, sir.
- 23 Q You know he doesn't drink alcohol, does he?
- 24 A No, sir.
- 25 Q Doesn't do drugs, does he?

1 **A** I don't believe.

2 **Q** Minor mama does drugs, doesn't she?

3 **A** She used to, sir.

4 **Q** She used to do cocaine. Did cocaine back when

5 all of this was going on, didn't she?

6 **A** I'm not sure, sir..

7 **Q** You're not?

8 **A** I'm not sure when she did it.

9 **Q** But you know she did it?

10 **A** Yes, sir.

11 **MR. RAST:** I have nothing further.

12 **THE COURT:** Redirect.

13 **MS. MOORE:** Nothing, Your Honor.

14 **THE COURT:** Thank you, ma'am. You may step

15 down.

16 Do you have another witness we can do today?

17 **MS. MOORE:** Real short.

18 **THE COURT:** All right. Call your witness.

19 **MS. MOORE:** Felicia Schwall.

20 FELICIA SCHWALL,

21 having been duly sworn, testified as follows:

22 **THE CLERK:** Have a seat, please, ma'am. Once

23 you're seated, state your full name, spelling your

24 last.

25 **THE WITNESS:** Felicia Schwall.

1 **COURT REPORTER:** Spell your last name.

2 **THE WITNESS:** S-c-h-w-a-l-l.

3 DIRECT EXAMINATION

4 BY MS. MOORE:

5 **Q** Ms. Schwall, how are you related to Minor

6 ?

7 **A** She's my niece.

8 **Q** So who is your sister?

9 **A** Shelly's my sister.

10 **Q** Her mother?

11 **A** Yeah.

12 **Q** Back in June, late June 2009, did you receive a
13 phone call from your daughter, Katelyn?

14 **A** Yes.

15 **Q** What did Katelyn tell you?

16 **A** She told me that my cousin, Christy, had told
17 her that there was some stuff going on between Minor
18 and her dad and she wanted to let me know because
19 she didn't know what to do about it.

20 **Q** Is that the only conversation you had with her
21 about that?

22 **A** When we talked about it, I told her that I was
23 just going to call Shelly and that's what I did
24 after I talked to her that night.

25 **Q** Did you call Shelly immediately?

1 **A** I think it was like -- it was early in the
2 morning when I did call her because it was late when
3 I heard anyway.

4 **MS. MOORE:** That's all I have, Your Honor.

5 **THE COURT:** Cross.

6 CROSS-EXAMINATION

7 BY MR. RAST:

8 **Q** What was the stuff that was going on?

9 **A** Touching and just improper display like he was
10 having her on his lap and making her touch him and
11 stuff like that, that's what I was told.

12 **Q** And you were told that by who?

13 **A** My daughter.

14 **Q** And who saw it?

15 **A** My cousin.

16 **Q** Who is that?

17 **A** Christy Kirkland.

18 **Q** She saw all of this happened?

19 **A** That's what I was told whenever my daughter
20 called me.

21 **Q** Well, your daughter just said that Christy
22 didn't see anything, she was told this?

23 **A** Well, that's what I was told.

24 **Q** So you thought Christy had seen this?

25 **A** Yeah.

1 Q And then you --

2 A Christy had talked to me previously about this,
3 too, so.

4 Q And what did you tell Shelly, Minor mama?

5 A I told Shelly that I think she needed to go
6 pick Minor up because there may be some stuff going
7 on over there and she needs to find out.

8 Q And what time did you call?

9 A It was early in the morning hours.

10 Q Say three o'clock in the morning?

11 A Probably around 4:00 maybe, I would say, 3:30,
12 4:00.

13 Q On a Sunday morning?

14 A Yep.

15 Q That she needed to go get Minor

16 A Yep.

17 Q Did she go get Minor

18 A She had to, I guess, get her a way to go get
19 her, but she did go get her.

20 Q When?

21 A That morning.

22 Q How do you know?

23 A She called me, said she was going to get her.

24 Q You don't know that -- do you know that Minor
25 didn't get back till around 9:30 that night?

1 **A** (No response.)

2 **Q** You didn't know that?

3 **A** She -- the morning I'm talking about, we went
4 to the police office in the morning hours.

5 **Q** You haven't seen anything yourself?

6 **A** I seen smacking on the butt and pulling her
7 down on his lap and stuff like that, that's all I
8 seen.

9 **Q** Anything wrong with that?

10 **A** I personally think if somebody was smacking my
11 daughter on the butt at 10 and 11 years old, that
12 it's wrong.

13 **Q** Maybe she was doing something wrong and he
14 spanked her?

15 **A** No, giggling and smacking.

16 **MR. RAST:** Okay. I have nothing further,
17 Judge.

18 **THE COURT:** Redirect.

19 **MS. MOORE:** Nothing, Your Honor.

20 **THE COURT:** Thank you, ma'am. You may step
21 down.

22 Do you have another witness today?

23 **MS. MOORE:** Not today, Your Honor.

24 **THE COURT:** Okay. Ladies and gentlemen, we'll
25 recess for the day.

1 Is 9:30 in the morning okay?

2 **MS. MOORE:** Yes, sir.

3 **THE COURT:** Mr. Rast?

4 **MR. RAST:** That's fine.

5 **THE COURT:** I need you in the jury room at 9:30
6 in the morning. If you -- once again, I remind you
7 if there's some sort of emergency or some problem
8 you have, please have somebody call and let us know
9 because we'll start looking for you if you're not
10 here. Use your common sense, if you come down with
11 some sort of stomach virus, we don't want it, don't
12 try to be too brave, just use your common sense, but
13 it is important that you be here. And like I said,
14 I can't do anything until I know where you are and
15 what's going on.

16 There's supposed to be some bad weather moving
17 in, so I'm just going to tell you to be here at 9:30
18 in the morning, not call that number or anything in
19 case there's a problem with power going out or
20 something.

21 9:30 in the morning. Hope you have a pleasant
22 evening. Remember all of those admonitions. Follow
23 the bailiff, please.

24 (The jury was excused for the day.)

25 **THE COURT:** How many more witnesses do you

1 anticipate tomorrow, Ms. Moore?

2 **MS. MOORE:** Three. I'm trying to get -- we may
3 be able to get that one from Wednesday. If we can
4 put her up first, she said she would be willing to
5 do it, but she's taking her masters exam and I don't
6 want to bother her before.

7 **THE COURT:** Well, I'll leave that up to you.
8 It's fine with me either way, just whatever y'all
9 can work out.

10 Mr. Rast, do you have something?

11 **MR. RAST:** Because of the problem, I told my
12 people to be here Thursday. Now, do I need them
13 here before then?

14 **MS. MOORE:** Well, Wednesday.

15 **MR. RAST:** You said you had one witness that
16 couldn't testify until Wednesday.

17 **THE COURT:** I think you need to have them here
18 Wednesday, but you may need to talk to Ms. Moore
19 about having them here sooner. I don't know. You
20 all know the case and I don't. I don't pretend to
21 know what to tell you. Y'all talk and come up with
22 some sort of resolution, at least let them know
23 there's a possibility we need to push them up.

24 As you all leave today, please be careful that
25 you don't have any contact with the jurors. You may

1 think they've already left and gone, but sometimes
2 people have to wait on rides, some people stop and
3 make cell phone calls, things like that, so don't be
4 talking about the case until you clear the
5 courthouse property or you're in an area where you
6 know a juror can't possibly be.

7 Court's in recess till 9:30 in the morning.

8 Thank you.

9 (The proceedings were concluded for February
10 28, 2011.)

11 (The following proceedings were held on
12 March 1, 2011.)

13 (Court Exhibit Number 2, jury note, marked
14 for identification purposes.)

15 **THE COURT:** All right. I received another note
16 from a juror. It reads -- it's from Jeffrey
17 Rodgers, juror number 128. It reads, I would like
18 to be off jury duty due to my five-year-old son's
19 having surgery on his arm on Wednesday, March 2nd,
20 2011 at 6:45 a.m. I didn't find out about this
21 until Monday afternoon.

22 Do you want to be heard?

23 **MS. MOORE:** No, sir.

24 **THE COURT:** Mr. Rast, do you want to be heard?

25 **MR. RAST:** Judge, 6:45, it should be over with

1 by 9:30 I would think. I mean, I hate to cut down
2 to the last alternate in case something else
3 happens.

4 **THE COURT:** All right. Ask Mr. Rodgers to step
5 in here, please.

6 **MR. RAST:** Although, I'll leave it up to the
7 Court, but like I said, if we do let him off, and
8 it's my understanding we're going to have to come
9 back tomorrow for the rest of the testimony, I hate
10 to be left short somehow, but I don't want him to
11 miss surgery on his son either.

12 **THE COURT:** Yes, sir.

13 **MS. MOORE:** We could start later, too, Judge.

14 **THE COURT:** Let me find out from him what's
15 going on.

16 (Juror Jeffrey Rodgers enters the
17 courtroom.)

18 **THE COURT:** You're Jeffrey Rodgers, sir?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Just have a seat there for me,
21 please. I got your note and I just need to ask you
22 some more specifics. Where are they doing the
23 surgery?

24 **JUROR:** Children's Hospital.

25 **THE COURT:** Children's Hospital?

1 **JUROR:** Yes, sir.

2 **THE COURT:** And do you know anything about how
3 long it's expected to take or anything like that?

4 **JUROR:** I believe the prep and all that should
5 be about two to three hours. And I don't know, as
6 far as him coming out of surgery, I don't know.

7 **THE COURT:** Are they going to admit him into
8 the hospital?

9 **JUROR:** That I do not know. It depends on his
10 pain level, sir.

11 **THE COURT:** And who takes care of him?

12 **JUROR:** My wife.

13 **THE COURT:** Mr. Rodgers, I'm going to have
14 them -- can you find another room, Lawrence? You
15 can even put him in my office just for a few
16 minutes.

17 **OFFICER:** Yes, sir.

18 **THE COURT:** Mr. Rodgers, if you'd step back
19 with the deputy, I'll get right back with you, okay.

20 (Juror leaves the courtroom.)

21 **THE COURT:** All right. Do you want to put
22 anything on the record, State?

23 **MS. MOORE:** Nothing from the State.

24 **THE COURT:** Defense?

25 **MR. RAST:** I don't want to put anything on the

1 record, Judge. Debra said we could start late
2 tomorrow, but I have no objection to that, but I
3 just do have a concern about going forward without
4 at least one alternate.

5 **THE COURT:** Well, I've got a concern, too, but
6 I can sense from him that he's got a concern. I
7 don't know where his mind will be. And, I mean, my
8 daughter just had a very minor procedure last Friday
9 and she didn't come out until in the afternoon and
10 then she wasn't entirely there. He said his wife
11 takes care of his son so I don't know if they're
12 together or not, but that really is not here nor
13 there. I don't know that that's my place to be
14 deciding.

15 We'll roll -- I'm going to excuse him. If we
16 go with -- if we come up with a situation where I
17 have another note like this, I'll have to decide
18 about postponing it, declaring a recess or declaring
19 a mistrial.

20 Would you get Mr. Rodgers back in here, please?

21 (Juror enters the courtroom.)

22 **THE COURT:** Mr. Rodgers, I'm going to excuse
23 you. I hope everything goes well with your son's
24 surgery.

25 **JUROR:** Thank you, sir.

1 **THE COURT:** I hope everything turns out well.
2 If you'll just give Lawrence your button there or
3 give the bailiff your button. You don't have to
4 call in or come back or worry about jury duty
5 anymore, all right.

6 **JUROR:** Thank you, sir.

7 **THE COURT:** Thank you.

8 (The juror was excused.)

9 **THE COURT:** All right. Is the State ready for
10 the jury?

11 **MS. MOORE:** The State's ready, Your Honor.

12 **THE COURT:** Defense?

13 **MR. RAST:** We're ready, Judge.

14 **THE COURT:** Tell Mr. Cassidy he's going to be
15 one of the jurors now. Bring them in.

16 (The jury enters the courtroom at 9:45 a.m.)

17 **THE COURT:** All right. Mr. Cassidy, you're
18 going to be one of the 12 jurors now. Mr. Rodgers
19 had a family situation. I've excused him from jury
20 duty. And so juror number 25 is substituted for
21 128.

22 Call your next witness, Solicitor.

23 **MS. MOORE:** Thank you, Your Honor. Please the
24 Court. State calls Shelly Elders.

25 **THE COURT:** Come around, please, ma'am.

1 SHELLY ELDERS,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Have a seat, please, ma'am. Once
4 you're seated, speak up loud and clear stating your
5 full name, spelling your last on the record, please.

6 **THE WITNESS:** Shelly Elders, E-l-d-e-r-s.

7 DIRECT EXAMINATION

8 BY MS. MOORE:

9 **Q** Ms. Elders, what's your relationship with Minor
10 ?

11 **A** She's my daughter.

12 **Q** And how old is Minor

13 **A** She's 12.

14 **Q** When is her birthday?

15 **A** .

16 **Q** Do you have any other children?

17 **A** Yes, ma'am, I do. I have three sons.

18 **Q** And what are their names and ages?

19 **A** child 1 , child 2 and child 3 .

20 **Q** Do they all have the same father?

21 **A** No, ma'am. My youngest two have the same
22 father and and my oldest one have the same
23 father.

24 **Q** How old is your oldest?

25 **A** He'll be 14 this month.

1 Q And his name is?

2 A child 1 .

3 Q Do you know the defendant in this case?

4 A Yes, ma'am, I do.

5 Q And how long -- how do you know the defendant?

6 A We've been married since I was 15.

7 Q How old are you now?

8 A Thirty-one.

9 Q When did you first meet the defendant?

10 A When I was 15.

11 Q And then y'all got married?

12 A Uh-huh. Yes, ma'am.

13 Q And had child 1 not long after that?

14 A I had child 1 when I was 17.

15 Q And Minor when you were?

16 A Eighteen.

17 Q Are you still currently married?

18 A To him, yes.

19 Q When is the last time y'all lived together?

20 A About four years ago.

21 Q You and the defendant?

22 A Yes.

23 Q How long did y'all live together then?

24 A He moved in for, I'd say, about four months.

25 We wasn't together together. I take care of my

1 father and when he got sick and had to be
2 hospitalized, he moved in to an empty bedroom to
3 help with bills.

4 Q So can you describe your relationship with the
5 defendant over the years?

6 A I know it might sound dumb for me to say this,
7 but he was my best friend.

8 Q So although y'all split up, you're still
9 friends?

10 A Yes, ma'am.

11 Q Can you describe the relationship between the
12 defendant and your daughter, Minor during her life?

13 A He didn't even claim Minor until she was almost
14 eight years old. He denied even being her father.
15 And when he did start spending time with her, I
16 figured it was maybe because of the seven years he
17 missed of her life that he was trying to make up
18 for.

19 Q So she was eight years old when he started
20 spending --

21 A Yes, ma'am.

22 Q And how often would he see her?

23 A Every other weekend.

24 Q Where would they go?

25 A To his house, his mother's house.

1 Q Where is that located?

2 A It's on in Cayce.

3 Q Do you know what county that's in?

4 A Lexington.

5 Q Was he able to see his son?

6 A Oh, yeah. He had all the rights to both of his
7 children.

8 Q Did he exercise his rights to his son?

9 A He did -- him and child 1 was really close,
10 child 1 , was really close. He went over there every
11 weekend, every holiday until Minor started going and
12 then it was maybe once a month that he went over
13 there.

14 Q Why did that stop? Do you know why that
15 stopped?

16 A I don't know. Most of the time he would say
17 that he didn't have room for both of them to come or
18 that he would get child 1 next weekend or he would
19 make some excuse.

20 Q So they didn't always go together?

21 A No, ma'am.

22 Q Did they ever go together?

23 A Yeah.

24 Q Did Minor ever seem like she didn't want to go
25 over there?

1 **A** Yeah. He called a few times to see if she
2 wanted to come and she wouldn't go, but the times
3 that she did go, she never said she didn't want to.
4 She had a friend that lived down the street from him
5 that she hung out with a lot.

6 **Q** Did she seem to enjoy going there?

7 **A** Yeah. I mean, she never -- nothing ever came
8 up about anything like this.

9 **Q** When were you first made aware of this?

10 **A** My family made allegations, you know, over the
11 couple of years, but I don't always react on
12 hearsay. And I went to **Minor** about it and asked her
13 about it and she kept telling me nothing was going
14 on. And then the last time -- this last time I told
15 her what I'd heard and I told her, I said, You need
16 to let me know because we're going to find out. I'm
17 going to take you to the doctor.

18 **Q** And when was this?

19 **A** The 27th of June, 2009.

20 **Q** And how were you made aware of it?

21 **A** I got a phone call.

22 **Q** From?

23 **A** As y'all know, from everybody, from my sister.

24 **Q** What was her name?

25 **A** Felicia Schwall.

1 **Q** And she told you...

2 **A** She told me that something was going on with
3 Minor and that I needed to talk to her about it.
4 And I asked her what it was and she told me that she
5 had heard that he had been touching on Minor
6 inappropriately.

7 So I called him, that's the first thing I did
8 was call him, asked him what was going on. He said,
9 What are you talking about? I said, What's going on
10 with you and Minor I got a phone call saying that
11 you were messing with her. And he said, She's a
12 fucking little liar. And when he said that, I hung
13 the phone up because I didn't have nothing else to
14 say.

15 **Q** Okay. So when you called him and told him, I
16 heard you were messing with my daughter, he didn't
17 ask you any details?

18 **A** Nope.

19 **Q** Did he ask you how did you find out about that
20 or --

21 **A** Nope.

22 **Q** His only statement was...

23 **A** She's a fucking little liar.

24 **Q** And you hung up the phone?

25 **A** Yeah.

1 Q Did you ever have another conversation with
2 him?

3 A Nope.

4 **THE COURT:** Please speak up.

5 BY MS. MOORE:

6 Q What, if anything, did you do next after you
7 hung up the phone with the defendant?

8 A I called my sister back because I didn't know
9 what to do. What does a mother do when you get a
10 phone call saying that your daughter has been messed
11 with? I called my sister back and discussed it with
12 her and we went to the police department and made
13 the report. And I took her to Richland Hospital for
14 an exam.

15 Q Let's back up. After you -- when did you talk
16 to Minor in the time between talking to the
17 defendant and your sister again?

18 A After I talked to him, I woke her up and asked
19 her what was going on. At first, she told me
20 nothing. And I said, Don't lie to me because I'm
21 about to take you to the doctor to get you checked.
22 And then she started crying and told me that he had
23 touched her.

24 Q Did you ever have any suspicions of your own?

25 A I trusted that man with everything. He has

1 baby-sitted (sic) for me before. Anytime I needed
2 somebody to talk to, he was the one I talked to. I
3 would have never thought that he would do something
4 like this.

5 **Q** So although people were telling you that?

6 **A** Although people were telling me that.

7 **Q** So you went to the police station, made a
8 report. When did you go to the hospital?

9 **A** I went to the hospital -- I had called up there
10 and they told me that I needed to make an
11 appointment with the nurse that was up there, so I
12 did that. And we went probably -- it was later in
13 the afternoon because we left at dark.

14 **Q** Were you in there when she had her exam?

15 **A** Yes, ma'am.

16 **Q** And how old was she at that time?

17 **A** She was ten.

18 **Q** Did you ever talk to her about what had
19 happened?

20 **A** She doesn't talk to me about it. I can
21 guarantee you that all of y'all in this room
22 probably knows more about this situation than I do.

23 **Q** Did you notice any changes in her behavior
24 after --

25 **A** Not right after, probably about a month, maybe

1 a month and a half. She moved -- I have a walk-in
2 closet in my room and she moved everything out of it
3 and turned that into her bedroom. She slept in my
4 closet for two months. She had attitude or easy to
5 hurt her feelings, she'd go off on anything. We
6 went through a big change with her for a while.

7 Q Did she ever get any counseling?

8 A Yes, ma'am. She goes to the Dickerson Center.
9 She's been going since this happened and she still
10 goes.

11 Q There's been some testimony from your sisters
12 about your drug use abuse?

13 A I don't deny that. I did have a drug problem.
14 I worked very hard this past year and a half to fix
15 that, yes, ma'am.

16 Q And when this case was reported to the police,
17 what, if anything, happened with DSS?

18 A They sent a social worker out about this case
19 with Minor I told her that I went and got help for
20 that. Matter of fact, the day she come to my house,
21 I had just got out of a rehab center. I fixed that
22 myself. Nobody called DSS on me, I did that.

23 Q You fixed what?

24 A I started fixing the problem myself. Nobody
25 called DSS and reported me, I told them what was

1 going on.

2 Q What was going on?

3 A About me using drugs. I don't have a problem
4 with telling people that.

5 Q When did you start -- when did you relapse back
6 into the drugs?

7 A When this started.

8 Q But you went to rehab on your own?

9 A Yes, ma'am, I did.

10 Q And did you successfully complete their
11 program?

12 A Yes, ma'am, I did.

13 Q What ultimately happened with that DSS case?

14 A It was unfounded and closed.

15 MS. MOORE: Beg the Court's indulgence.

16 (Pause.)

17 Q Had DSS ever been -- had you ever been
18 investigated by DSS prior to this?

19 A Oh, yeah.

20 Q For what?

21 A An allegation that I was using drugs.

22 Q When was that?

23 A That was five years ago.

24 Q And what had happened with that case?

25 A I went and had a drug test done. I was clean

1 and it was unfounded.

2 Q Have you been clean since this case was
3 unfounded?

4 A Yes, ma'am. August of last year was a year.

5 MS. MOORE: That's all I have, Your Honor.

6 THE COURT: All right. Cross-examination.

7 MR. RAST: May it please the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. RAST:

11 Q DSS, Department of Social Services, became
12 involved in this when these allegations against Mike
13 were made?

14 A Uh-huh.

15 Q You tested positive for cocaine at that time,
16 did you not?

17 A I wasn't tested at that time.

18 Q The DSS sheet gave you or told you to go to
19 LRADAC, did they not?

20 A No, sir, they did not. I was in LRADAC before
21 DSS came to my house.

22 Q Okay. What is LRADAC? Can you explain?

23 A LRADAC is a drug and alcohol therapy center.

24 Q You were in that before this incident with Mike
25 came up?

1 **A** No. I was in that before DSS came to my house
2 for this case.

3 **Q** DSS came to your house because Mike gave them a
4 picture of you using cocaine, did he not?

5 **A** No. If he did, it was never brought to my
6 attention.

7 **Q** It's in the record at the Department of Social
8 Services, though, isn't it?

9 **A** Well, that's fine if it is, but they never
10 showed it to me.

11 **Q** But they did have you being drug tested for
12 cocaine?

13 **A** Yes, sir, they did.

14 **Q** You and Mike have not always gotten along real
15 well, have you?

16 **A** Our relationship has been rocky as any other
17 would be, but he was still the person I turned to.

18 **Q** In fact, you did not even have him listed as
19 Shelly's father -- I mean, Minor father, did you,
20 on the birth certificate?

21 **A** I didn't put him on Minor birth certificate
22 because of the hassle I went through with child 1 .

23 **Q** But his name was not on her birth certificate?

24 **A** No, sir.

25 **Q** When this started, you talked to Detective

1 Belk, at that time, at the Cayce Police Department,
2 did you not?

3 A I talked to her after she got the report, yeah.

4 Q Did you give her a written statement?

5 A Yes, sir, I believe I did.

6 MR. RAST: May I approach the witness, Judge?

7 THE COURT: Yes, sir.

8 BY MR. RAST:

9 Q Look at that and see if that is the statement
10 you gave her.

11 A Yeah.

12 Q Is that statement true?

13 A Yes, sir.

14 Q Could you read the statement for me, please?

15 A Yes, sir. I received a phone call at 3:30 a.m.
16 on Sunday, June the 28th, 2009, telling me that
17 Michael Elders has been sexually assaulting our
18 daughter, Minor . I told Minor I was aware
19 of what was going on and I needed her to tell me.

20 THE COURT: You need to slow down. When people
21 read, they speak faster. The court reporter still
22 has to take it down.

23 THE WITNESS: I'm sorry.

24 THE COURT: That's all right.

25 THE WITNESS: She told me her father had been

1 putting his hands down her pants and playing with
2 her private area. I asked her how long this had
3 been going on, she said every time she went over to
4 his house for about a year.

5 The call I received was from my sister, Felicia
6 Schwall. She told me Michael's cousin, Johnny
7 Hutto, saw Michael touching Minor inappropriately
8 and I needed to ask Minor what was going on.

9 MR. RAST: Judge, I'd like to have that marked
10 as Defendant's Exhibit 1, please.

11 THE COURT: Any objection?

12 MS. MOORE: No objection, Your Honor.

13 THE COURT: Mark that in evidence, please,
14 ma'am.

15 MR. RAST: I didn't put it in evidence, just as
16 an exhibit. I don't think I can put it in evidence
17 yet.

18 THE COURT: You can put it in evidence if you
19 want to. You're talking about marking it for I.D.?

20 MR. RAST: Well, put it in evidence then,
21 that's fine.

22 THE COURT: You lose the last argument.

23 MR. RAST: I know that.

24 THE COURT: Okay. Mark it in evidence, please,
25 ma'am.

1 (Defendant's Exhibit Number 1, statement of
2 Shelly Elders, admitted into evidence.)

3 BY MR. RAST:

4 Q You have had Michael arrested three times for
5 criminal domestic violence, have you not?

6 A Yes, sir, I have.

7 Q He was not convicted of any of those, was he?

8 A No, sir, I don't think he was.

9 Q You also had him arrested for harassment, did
10 you not?

11 A Yes, sir, I have.

12 Q He was not convicted of that, was he?

13 A Not that I'm aware of.

14 Q He was arrested for unlawful use of telephone?

15 A Yes, sir.

16 Q He was not convicted of that?

17 A But the officer that made that report answered
18 my telephone when he called.

19 Q He was not convicted of it, was he?

20 A I don't know. I don't know.

21 Q He has not been convicted of anything, has he?

22 A I don't know. I honestly don't know.

23 Q But you have had him arrested four times?

24 A Oh, yes, sir.

25 Q Now, in that statement that you gave and you

1 just read, you said that he had -- let me see, what
2 was it -- that he had sexually assaulted Minor

3 Those are words you used?

4 A (No response.)

5 Q Let me show you Defendant's Exhibit 1 again.

6 Did you use the words sexually assaulted?

7 A Yep, sure did.

8 Q And you also used the word that he had been
9 touching her privates?

10 A Yes, sir.

11 Q That's the exact same words Minor uses, isn't
12 it, sexually assault and privates?

13 A Because all of my children say private for
14 every private area on your body. And she has been
15 going through this, drug out for over a year with
16 adults around her saying sexually assault.

17 Q Isn't it true that most kids refer to private
18 parts by different words --

19 A No, sir.

20 Q -- such as tutu, wee-wee?

21 A Not mine, not my kids.

22 Q Yours don't. Yours all say private?

23 A They all say private.

24 Q And sexual assault, they use that phrase all
25 the time, too?

1 **A** Yeah. Yeah, I do. Uh-huh.

2 **Q** That is not a child's phrase, is it?

3 **A** No, it's not a child's phrase, but a child is
4 not supposed to have to go through a trial like this
5 either with other adults saying it.

6 **Q** And when Minor was testifying, she kept looking
7 at you sitting back here behind me, didn't she?

8 **A** Yeah, she kept looking at me. I'm her mother.
9 I'm her support.

10 **Q** And she's going to do what you want her to do?

11 **A** No, sir. And if you're insinuating that I put
12 my daughter through a trial like this to get to
13 somebody, you're crazy.

14 **Q** . You've tried to get to him in the past, haven't
15 you?

16 **A** No, sir. If I wanted to do this, I would have
17 did it five years ago the first time he called DSS
18 on me.

19 **Q** You had him arrested for criminal domestic
20 violence --

21 **A** Yes, sir, because --

22 **Q** -- three times and he's never been convicted of
23 anything?

24 **A** Yes, sir.

25 **Q** And you admit that you were doing cocaine back

1 around this time?

2 **A** Yes, sir. I'm not going to lie about nothing.

3 I have nothing to hide. But I don't see where
4 that's relevant when I'm not on trial, he is.

5 **Q** Is DSS part of social services still involved
6 with you?

7 **A** That case has been over a year now.

8 **Q** Are you working anywhere?

9 **A** I'm a in-home caregiver. I have a disabled
10 father that cannot get out the bed. I have to be
11 with him 24 hours a day.

12 **Q** Ma'am, are you working, employed anywhere?

13 **A** Yes.

14 **Q** Where?

15 **A** I work for myself.

16 **Q** How much do you make?

17 **A** Probably about seven a month.

18 **Q** About what?

19 **A** About 700 a month.

20 **Q** Doing what?

21 **A** Taking care of my father.

22 **Q** Is he paying you?

23 **A** He pays me some and the state does.

24 **Q** The state pays you to take care of him?

25 **A** Uh-huh.

1 Q Mike was paying child support to you, was he
2 not?

3 A Yes, he was.

4 Q The father of your other children paying child
5 support?

6 A Yes, he is.

7 Q Who is the father of those children?

8 A Mark Tarlton.

9 Q Is he in prison?

10 A No, sir, he's not.

11 Q Was he in prison for a while?

12 A Yes, sir, he was.

13 Q Is he out now?

14 A Yes, sir.

15 Q And he's paying child support now?

16 A Yes, sir. He pays voluntary child support.

17 Q And he was put in prison for what reason?

18 A He was put in for a CDV.

19 Q Against you?

20 A Uh-huh.

21 Q The same thing you tried to get Mike in jail
22 for?

23 A Yeah, that's the funny thing about the law, it
24 changes. See, now when you do a CDV report, they
25 take it and you don't have no choice, so. I tried

1 to give him a break over and over again. Every time
2 I tried, he did it again.

3 Q You're a nice person?

4 A Thank you.

5 Q Is that what you're saying?

6 A I'm not saying I'm perfect. Nobody's perfect.
7 Nobody in this world is perfect, but I'm not going
8 to let my daughter be treated like this because he
9 wants --

10 Q You told the people at Palmetto Health Care
11 that your daughter, Minor, said Mike had not
12 penetrated her privates, did you not?

13 A Yeah, because that's what she told me.

14 Q That's what you said, right. And she also told
15 you that he had never made her touch him?

16 A At the time, yeah, that's what she said.

17 MR. RAST: Bear with me just a moment, Judge.

18 THE COURT: Yes, sir.

19 MR. RAST: I have nothing further.

20 THE COURT: Redirect.

21 MS. MOORE: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. MOORE:

24 Q You testified on direct, Ms. Elders, though,
25 that your daughter doesn't talk about this at all?

1 **A** Uh-huh.

2 **Q** Gave you very little information?

3 **A** (Witness nodded head.)

4 **Q** Then and now?

5 **A** The only time she has talked to me is the first
6 conversation we had when I told her she needed to
7 tell me what was going on because I was taking her
8 to the doctor. After that, the only person that she
9 has talked to about this is Carol.

10 **Q** And then when you go to meet with then
11 Detective Belk, now Detective McCord --

12 **A** Uh-huh.

13 **Q** -- did she use that terminology, sexual
14 assault?

15 **A** Every person that **Minor** has talked to about
16 this situation has used those terms.

17 **MS. MOORE:** Beg the Court's indulgence one
18 moment.

19 **THE COURT:** Yes, ma'am.

20 (Pause.)

21 **BY MS. MOORE:**

22 **Q** I'm going to show you something and ask if you
23 recognize this?

24 **A** Yeah.

25 **Q** What is that?

1 **A** When we found out all of this was going on with
2 Minor my sister went and bought her a note pad.
3 And she told her since she wasn't talking to me
4 about it, just write it down because she was seeing
5 Carol and that Ms. Belk had told her that if she
6 could remember anything that she didn't put in her
7 statement, to write it down and bring it to her.
8 And that's what these are.

9 **Q** Was that a letter to you?

10 **A** Yes, ma'am.

11 **Q** And whose handwriting is that?

12 **A** Minor .

13 **MS. MOORE:** Your Honor, I would offer this in
14 evidence at this time.

15 (Pause.)

16 **MR. RAST:** Judge, could we send the jury out
17 for a moment, please?

18 **THE COURT:** Yes, sir.

19 Ladies and gentlemen, please step in the jury
20 room. Don't discuss the case.

21 (The jury retires to the jury room.)

22 **THE COURT:** Yes, sir.

23 **MR. RAST:** Judge, I'm going to object to this
24 coming in through this witness. I mean, Minor has
25 already testified. Minor is probably the one that

1 should -- this should have gone in with.

2 Also, we've got one piece of paper here that
3 says, He asked me if I thought my friend, Brittany,
4 would play truth or dare with him. I didn't say
5 anything and he asked me again. And I don't know,
6 leave me alone, please.

7 Judge, I just think this is inadmissible. I
8 don't know what Brittany has to do with anything. I
9 mean, it's just confusing this case. There's three
10 pieces of paper here that I have.

11 **MS. MOORE:** She testified to that, Judge, and
12 then he crossed saying that the -- she denied it
13 several times.

14 **MR. RAST:** She did not testify to it. I think
15 that was on the forensic interview tape we'd shown.

16 **MS. MOORE:** No, she did.

17 **THE WITNESS:** She did testify to that piece
18 about Brittany yesterday.

19 **THE COURT:** Ma'am, you don't get to participate
20 in this part of it, please.

21 **MR. RAST:** I just don't think these are
22 admissible through this witness.

23 **THE COURT:** They're not. Do y'all want me to
24 rule?

25 **MR. RAST:** Yes.

1 **THE COURT:** They may be admissible if you put
2 Minor back on the stand, but that's hearsay right
3 now. Mark it for I.D. I'm not saying it can't come
4 in, I'm just saying it can't come in through this
5 witness.

6 (State's Exhibit Number 2, letter, marked
7 for identification purposes.)

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

9 **MS. MOORE:** Yeah.

10 **THE COURT:** Ready for the jury?

11 **MR. RAST:** I'm ready, Judge.

12 **THE COURT:** Bring them back in, please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. The objection's
15 sustained at this time. It'll be hearsay as to this
16 witness.

17 **MS. MOORE:** Thank you, Your Honor. That's all
18 the questions I have.

19 **THE COURT:** It's been marked for identification
20 as Exhibit 2.

21 All right. Anything else of this witness?

22 **MR. RAST:** I have nothing, Judge.

23 **THE COURT:** Thank you, ma'am. You may step
24 down.

25 Call your next witness, please.

1 **MS. MOORE:** Detective Danielle McCord.

2 **THE COURT:** Come around, please, ma'am.

3 DANIELLE MCCORD,

4 having been duly sworn, testified as follows:

5 **THE CLERK:** Have a seat, please, ma'am. Once
6 you're seated, state your full name, spelling your
7 last for the record, please.

8 **THE WITNESS:** Investigator Danielle McCord,
9 M-c-C-o-r-d.

10 DIRECT EXAMINATION

11 BY MS. MOORE:

12 **Q** Investigator McCord, where are you employed?

13 **A** The City of Cayce Police Department.

14 **Q** And how long have you been employed at the City
15 of Cayce?

16 **A** Almost ten years.

17 **Q** What are your duties and responsibilities?

18 **A** I'm assigned to our investigative unit, I
19 handle most of our child abuse cases, sex crimes and
20 our child abuse -- I'm sorry -- and our domestic
21 violence cases.

22 **Q** How long have you been assigned in that unit?

23 **A** Almost seven years.

24 **Q** Did you have an opportunity to meet with the
25 victim in this case, Minor

1 **A** I did.

2 **Q** How did you become involved in this case?

3 **A** The case gets assigned to investigations and
4 any cases usually involving CSCs usually get
5 assigned to me.

6 **Q** Did you meet with the victims in this case?

7 **A** I did.

8 **Q** What day did you meet with them?

9 **A** I believe it was on the 29th.

10 **Q** And what, if anything, did you do on that day?

11 **A** It was on the 30th, I'm sorry.

12 **Q** On the 30th.

13 **A** I just brought them in to speak with them about
14 the incident to make sure that what was reported in
15 the initial report was accurate, collected written
16 statements from both the victim and her mother at
17 that time.

18 **Q** What, if anything else, did you do in this
19 case?

20 **A** DSS was already involved so I didn't -- they
21 had set up the forensic interview. And Ms. Elders
22 was already taking her child to the doctor or
23 actually to Richland Memorial, I do believe is where
24 she went. So the only thing I had to do was get the
25 initial statements and wait for the forensic report

1 to come back.

2 Q And once you got the forensic report back, what
3 did you do?

4 A I obtained warrants for Mr. Elders' arrest.

5 Q And did you subsequently arrest him?

6 A I did.

7 Q What date was that?

8 A July the 15th, 2009.

9 Q Did you go alone?

10 A I did not. My lieutenant, Lieutenant Jeff
11 Simmons, was with me.

12 Q And where did you serve the warrants at?

13 A The warrants were actually served in our
14 booking area. However, myself and Lieutenant
15 Simmons located him, Mr. Elders, at

16 in Cayce, South Carolina, Lexington County.

17 Q And what did you tell him, if anything, when
18 you were detaining him?

19 A That I had a warrant for his arrest for
20 criminal sexual conduct.

21 Q At this time he was in custody, correct?

22 A Yes.

23 Q Was he free to go?

24 A No, he was not.

25 Q Did you question him in any way?

1 **A** I did not. Mr. Elders immediately --

2 **MR. RAST:** Objection, Your Honor.

3 **THE COURT:** Yes, sir.

4 **MR. RAST:** We need to send the jury out to hear
5 this one, Judge.

6 **THE COURT:** All right. Ladies and gentlemen,
7 please step in the jury room. Don't discuss the
8 case.

9 (The jury retires to the jury room.)

10 **THE COURT:** Yes, sir.

11 **MR. RAST:** If Your Honor pleases, we had the in
12 camera testimony from this officer and she stated
13 that my client made a statement and that he invoked
14 his right to me as an attorney. It sounded to me
15 like that's what she was fixing to come out with and
16 you had already advised them be careful with coming
17 out of him invoking his constitutional right. I
18 don't want a mistrial. It sounded to me like that's
19 what she was fixing to say.

20 **THE COURT:** I don't know if she was going to
21 say that he immediately said that part about being a
22 liar or she was going to talk about the right to
23 counsel.

24 You need to stay away from invoking right to
25 counsel.

1 **THE WITNESS:** I need to stay away from...

2 **THE COURT:** Yeah. You can't say anything about
3 him invoking his right to counsel.

4 **THE WITNESS:** Okay.

5 **MR. RAST:** That's what I wanted to be sure of,
6 Judge, that's why I objected.

7 **MS. MOORE:** Nothing about him having an
8 attorney.

9 **THE WITNESS:** Okay.

10 **THE COURT:** You can't comment on his right to
11 remain silent. And if you do, I'm pretty much going
12 to have to declare a mistrial. So try to stay -- if
13 you feel like you're asked a question that you
14 cannot respond to unless you need to go into that,
15 you just turn to me and say something about that you
16 need an instruction from the Court, okay?

17 **THE WITNESS:** Okay. Will do.

18 **THE COURT:** All right. Bring the jury back.

19 (The jury returns to the courtroom.)

20 **THE COURT:** All right. The objection's
21 sustained. You may continue.

22 **MS. MOORE:** Thank you, Your Honor.

23 BY MS. MOORE:

24 **Q** When you and your lieutenant went to serve the
25 warrants and he was in custody, did you ask him any

1 questions?

2 **A** No, I did not.

3 **Q** What, if any, statements did he make after you
4 told him you had a warrant for criminal sexual
5 conduct first degree?

6 **A** He immediately inquired if it was in reference
7 to his daughter. I explained that the warrant was
8 for criminal sexual conduct. He then stated that
9 they were liars.

10 **Q** You did not tell him, yes, it was for your
11 daughter or did you?

12 **A** Yes. After he asked if it was about his
13 daughter, I said, Yes, the warrant's for criminal
14 sexual conduct.

15 **Q** When you met with Minor and her mother, Shelly,
16 there's a lot of talk about this terminology sexual
17 assault, is that something that you commonly use?

18 **A** Yes.

19 **Q** Is that terminology you commonly use?

20 **A** Yes. It's terminology we all commonly use.

21 **MS. MOORE:** That's all I have, Your Honor.

22 **THE COURT:** Thank you.

23 Cross.

24 **MR. RAST:** May it please the Court.

25 **THE COURT:** Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. RAST:

3 Q When you served the warrant, Shelly had already
4 called Mike and said that she found out he was
5 messing with Minor ; is that right?

6 A I do believe so from her testimony.

7 Q And that's why he would say, Is this about my
8 daughter? That's not unusual, is it?

9 A I can't tell you why he would ask what he would
10 ask.

11 Q You investigate a lot of these cases; is that
12 right?

13 A I do.

14 Q Kids don't use the words private. They've got
15 other words for their private parts, don't they?

16 A I would have to disagree with you actually.

17 Q You have never heard one call it a tutu, a
18 pee-pee, a wee-wee, any other word other than
19 privates?

20 A I have heard all kinds of terminology.

21 Q Right. Kids use different terminology than
22 adults, right?

23 A I mean, I can't say that that's necessarily
24 true. I mean, it just depends on the kid. We've
25 had some kids come in and refer to it exactly as

1 what it is, a vagina and a penis. We've had some
2 come in and say privates. I've never heard tutu,
3 but I'm not going to say that some kid doesn't
4 relate that word with his privates.

5 Q Shelly told you when she first came in, that
6 Johnny Hutto had seen Mike put his hand down Minor
7 pants on the porch, didn't she?

8 A I do believe she did, yes.

9 Q Did you ever talk to Johnny Hutto?

10 A I did not, someone from my department did.

11 Q Did anybody ever get a statement from Johnny
12 Hutto?

13 A No, not that I'm aware of.

14 Q You're the chief investigator in this case,
15 they got a witness and you never talked to the
16 witness?

17 A No.

18 Q You never talked to Mike before you served the
19 warrant?

20 A No.

21 Q In fact, the warrant, you actually made a
22 mistake on the warrant, did you not?

23 A I did, yes.

24 Q You did not have the warrant when you went to
25 Mike's house to arrest him?

1 **A** Oh, no, sir, we had the warrant.

2 **Q** Why didn't you serve it at his house?

3 **A** I don't serve the warrant. It's served in
4 our -- we have a booking facility. It's our policy
5 our warrants are served in our booking facility
6 because we have to sign off on them.

7 **Q** But you don't serve them at the house when you
8 arrest them?

9 **A** No. We have them with us when we go. We pick
10 up whoever we're going to pick up, bring them back
11 to our booking facility and that's where all the
12 paperwork is done.

13 **Q** Who else went with you besides Simmons?

14 **A** No one.

15 **Q** You didn't have any other police cars there?

16 **A** No, sir. It was myself and Lieutenant Simmons.

17 **Q** Did you ever check Mike's criminal record?

18 **A** Yes.

19 **Q** Found out he did not have any convictions, did
20 he?

21 **A** He did not.

22 **Q** And you have never talked to Johnny Hutto?

23 **A** I have talked to him here at the Solicitor's
24 office since this case has started, but prior to,
25 no.

1 Q What did he say?

2 A I just listened in on their conversation.

3 Q Did you hear him say that he never saw Mike
4 Elders put his hand down Shelly's pants?

5 A Yes, he did say that. He said he never saw
6 that.

7 Q He never said that either, did he?

8 A I don't recall him saying he never said it.

9 Q The Solicitor had him under subpoena to testify
10 in this case, didn't she?

11 A To be honest, I'm not really sure who she has
12 under subpoena besides me.

13 Q You know she told him not to come?

14 A No, sir.

15 Q You don't know that. Shouldn't somebody from
16 the police department have contacted a witness?

17 A Somebody from the police department did contact
18 the witness.

19 Q They never got a statement from him?

20 A It's not uncommon for people to not want to
21 write written statements.

22 Q Have you got anything in there saying he
23 refused to write a statement?

24 A No. I didn't say he refused. I just said it's
25 not uncommon for people to not write written

1 statements.

2 **Q** Is there any note in the file about what Johnny
3 Hutto said when he was interviewed by anyone?

4 **A** No.

5 **Q** Nothing?

6 **A** Nothing.

7 **MR. RAST:** Thank you. I have nothing further.

8 **THE COURT:** Redirect.

9 **MS. MOORE:** Nothing, Your Honor.

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

12 Call your next witness.

13 **MS. MOORE:** State calls Robin Baker.

14 ROBIN BAKER,

15 having been duly sworn, testified as follows:

16 **THE CLERK:** Have a seat up there, please,
17 ma'am. Once you're seated, state your full name,
18 spelling your last on the record, please.

19 **THE WITNESS:** My name is Robin Baker,
20 B-a-k-e-r.

21 DIRECT EXAMINATION

22 BY MS. MOORE:

23 **Q** Ms. Baker, where are you currently employed?

24 **A** I am currently a school health services
25 coordinator for Newberry County School District. I

1 oversee about 6,000 students, their health care. I
2 have 11 nurses under me with an administrative
3 assistant. I also oversee the -- or coordinate with
4 the school district safety issues, OSHA training,
5 HIPAA, things like that.

6 **Q** How long have you been with the school
7 district?

8 **A** I recently moved from Lexington Medical Center
9 as an E.D. staff nurse in August of last year to
10 this position.

11 **Q** So your prior employment was with Lexington
12 Medical Center?

13 **A** Yes, ma'am.

14 **Q** And in what capacity?

15 **A** I was an emergency room nurse, staff nurse. I
16 also did sexual assaults as needed. I also worked
17 with Palmetto Health Richland as a sexual assault
18 nurse as needed. And prior to that, I worked at
19 Newberry County Memorial Hospital as an emergency
20 room nurse also with the sexual assault program.

21 **Q** Can you explain what a sexual assault nurse is?

22 **A** It is a specialized entity of the nursing
23 program. What we do is we are trained specifically
24 to examine a victim, gain an accurate history of
25 what happened and DNA collection, if necessary or if

1 we find anything.

2 Q Can you give your educational background?

3 A Okay. As a nurse, I went to Lander University,
4 graduated in 2001 with a bachelors degree in
5 nursing. After that, I became interested in
6 forensics, found a sexual assault nursing program.
7 With that, I went to class for 40 hours as a
8 didactic 40 hour program, was tested on the
9 information that I received.

10 After that, I had to do clinicals which
11 included law enforcement ride around, expert
12 testimony, observation in a courtroom. I had to do
13 40 pelvic exams with a physician or with a sexual
14 assault nurse examiner and then I had to do ten
15 acute sexual assaults, now that was with the adults.
16 I received my certification in 2006 with that.

17 Shortly after that, Terry Casto, who was the
18 director of the sexual assault program at Richland
19 Memorial Hospital, requested that I do the
20 pediatric, which is another entity of the nursing
21 program. There again, I went through a 40 hour
22 didactic classroom program that was very intense
23 with forensic background. SLED would come in and
24 basically help us understand the dynamics of the
25 importance of DNA collection, the importance of

1 getting a correct history and being objective in
2 this area.

3 I also went to Charleston for a week to observe
4 the sexual assault program down there, the
5 pediatric. I saw numerous students -- or not
6 students, excuse me -- numerous patients that had
7 gone through that program with acute type sexual
8 assault. I was taught the difference between normal
9 anatomy and abnormal anatomy. They also showed me
10 the different aspects of how to correctly gather
11 evidence to be able to document, you know, my
12 findings.

13 Q Can you estimate the number of exams that you
14 have performed?

15 A Probably over 50.

16 Q How many of those were children?

17 A Around 10 to 15.

18 Q Have you gone to seminars and conferences?

19 A Yes, ma'am. We were required to do at least
20 two conferences per year and I tried to continue
21 with that.

22 Q To maintain your certification?

23 A Yes, ma'am.

24 MS. MOORE: Your Honor, at this time, I will
25 qualify Ms. Baker by education, experience and

1 training, to be an expert in the field of sexual
2 assault examination.

3 **THE COURT:** Mr. Rast.

4 **MR. RAST:** No objection.

5 **THE COURT:** She is so recognized and may render
6 opinions in that field. Go ahead.

7 **MS. MOORE:** Thank you, Your Honor.

8 BY MS. MOORE:

9 **Q** So you testified that you had specific training
10 in adolescent growth and development and the
11 difference between their anatomy and an adult's?

12 **A** Yes, ma'am.

13 **Q** What are the types of differences that you're
14 talking about?

15 **A** The different types are we have like a tenure
16 stage development. You have tenure stage one which
17 would be like a baby. Tenure stage two you start
18 developing a little bit of breast buds, a little bit
19 of hair on the pubic area. And then in the pubic
20 area, you have the labia majora, the labia minora.
21 In a child, the labia minora is not as developed as
22 with an adult.

23 **Q** Were you working late June of 2009?

24 **A** Yes. I was on-call.

25 **Q** Did you get a call about a patient by the name

1 of Minor

2 A Yes, ma'am, I did.

3 Q And did you ultimately do an exam on her?

4 A Yes, ma'am, I did.

5 Q What date was that?

6 A That was June the 29th of 2009 -- oh, excuse me
7 -- that's her birthday -- no -- yeah, June the 29th,
8 2009.

9 Q Can you explain your procedure or your exam
10 when you meet with a patient?

11 A The first thing that we are taught to do is to
12 have the patient to be able to help her relax or him
13 to relax. We talk with them. I go over exactly
14 what I'm going to be doing, the type of questioning
15 that I might be asking. I try to help them to
16 understand the importance of telling the truth,
17 being objective.

18 Then I go into the history. I start asking
19 questions about what happened; what led to the
20 episode; where they hurt; if they received any
21 injuries, where the injuries were; if there was any
22 type of penile penetration, was there any
23 ejaculation; where did the ejaculation occur; was
24 there any type of oral sex or vaginal sex or anal
25 sex; things like that.

1 **Q** So you get the history from the patient?

2 **A** Yes, ma'am, I do.

3 **Q** And what were her complaints to you?

4 **A** Her complaints basically consisted of having
5 dysuria. Dysuria just means that it was painful to
6 urinate. She also stated that she had been sexually
7 molested, that someone, that her father had placed
8 his finger down her pants and had started rubbing
9 around her, what she called, her private areas and
10 that it hurt.

11 **Q** Did she say anything else about what she did?

12 **A** Do you mind if I read my notes?

13 **Q** No, if that helps you refresh your memory.

14 **A** The main thing that I asked -- well, the first
15 thing that I asked her was, you know, why, why was
16 she there today, did she know why she was there.
17 And she said, Yes, because my dad was touching me in
18 my private places.

19 I asked her, Did something happen to you? She
20 said, Yes, I was walking around and he just put his
21 hands down my pants. Then I told him to leave me
22 alone and I walked away. My uncle saw it, Johnny
23 Hutto. He was really, really mad. They were
24 talking and I just heard, that's not right, that's
25 your daughter.

1 I asked her where she was touched. And she
2 said, My private. And I asked her, Was the touching
3 over the clothes or under the clothes? And she said
4 under.

5 How did your private part feel? And she said
6 that it hurt. She asked -- I asked her if there was
7 another part of the body that was touched and she
8 said no. And I asked, Did you touch any other part
9 of his body? She said, Yes, he made me touch his
10 private. I felt really, really bad. I touched him
11 under his cloths. It happened not the last time,
12 but the time before I was there. He unzipped his
13 pants. He pulled it out, nothing happened, it
14 stayed the same. And I asked her, Who did it? She
15 said, My dad, Michael Ray Elders.

16 The other comments, I asked her if there was
17 something else that she needed to add, if there's
18 something, you know, prevalent to, you know, what
19 happened to her that day. And she said, Yes. He
20 asked if my friend, Brittany Jones, would play truth
21 or dare with him.

22 **MR. RAST:** Objection, Your Honor.

23 **THE COURT:** Yes, sir.

24 **MR. RAST:** I don't think that has anything to
25 do with what she was doing in this particular case.

1 It's irrelevant, immaterial.

2 **THE COURT:** Do you want to be heard?

3 **MR. RAST:** Yes, Your Honor.

4 **THE COURT:** No, I mean, the Solicitor. Do you
5 want to be heard?

6 **MS. MOORE:** We've already -- she testified to
7 that. The victim's already testified to that. It
8 just shows that she's being consistent with what she
9 said at the time.

10 **THE COURT:** Well, I don't know what she's going
11 to say, but...

12 **THE WITNESS:** Would you like to read it, sir?
13 It's the very last comment.

14 (Pause.)

15 **THE COURT:** The objection's overruled. You
16 have something to add?

17 **MR. RAST:** You overruled it?

18 **THE COURT:** The objection's overruled. It's
19 merely duplicative of what's already been entered
20 into evidence.

21 You may continue, ma'am.

22 **THE WITNESS:** Thank you.

23 She said, Yes. He asked if my friend, Brittany
24 Jones, would play truth or dare with him. I did not
25 say anything. Then he asked me again and I said, I

1 don't know, and I told him to leave me alone. It
2 started about a year ago. I still hurt and burn a
3 little when I pee.

4 BY MS. MOORE:

5 Q So after you get that history, what, if
6 anything, do you do?

7 A After I get the history, I discuss with the
8 mother and with the patient the next process which
9 would be to examine the areas that were indicative
10 of DNA collection or injury.

11 Q And did you do your examination?

12 A Yes, I did.

13 Q Do you use any instruments to assist you?

14 A Yes, I do.

15 Q What are those instruments?

16 A One of the instruments, the main instrument
17 that you use in sexual assault is called a
18 colposcope. It is a computerized camera that is
19 connected to a database. You're able to magnify
20 areas of, you know, if there's any areas of trauma
21 or injury or anything like that, able to take
22 pictures and able to store those pictures for
23 further evaluation.

24 Q Was there a specific area of the body that you
25 were focusing on with Minor ?

1 **THE COURT:** I couldn't hear the question.

2 BY MS. MOORE:

3 **Q** Was there a specific area of her body, on
4 Minor body, that you were examining?

5 **A** Yes.

6 **Q** What was that area?

7 **A** From the mons pubis to the anus. Would you
8 like for me to explain the mons pubis to the anus?

9 **Q** Would it help you to see a diagram?

10 **A** Yes.

11 **MS. MOORE:** Your Honor, we have a diagram
12 previously shown to defense counsel.

13 **Q** Would this aid you?

14 **A** Yes.

15 **MS. MOORE:** Permission for the witness to step
16 down.

17 **THE COURT:** Keep your voice up. And I prefer
18 that you face the court reporter so that you'll be
19 on the other side, but the jury has to hear you so
20 make sure you speak up.

21 **THE WITNESS:** Yes, sir.

22 (Witness leaves the witness stand.)

23 **THE COURT:** Can everybody see it? Thank you.

24 **THE WITNESS:** This right here is one of the
25 forms, one of the pages of the electronic charting

1 that we do.

2 Am I talking loud enough, sir?

3 **THE COURT:** If everybody else can hear you, it
4 doesn't really matter much if I hear you. Go ahead.

5 **THE WITNESS:** Okay. This is just one of the
6 pages of the electronic charting that I do as a
7 sexual assault nurse examiner. This right here,
8 these two things, are diagrams of what you would
9 consider the vaginal area of a patient. This is
10 where -- this is the mons pubis, which is where the
11 pubic bone is where the pubic hair grows. This
12 right here is just like an upside down view.

13 As a pediatric sexual assault nurse examiner,
14 you want to examine them right side up. If you
15 can't see the orifice, the vaginal orifice, which is
16 here, the hymen, then you do what we call a frog leg
17 and you turn them upside down and it kind of --
18 gravity takes hold and opens up that area.

19 Now, if that area doesn't open up, you do
20 saline. You don't touch the hymen because it's
21 tender, so you just drop a little saline on it and
22 it opens up to where you can see the hymenal area to
23 see if there's any injuries there.

24 Now, for Minor , the mons pubis is here. The
25 injuries that I saw, the redness, was what we call

1 on the labia majora, which is the big lips of the
2 vaginal area. The labia minora are the smaller
3 lips, the thinner lips. And her -- at this point in
4 time because of her age, the lips were -- the labia
5 minora was not fully developed so they weren't as
6 large as the labia majora. And this right here just
7 indicates this is where I saw the redness and it's
8 really close to the hymenal area.

9 BY MS. MOORE:

10 Q Did you take photographs of this?

11 A Yes, I did.

12 Q Let me show you three photographs, ask you if
13 you -- four photographs and ask you if you recognize
14 these?

15 A Yes, I do.

16 Q Do these accurately represent the photos that
17 you took of Minor the day of your exam?

18 A Yes.

19 MS. MOORE: Your Honor, at this time, I offer
20 these four.

21 THE COURT: Any objection?

22 MR. RAST: No objection.

23 THE COURT: Mark those in evidence, please,
24 ma'am.

25 (State's Exhibit Numbers 3 through 6,

1 photographs, admitted into evidence.)

2 **THE COURT:** All right. Because of the
3 sensitive nature of those photographs, Exhibits 3
4 through 6 will be sealed after the trial with the
5 clerk.

6 **THE CLERK:** Yes, sir.

7 **THE COURT:** All right. Go ahead.

8 BY MS. MOORE:

9 **Q** What are those photographs?

10 **A** These photographs are of Minor
11 vaginal area. This right here is the hymen. This
12 right here is what we call the orifice, the opening
13 of the vagina.

14 This right here with me retracting, these are
15 my fingers, I retracted her labia majora to open up
16 this area. If you notice right here, it's very red
17 here, okay. It's right here at the labia majora.
18 It's on either side. Inside that is the redness.
19 And it portrays -- I retracted a little bit further
20 on this side. Because of the tenderness and
21 everything, I didn't want to retract really far so I
22 did just a little bit on one -- more on one side so
23 it would kind of ease up the other side, and there
24 again, there's the redness. And I think this is the
25 other -- this is the other side right here, the

1 redness.

2 And this right here is the clitoral hood.
3 Underneath that you're going to find the clitoris
4 and then the urethra and then you will see the
5 hymen. And I just opened that up and you can see
6 redness.

7 **Q** In your opinion, Ms. Baker, can you tell us
8 whether or not that type of injury or trauma is
9 consistent with a sexual assault?

10 **A** Yes, it is consistent with a sexual assault.

11 **Q** And why do you form that opinion?

12 **A** Because there's -- in a prepubescent child,
13 there's no estrogen. Estrogen is the hormone that
14 releases the lubricant in order that when you do rub
15 in that area, there's lubricant that is excreted
16 through the vagina. It makes it nice and slippery
17 and that's what -- the nature of the beast, that's
18 how you get lubricated, that's how the penis goes in
19 easily.

20 Now, with a prepubescent child, there is no
21 estrogen there, so what happens with no estrogen, it
22 is very tender. If you notice, like, if you -- when
23 you start wiping a child, a baby, and there's -- you
24 need to clean that area, they kind of squirm a
25 little bit, the reason why they're squirming is

1 because it is tender because there's no estrogen
2 there. The same with a ten-year-old, if you go in
3 and you rub that area, it's tender. They don't like
4 to be touched there.

5 **Q** So, in your opinion, how did such an injury
6 occur as a result of sexual abuse?

7 **A** Some type of friction, rubbing back and forth
8 in that area would cause some type of irritation and
9 redness.

10 **Q** In your opinion, could this have been caused by
11 a urinary tract infection or some other sort of
12 infection?

13 **A** It could if she were diagnosed with a urinary
14 tract infection, but she wasn't, so, therefore, I
15 would have to conclude that it was more -- it was --
16 in my opinion, it was more of the rubbing friction.
17 And with that rubbing friction, when she urinated,
18 it became irritated and that's what made her hurt
19 when she peed.

20 **Q** So just general wiping would not cause those
21 injuries in a prepubescent child?

22 **A** No, because you're looking at it being -- a
23 child is not going to wipe that area because it is
24 tender. They will pat it, but they will not wipe it
25 because of the area not being estrogenized.

1 **Q** And so your -- in your medical opinion, your
2 diagnosis for Minor was what?

3 **A** Sexual assault from her history and from the
4 injuries.

5 **MS. MOORE:** Thank you. That's all I have.

6 **THE COURT:** Have a seat back up here, please,
7 ma'am.

8 (Witness resumes the witness stand.)

9 **THE COURT:** Cross-examination.

10 **MR. RAST:** May it please the Court.

11 **THE COURT:** Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. RAST:

14 **Q** How often would this area have to be rubbed in
15 order for it to be red?

16 **A** It would have to be a pretty forceful type rub,
17 irritation, friction.

18 **Q** Pretty forceful, something that would hurt
19 her --

20 **A** Well, you've got to realize that that area --
21 if you continued to rub it, you wouldn't have to
22 have the forcefulness of it, but if it were just
23 like a one instance, yes, it would have to be
24 forceful, it's just according.

25 **Q** Forceful mean painful for a ten-year-old?

1 **A** Yes, sir.

2 **Q** Would probably holler out if it was rubbed that
3 hard?

4 **A** Not so much holler out, but say that it hurt.

5 **Q** Would a mild insert -- would you have to insert
6 something inside the vagina area to make it red like
7 that or could just touching the outside do it?

8 **A** Touching the outside would do it.

9 **Q** So it would not have to be any insertion?

10 **A** Not necessarily. The redness was on the labia
11 majora close to the hymenal tissue.

12 **Q** Let me ask you this. Suppose the little girl
13 was wearing blue jeans without panties and they was
14 rubbing, would that cause a redness?

15 **A** No, sir.

16 **Q** It would not?

17 **A** No, sir. And the reason why is because when
18 you look at the mons pubis, it's like this
19 (indicating). You actually have to separate it in
20 order to get to that area.

21 **Q** What about self masturbation?

22 **A** With a female, masturbation -- can I go to the
23 picture, please?

24 **Q** Sure.

25 **A** (Witness leaves the witness stand.)

1 Remember when I talked to you about the
2 clitoral hood? This right here is the vaginal
3 orifice. You have the urethra here and then you
4 have the clitoral hood here.

5 The clitoris is the orgasmic body part for the
6 female. So it's not down here, it's up here. So a
7 female who would be masturbating would be here and
8 not here because this, remember, is tender. She's
9 not going to touch that. She will touch this.

10 **Q** If she was looking for an orgasm?

11 **A** If she's looking for an orgasm, it's going to
12 be here.

13 **Q** If you're ten years old, are you looking for an
14 orgasm or you're experimenting?

15 **A** Either way. You can -- as a ten-year-old
16 female, yes, you can have orgasms.

17 **Q** You can just be experimenting, too?

18 **A** You can be experimenting, but you're not going
19 to experiment down here because, remember, that's
20 tender. There's no estrogen there. It's going to
21 be here.

22 (Witness resumes the witness stand.)

23 **Q** Now, you filled out a form after your
24 investigation; is that correct?

25 **A** Yes, sir.

1 **Q** And you've got over here, History provided,
2 penetration of vagina area by, and you've got
3 listed, Penis, finger and object. Do you recall
4 that?

5 **A** Yes, sir.

6 **Q** And you've got, Penetration of vagina by penis,
7 you've got no?

8 **A** Yes, sir.

9 **Q** Finger, you've got attempted?

10 **A** Yes, sir.

11 **Q** Object, you've got no?

12 **A** Yes, sir.

13 **Q** So that means no penetration by the finger
14 either?

15 **A** Into the vagina.

16 **Q** Right.

17 **A** The vagina is not part of the labia minora and
18 the labia majora.

19 **Q** Penetration of the anus, you've got no for
20 everything. There wasn't any question about that,
21 was there?

22 **A** Yes, sir.

23 **Q** You've got the general physical examination.
24 Have you got that report in front of you?

25 **A** Yes, sir.

1 Q Describe general demeanor, you've got she was
2 quiet?

3 A Yes, sir.

4 Q Not fearful, not tremble, not anxious, not
5 controlled, not anger, not sobbing, tense?

6 A Yes, sir.

7 Q Tense probably because you were examining her
8 down there, right?

9 A No. This was during -- prior to that exam.
10 This was when she first came in and I observed her
11 demeanor at that time.

12 Q Response to questions, you got briefly,
13 reluctantly. You checked readily?

14 A Yes, sir.

15 Q She readily responded?

16 A Yes, sir.

17 Q That's a little unusual in a sexual abuse
18 victim, isn't it?

19 A No, sir.

20 Q Aren't they a little hesitant most of the time
21 to talk about --

22 A No, sir, not when -- that's where our training
23 comes in. We are able to communicate with the
24 patient and help them to relax and help them to
25 understand exactly what's going to happen, the

1 questions that we're going to present to them so
2 that they will readily open up in order to give an
3 objective, truthful history of what actually
4 happened.

5 Q Right below that, you've got assessments,
6 HEENT. What is that?

7 A That's head, eyes, ears, nose, throat.

8 Q Do what?

9 A Head, eyes, ears, nose, throat.

10 Q And you examined that, neck, chest. Did you
11 find anything unusual there?

12 A No, sir, I did not.

13 Q Then on the next page, any actual forensic
14 record. You've checked no findings?

15 A That's on the body, on the body surface. We
16 have, on the next page, that's where we go into the
17 genital examination. There were no body findings.

18 Q And on the next page, the only thing you found,
19 was there any stretching?

20 A Sir?

21 Q Any stretching of the vagina area or any
22 private parts?

23 A You cannot conclude that through an exam. It's
24 like saying is she a virgin or not a virgin. You
25 cannot conclude that.

1 **Q** Did you find any evidence that there had been
2 any stretching?

3 **A** That's basically what I told you. You cannot
4 testify to that because what happens, a hymen is
5 like a thick rubber band. It stretches and goes
6 back.

7 Now, if there was lacerations to where -- and
8 it would be very painful. Now, that's when she
9 would cry out if he literally went into the vaginal
10 area through the hole, the opening, the orifice, the
11 os, whatever you want to call it. He tried to
12 penetrate that area. That's the reason why, on the
13 previous part, I said that he attempted to penetrate
14 the vagina, the orifice, but he attempted and was
15 not able to because she said it hurt and she ran
16 away.

17 **Q** Basically, you're basing your findings on what
18 she told you?

19 **A** Between that and the redness in that area.

20 **Q** Suppose she had not told you anything, you had
21 just examined her?

22 **A** Then I would have to still conclude, due to the
23 redness and my background in the medical field of
24 sexual assaults in the pediatric area, that redness
25 usually is not there.

1 **Q** Usually, but there are other reasons it can be
2 there; is that correct?

3 **A** If you have a urinary tract infection and it
4 gets infected.

5 **Q** Anything else other than just a urinary tract
6 infection?

7 **A** If there is feces on the area would irritate it
8 also, but you're still looking at this area here
9 being closed, it would be very difficult to get it
10 there.

11 **Q** But it still can happen?

12 **A** It can.

13 **Q** An attempt to stick a finger in there once
14 every two weeks would not cause it to be red, would
15 it?

16 **A** Yes, it would.

17 **Q** It would last that long?

18 **A** It can, yes, because you're looking at a
19 foreign body creating some type of friction,
20 possibly, you're looking at the fingers and the
21 mouth and the fingernails having a lot of bacteria,
22 it could excoriate that area and leave it excoriated
23 or red for some time. And it's an -- from what
24 she -- from this history, this had been going on for
25 a year.

1 **Q** Like I said, you're basing most of it on what
2 she has said?

3 **A** You have to go by the history and by your
4 physical findings and that's with any sexual assault
5 case.

6 **Q** You're no longer working for Palmetto Health?

7 **A** Not at this time. They're trying to create a
8 sexual assault program in Newberry, which I live in
9 Newberry, and then I will pick back up with the
10 sexual assaults.

11 **Q** Is that why you changed jobs?

12 **A** No, sir. I changed jobs so that I could work
13 closer to home. I wanted to get into management and
14 this management position came open.

15 **Q** When did you leave Palmetto Health?

16 **A** I left Palmetto Health in 2010.

17 **MR. RAST:** Thank you.

18 I have nothing further, Judge.

19 **THE COURT:** Redirect.

20 **MS. MOORE:** Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. MOORE:

23 **Q** Ms. Baker, have there been -- have you done
24 examinations on patients who are adamant that they
25 were sexually assaulted, but there were no physical

1 findings?

2 **A** Yes.

3 **Q** But, in this case, you obtained the history and
4 the physical findings were what?

5 **A** Were consistent with her story and with the
6 history and my knowledge, background of some type of
7 physical injury or trauma to that area.

8 **Q** And your opinion how these injuries occurred
9 was?

10 **A** Was from some type of frictional rub in the
11 labia majora area.

12 **Q** Your report would reflect those findings,
13 correct?

14 **A** Yes.

15 **MS. MOORE:** That's all I have Your Honor.

16 **THE COURT:** Recross.

17 **MR. RAST:** Nothing else, Judge.

18 **THE COURT:** Thank you, ma'am. You may step
19 down.

20 **THE WITNESS:** Thank you, sir.

21 **THE COURT:** All right. Ladies and gentlemen, I
22 know you've been out of the courtroom several times,
23 but we have not, so we're going to take a 15 minute
24 break. Don't discuss the case. I'll get back to
25 you as soon as I can. Thank you.

1 (The jury retires to the jury room.)

2 **THE COURT:** Where are we with the witnesses?

3 **MS. MOORE:** Your Honor, this is where we're
4 going to break for the day. Our next witness isn't
5 available until 9:00 in the morning.

6 **THE COURT:** Is that the last witness that you
7 anticipate? Are you going to call the child back
8 again?

9 **MS. MOORE:** I may.

10 **THE COURT:** Other than that, those are the only
11 witnesses you expect?

12 **MS. MOORE:** Yes, sir.

13 **THE COURT:** All right. So, Mr. Rast, we talked
14 about this on Friday. You all said something about
15 taking out of order, but that's not normally done.
16 Do you want to just break?

17 **MR. RAST:** I do not want to do that, Judge.

18 **THE COURT:** You just want to break for the day,
19 right?

20 **MR. RAST:** Right. I've got my witness
21 scheduled for 10:30 tomorrow.

22 **THE COURT:** All right. Well, let's go ahead
23 and take a break and then I'll get the jury in and
24 send them home. Thank you.

25 (Brief Recess.)

1 **THE COURT:** All right. No change in the
2 schedule? The schedule's just like y'all told me
3 before the break?

4 **MS. MOORE:** Yes, sir.

5 **THE COURT:** All right. Bring them in.
6 9:30 in the morning?

7 **MS. MOORE:** Yes, sir.

8 (The jury returns to the courtroom.)

9 **THE COURT:** All right. Ladies and gentlemen, I
10 told you that we may have a short day on Tuesday and
11 it's going to be shorter than I thought with you
12 folks. When we took the break, I learned that the
13 witnesses that we had so far went a little bit
14 faster than anybody expected. And the next witness,
15 I knew before we started the trial, was unavailable
16 until Wednesday. And for a valid reason, they
17 cannot be here.

18 So we've reached a stopping point for the day.
19 I'm told that we can resume at 9:30 in the morning.
20 And we'll probably -- it's possible you'll get the
21 case tomorrow, but more likely it will be Thursday,
22 okay. That's the way it looks right now.

23 I hope you have a pleasant remainder of the
24 afternoon and evening and I need you here at 9:30.
25 Don't discuss the case. Remember those admonitions.

1 And y'all know I've run out of alternates, so I need
2 to make sure you're all here if you can possibly be.
3 Thank you.

4 (The jury was excused for the day.)

5 **THE COURT:** All right. Folks, be careful as
6 you exit that you'don't have any contact with the
7 jurors. It's best to give them a few minutes to
8 clear out. And I look to see y'all at 9:30 in the
9 morning. Thank you..

10 (The proceedings were concluded for March 1,
11 2011.)

12 (The following proceedings were held on
13 March 2, 2011.)

14 **THE COURT:** State ready for the jury.

15 **MS. MOORE:** Yes, sir, Your Honor.

16 **THE COURT:** Defense ready?

17 **MR. RAST:** Defense is ready, Judge.

18 **THE COURT:** Bring in the jury, please.

19 (The jury enters the courtroom at 9:50 a.m.)

20 **THE COURT:** Good morning, ladies and gentlemen.
21 We'll continue with the State's case.

22 Call your next witness, please.

23 **MS. MOORE:** Thank you, Your Honor. The State
24 calls Johnny Hutto.

25 **THE COURT:** Come around please, sir.

1 JOHNNY HUTTO,

2 having been duly sworn, testified as follows:

3 **THE CLERK:** Please be seated. State your full
4 name, spell your last name.

5 **THE WITNESS:** Johnny Hutto, H-u-t-t-o.

6 DIRECT EXAMINATION

7 BY MS. MOORE:

8 **Q** Good morning, Mr. Hutto. How are you?

9 **A** Running late.

10 **Q** Mr. Hutto, you know the defendant, Michael
11 Elders?

12 **A** Yes, ma'am.

13 **Q** How do you know him?

14 **A** He's my cousin.

15 **Q** How long have you known him?

16 **A** Pretty much all my life.

17 **Q** And do you know the victim in this case, Minor
18 ?

19 **A** Yes, ma'am, I do.

20 **Q** How do you know Minor ?

21 **A** Seeing her over at Mike's.

22 **Q** Do you know her mother, Shelly?

23 **A** Yes, ma'am, I do.

24 **Q** How long have you known Shelly?

25 **A** Pretty much since her and Mike were married.

1 **Q** Where did Michael Elders live?

2 **A** .

3 **Q** And how long has he lived there?

4 **A** All of his life.

5 **Q** Who lives there with him?

6 **A** His mother, his two brothers.

7 **Q** But he's lived there all his life?

8 **A** Yes, ma'am.

9 **Q** Did you ever stay at that home on

10

11 **A** Yes, ma'am, I stayed there off and on.

12 **Q** When is the last time you stayed there?

13 **A** A couple months ago.

14 **THE COURT:** I'm having a hard time hearing you.

15 **THE WITNESS:** I'm sorry.

16 **THE COURT:** You said a couple months ago?

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Go ahead.

19 BY MS. MOORE:

20 **Q** And just to go through your rap sheet, you've
21 spent some time in prison, right?

22 **A** Yes, ma'am, 13 and a half years altogether.

23 **Q** You've been convicted of obstructing a
24 railroad, armed robbery, housebreaking?

25 **A** Car theft, burglary.

1 Q But the last time you stayed there was four
2 months ago, right?

3 A Yes, ma'am.

4 Q And were you staying there or were you at the
5 home the weekend of June 27th, 2009?

6 A Yes, ma'am.

7 Q What were you doing that day?

8 A Well, I just came in from work and was drinking
9 a couple beers with a friend of mine.

10 Q Do you remember about what time that was?

11 A I guess about 5:30 or 6:00.

12 Q Who was there when you were there?

13 A Well, to be honest with you, I don't know who
14 all was, you know, in the house. I know the
15 neighbors were outside and some of them were over in
16 the yard.

17 Q Do you remember Christy Kirkland?

18 A Yes, ma'am, I know Christy Kirkland.

19 Q Was she there?

20 A I want to say yes, but I'm not positive.

21 Q Was Ray Elders there?

22 A I think he was in the house.

23 Q Was the defendant, Michael Elders, there?

24 A Not at the time I got there, no, ma'am.

25 Q After you got there, at some point, did he come

1 to the house?

2 A Yes, ma'am.

3 Q How did he come to the house?

4 A He pulled up in his truck.

5 Q Was anybody with him in his truck?

6 A Yes, ma'am. Ms. Minor was sitting on
7 his lap.

8 Q And what, if anything, did you say to the
9 defendant when he pulled up?

10 A It just caught me wrong the way he pulled up.
11 I told him he was a sick fucker and I was going to
12 beat his ass.

13 Q For what? Why did you say that?

14 A Because of the fact that young'un was riding
15 around on his lap.

16 Q But you never saw him put his hands down her
17 pants?

18 A No, ma'am.

19 Q Did you ever see her on the porch?

20 A No, ma'am. I mean, I've seen her on the porch,
21 but I've never seen anything going on.

22 Q But you weren't there all that day; is that
23 correct?

24 A No, ma'am.

25 Q It could be possible that something may have

1 happened, you just didn't see it?

2 **MR. RAST:** Objection, Your Honor.

3 **THE COURT:** Yes, sir.

4 **MR. RAST:** Calls for conclusion and
5 speculation.

6 **THE COURT:** It calls for speculation. It's
7 sustained.

8 **MS. MOORE:** Thank you, Your Honor.

9 BY MS. MOORE:

10 **Q** How often would Minor stay at the house with
11 her father?

12 **A** Sometimes she'd be there all week, sometimes we
13 wouldn't see her for two weeks.

14 **Q** Where would she sleep?

15 **A** Her and Mike and Aunt Betty slept in the same
16 room.

17 **Q** What were the sleeping arrangements in that
18 room?

19 **A** Minor and Mike slept together and Aunt Betty
20 slept in another bed.

21 **Q** Did you ever see anything else inappropriate
22 going on?

23 **A** No, ma'am.

24 **MS. MOORE:** That's all I have, Your Honor.

25 **THE COURT:** Thank you.

1 Cross.

2 MR. RAST: May it please the Court.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MR. RAST:

6 Q Johnny, the Solicitor's office had you
7 subpoenaed for earlier this week, didn't they?

8 A Yes, sir.

9 Q Did they tell you to go home, they didn't want
10 you?

11 A Yes, sir.

12 Q I also had you subpoenaed, though?

13 A Yes, sir.

14 Q That's why they called you this morning because
15 I told you to be here this morning?

16 A You told me to be here tomorrow morning.

17 Q Yeah, but then you got the message to be here
18 this morning?

19 A Yes, sir.

20 Q You have never seen Mike put his hands down
21 Minor pants, have you?

22 A No, sir, I have not.

23 Q Have you ever seen him do anything
24 inappropriate other than her sitting on his lap
25 while he's driving?

1 **A** No, sir, I have not.

2 **Q** How did **Minor** act around Mike? Was she shy of
3 him or were they close or what?

4 **A** Well, it seemed to me they were pretty close,
5 you know.

6 **Q** She never did act like she was afraid of him in
7 any manner, did she?

8 **A** Not to me, no, sir.

9 **Q** Did you also see her brother over at Mike's
10 house on occasions?

11 **A** Yes, sir.

12 **Q** He'd come there often?

13 **A** Well, he didn't come as much as **Minor** , but,
14 yes, he did come.

15 **Q** He did come a good bit, didn't he?

16 **A** Yes, sir.

17 **Q** Have you seen Mike around other children in the
18 neighborhood and family?

19 **A** I've seen Mike blow the horn at teenage girls
20 up the road and their fathers get pretty well pissed
21 at him, come down and threaten to beat his ass.

22 **Q** Have you seen any other kids around, his nieces
23 or anything, with him in his house?

24 **A** Yes, sir.

25 **Q** Has he ever touched them wrong or anything?

1 **A** I've never seen him touch any young girl.

2 **Q** All right. You never told anyone that he had?

3 **A** No, sir, I have not.

4 **Q** You gave a statement to the Cayce Police
5 Department, did you not?

6 **A** Yes, sir, I did.

7 **Q** Do you have a copy of it?

8 **A** No, I was never given a copy.

9 **MR. RAST:** If Your Honor pleases, I believe the
10 Solicitor has the original statement. I would
11 request that they produce it and let's put it in
12 evidence.

13 **THE WITNESS:** I can tell you what I put on that
14 statement.

15 **MR. RAST:** Just a minute.

16 (Pause.)

17 BY MR. RAST:

18 **Q** Look at that and tell me if that is the
19 statement that you gave to the Cayce Police
20 Department.

21 **A** Yes, sir, it is.

22 **Q** Is that true what you said in that statement?

23 **A** Yes, sir, it is.

24 **MR. RAST:** Your Honor pleases, I offer this
25 into evidence as Defendant's Exhibit Number 2, I

1 believe.

2 MS. MOORE: No objection, Your Honor.

3 THE COURT: Mark it in evidence, please.

4 (Defendant's Exhibit Number 2, statement of
5 Johnny Hutto, admitted into evidence.)

6 BY MR. RAST:

7 Q Johnny, could you read this statement you gave
8 to the jury, please?

9 A Yes, sir, I can. It says, On Saturday two
10 weeks ago, I saw Mike pull up in the --

11 Q First of all, what was the date of that
12 statement that you gave? When was it?

13 A 15th of July.

14 Q Of what year?

15 A 2009.

16 Q July the 15th of 2009, okay. Read the
17 statement, please.

18 A It says, On Saturday two weeks ago, I saw Mike
19 pull up in the yard with his daughter on his lap.
20 At this time, I told him that he was a sick fucker
21 and that I should -- that it wasn't right. Mike
22 stated that he was out teaching his daughter to
23 drive and I just left it at that.

24 Q Did they ask you a question?

25 A Yes, sir, they did.

1 **Q** What was the question?

2 **A** Have you ever seen Mike Elders put his hands or
3 fingers into his daughter's pants?

4 **Q** What was your answer?

5 **A** No, sir.

6 **Q** Is that written down there, too, your answer?

7 **A** Yes, sir, and initialled.

8 **Q** They asked you another question?

9 **A** Yes, sir.

10 **Q** What?

11 **A** Have you ever seen Mike Elders, something, his
12 daughter in any manner?

13 **Q** And your answer?

14 **A** Just that I saw him sitting on -- her sitting
15 on his lap.

16 **Q** That's all?

17 **A** Yes, sir.

18 **MR. RAST:** I have nothing further, Judge.

19 **THE COURT:** Redirect.

20 REDIRECT EXAMINATION

21 BY MS. MOORE:

22 **Q** John, do you recall who you gave that statement
23 to?

24 **A** Some detective from the City of Cayce.

25 **Q** Was it this young lady here?

1 **A** No, sir, it was two gentlemen -- no, ma'am, I'm
2 sorry.

3 **Q** Michael's son, child 1 .

4 **A** Yes, ma'am.

5 **Q** He was older; is that right?

6 **A** Yes, ma'am.

7 **Q** Did you ever see Michael teaching him how to
8 drive?

9 **A** No, ma'am.

10 **Q** Did you ever see him on his lap?

11 **A** No, ma'am.

12 **MS. MOORE:** That's all I have.

13 **THE COURT:** Recross.

14 **MR. RAST:** Nothing further, Judge.

15 **THE COURT:** Thank you, sir. You may step down.

16 Call your next witness.

17 **MS. MOORE:** The State calls Laurie Caldwell.

18 LAURIE CALDWELL,

19 having been duly sworn, testified as follows:

20 **THE CLERK:** Please be seated. State your full
21 name, spell your last name.

22 **THE WITNESS:** My name is Laurie Caldwell,
23 C-a-l-d-w-e-l-l.

24 *****

25 *****

1 VOIR DIRE

2 BY MS. MOORE:

3 Q Ms. Caldwell, are you currently employed?

4 A No, I'm unemployed.

5 Q As of when?

6 A As of Monday at five o'clock.

7 Q Where were you currently employed?

8 A I was employed with the South Carolina Law
9 Enforcement Division better known as SLED.

10 Q And how many years were you with SLED?

11 A Twenty-five.

12 Q Can you give the jury your educational
13 background and training?

14 A Yes. I graduated from the University of South
15 Carolina first with an associates in criminal
16 justice and then two more years, finished up with a
17 bachelors degree in interdisciplinary studies. Then
18 in 1986, I graduated with my masters in social work.
19 From there, I began employment at SLED and went --
20 started going into several different trainings in
21 the area of child abuse, child sexual abuse.

22 Q And have you attended courses, seminars and
23 other trainings in the field of forensic
24 interviewing as well?

25 A Yes, I have. Out of state, in state like

1 through the Federal Law Enforcement Training Center,
2 which is in Georgia, the University of Louisville,
3 their police institute, and our South Carolina
4 Criminal Justice Academy. And the most prevalent,
5 as far as the field of child forensic interviewing,
6 would be through the Children's Law Office at USC,
7 and that I attended in, I believe it was 2001.

8 Q Are you also a licensed social worker?

9 A Yes. As of yesterday afternoon, I'm a licensed
10 social worker.

11 Q And can you estimate the number of forensic
12 interviews that you've done over the years?

13 A Over the course of the years, probably over a
14 thousand.

15 Q Have you ever testified in courts of record in
16 South Carolina?

17 A Yes, I have.

18 Q Have you been qualified as an expert in the
19 field of forensic interviewing and child abuse
20 assessment?

21 A Yes.

22 Q Approximately how many times?

23 A Probably close to ten.

24 MS. MOORE: Your Honor, at this time, we'd
25 offer Ms. Caldwell as an expert in the field of

1 forensic interviewing and child abuse assessment.

2 **THE COURT:** Any voir dire?

3 **MR. RAST:** Yes, Your Honor, if you please.

4 **THE COURT:** Yes.

5 VOIR DIRE

6 BY MR. RAST:

7 **Q** You were licensed as a social worker yesterday?

8 **A** Yes, sir, I took my licensing exam.

9 **Q** All right. Do you have any kind of certificate
10 as a forensic interviewer?

11 **A** I have certificates, but there is no such thing
12 as a certification. There has been some national
13 movement about that, but there is nothing to present
14 as a certification.

15 **Q** So you have never been certified as a forensic
16 expert?

17 **A** There's no such thing as a certification in
18 child forensic interviewing.

19 **Q** Such like there's no such thing as an expert
20 attorney; is that right?

21 **A** I guess so.

22 **Q** What qualifies you as a forensic expert in
23 sexual abuse in your opinion?

24 **A** In my opinion? Through my training, through
25 the training that I have provided across the nation

1 and most significantly, the amount of interviews I
2 have conducted that have stood up in courts across
3 the State of South Carolina.

4 **Q** And that's been about ten?

5 **A** My interviews? No, sir, there's been --

6 **Q** No, that stood up in court.

7 **A** I'm not following your question.

8 **Q** I think you said earlier you had been qualified
9 about ten times in court?

10 **A** Oh, yes, sir.

11 **Q** So you're talking --

12 **A** But I was also looking -- I thought you meant
13 my experience.

14 **Q** No. Just the times you were qualified is about
15 ten?

16 **A** Approximately ten.

17 **Q** Was that without objection?

18 **A** Without objection.

19 **Q** All right. If I object, it'll be the first
20 time anybody's ever objected?

21 **A** Yes, sir.

22 **MR. RAST:** Judge, I object. She has
23 experience, but that does not mean she is an expert.
24 There is nothing in her testimony to indicate that
25 she would have a better opinion than somebody else.

1 (Pause.)

2 MS. MOORE: Your Honor, may I be heard?

3 THE COURT: You can be heard. The field has
4 been recognized by the Supreme Court. I just don't
5 know if you've asked her enough questions to allow
6 me to make a ruling.

7 MS. MOORE: As far as a forensic interview or
8 child abuse assessment?

9 THE COURT: I think there has to be -- I mean,
10 I can't tell you how to practice law.

11 MS. MOORE: Yes, sir.

12 THE COURT: And I can't give advisory rulings.
13 An expert has to be able to explain what information
14 and ability they have to provide assistance to the
15 jury that would not be in the normal range of
16 knowledge of a juror and I don't think I've heard
17 that.

18 RE-VOIR DIRE

19 BY MS. MOORE:

20 Q You've done over 11 -- you've done over a
21 thousand forensic interviews with children?

22 A Yes.

23 Q How many years have you dealt with children at
24 SLED?

25 A In that capacity, 23 years.

1 **Q** So, in those 23 years, can you -- how many
2 cases of child abuse have you investigated?

3 **A** I really -- I have no idea, but I did it across
4 the State of South Carolina.

5 **Q** And ten times you've been qualified as an
6 expert in child abuse assessment?

7 **A** Approximately, yes.

8 **Q** Do you have any training in the field of child
9 abuse assessment?

10 **A** Yes.

11 **Q** Can you tell us about that?

12 **A** Beginning back in 1986, I started my training
13 in child abuse. Some of the training was provided
14 through the Federal Law Enforcement Training Center,
15 which is located in Brunswick, Georgia, is -- at the
16 Federal Law Enforcement Training Center called -- in
17 Glynco. It's right outside of Brunswick. I've also
18 attended classes through the Federal Bureau of
19 Investigation, or the FBI, on child abuse
20 investigations, child abuse investigations at the
21 South Carolina Criminal Justice Academy.

22 I have attended continued education as much as
23 I could possibly get in the field of forensic
24 interviewing. The one that I have kept up with in
25 the past few years is when I went through what we

1 call -- at that time, it was called Finding Words
2 South Carolina and that is a forensic interview
3 protocol that is flexible. I don't particularly
4 care for the word protocol, but it's very flexible.
5 And -- first of all, in the interview -- forensic
6 interview is designed for children for them to tell
7 their story on their level.

8 The Children's Law Office and the Assessment
9 Resource Center in Richland County, another -- it's
10 a child advocacy center. They sponsor this training
11 and it was a week long, very intense training.
12 Since then, I have also attended several of their
13 advanced forensic interviewing courses.

14 They have changed the name since I've been
15 through. It was called, like I said, Finding Words.
16 Now, it's called Child First. This is a protocol
17 that has stood up across the nation in various
18 courts. Nineteen states have adopted this protocol,
19 as well as Japan is pursuing it, the country of
20 Colombia is pursuing it. There might be one other
21 country. But they offer continuing education
22 yearly.

23 I have been to Mobile, Alabama; Atlantic City;
24 Savannah, Georgia, to continue the training in the
25 field of child forensic interview trying to stay up

1 on the different changes and legislative concerns or
2 pros for it.

3 **MS. MOORE:** Your Honor, again, I would offer
4 her as an expert in the field of forensic
5 interviewing and child abuse assessment.

6 **MR. RAST:** Your Honor please, I still object.
7 Interviewing a thousand people does not make you an
8 expert in that field, going to classes does not make
9 you an expert in that field. There are a lot of
10 football players that go to class that don't pass.
11 I mean, we have nothing here to show that she should
12 be qualified as an expert.

13 **MS. MOORE:** Your Honor, I believe that the
14 expert is -- can be ruled as an expert by their
15 training, their experience. And State v. Schumpert
16 says, Defects in the amount and quality of education
17 or experience go to the weight of the expert's
18 testimony and not its admissibility.

19 Again, we would offer her as an expert in the
20 field of forensic interviewing and child abuse
21 assessment.

22 **THE COURT:** Ladies and gentlemen of the jury,
23 please step in the jury room. Don't discuss the
24 case.

25 (The jury retires to the jury room.)

1 **THE COURT:** What opinions are you intending to
2 elicit from this witness? I don't know what her
3 role is in this case.

4 **MS. MOORE:** She is just going to talk in
5 general terms about delayed disclosure, Your Honor,
6 and the process of disclosure. The woman who
7 actually did the forensic interview was admitted as
8 an expert without objection.

9 **THE COURT:** Right, I knew what she was --

10 **MS. MOORE:** With less experience than Ms.
11 Caldwell.

12 **THE COURT:** I'm sorry? I was talking over you.

13 **MS. MOORE:** I'm sorry. With less experience
14 than Ms. Caldwell.

15 **THE COURT:** Yeah, but she did the interview. I
16 don't know what this lady is going to talk about,
17 that was my whole point. Nobody's told me what it
18 is she's sitting on the stand for.

19 **MS. MOORE:** She's not met with the victim.
20 She's going to talk about -- she's going to educate
21 the jury on delayed disclosure, child abuse
22 accommodation syndrome, how a child -- why it is
23 children don't tell, how they minimize, how they
24 give tentative disclosures.

25 **THE COURT:** Here's the issue. Again, I'm a

1 little bit uncomfortable because it's not a proper
2 role for me to sit up here and tell you what I think
3 you have to offer, but there's a prong that I have
4 not heard and that is whether the proffered
5 testimony will assist the trier of fact.

6 I don't know what it is she's going to talk
7 about. You know what it is she's going to talk
8 about, but nobody else --

9 **MS. MOORE:** We can go through her testimony if
10 you'd like, Your Honor. She's just going to educate
11 the jury on why it is children do not disclose.
12 It's something I've done numerous -- every case,
13 every CSC case I've had, I've usually used an
14 expert.

15 **THE COURT:** You're missing my point. Give me a
16 break, maybe I can communicate it clearly. You know
17 what you want to do, you've got to let the rest of
18 us in on what you're planning to do.

19 We're at ease.

20 You can step down if you like, but you can't
21 discuss your testimony with anybody.

22 (Brief Recess.)

23 **THE COURT:** Do you want to go through the
24 proffer outside the presence of the jury or do you
25 want to try it again in front of the presence of the

1 jury?

2 **MS. MOORE:** I'd rather do it outside just to
3 make sure that -- I'm sorry, Your Honor. I'm just
4 not -- I'm not...

5 **THE COURT:** Well, you're focused in on whether
6 she has the education and training and experience.

7 **MS. MOORE:** Correct.

8 **THE COURT:** I'm trying to get you to see that
9 is not what I'm focusing on as far as the objection.

10 **MR. RAST:** Your Honor pleases, I'm reluctant
11 for you to help the Solicitor here.

12 **THE COURT:** Well, you don't know how hard I'm
13 up here struggling to be neutral and detached.

14 **MS. MOORE:** Your Honor, is it that you feel
15 that she's not going to testify to the relevancy to
16 the case? If I give her case specific scenarios
17 that she can relate why the child would not do
18 something, is that...

19 (Pause.)

20 **THE COURT:** I'm going to need to take another
21 break, but let me just see if I can answer this
22 question and still maintain my integrity as a
23 neutral and detached trial judge. You have asked
24 this witness questions about her education, training
25 and experience and how many times she's been

1 qualified.

2 MS. MOORE: Yes, sir.

3 THE COURT: That's all you've done.

4 MS. MOORE: I offered her as an expert.

5 THE COURT: You offered her as an expert
6 witness, yes, you did. It's like saying I took a
7 brick laying course, which I did, am I able to...

8 MS. MOORE: Your Honor, Deputy Solicitor Graham
9 is kind enough to tag in with me on this one. If
10 science -- Rule 702, If scientific, technical or
11 otherwise specialized knowledge will assist the
12 trier fact to understand the evidence or to
13 determine a fact in issue, a witness is qualified as
14 an expert by knowledge, skill, experience, training
15 or education, may testify thereto in the form of an
16 opinion or otherwise, at the Court's discretion of
17 course.

18 THE COURT: The quote that I read to y'all
19 right before I walked off the bench is from Haynes
20 Waters Builders case, Fields versus J. Haynes Waters
21 Builders. It's a 2008 case.

22 In determining a witness' qualification as an
23 expert, the trial court should make an inquiry broad
24 in scope. We're not in disagreement there.

25 Specifically, the trial court ought to take

1 into account the factors delineated in the rules of
2 evidence -- I don't disagree with you about the
3 rules of evidence, that's not my problem -- the
4 statutory law -- that's not my problem, can be in a
5 way, but let's just skip over that right now -- and
6 any other source of authority that may be relevant
7 to a purported witness -- expert witness' level of
8 skill or knowledge. And the trial court must
9 determine whether the offered testimony will assist
10 the trier of fact. I don't know that.

11 **MS. MOORE:** Would you like me to start asking
12 the questions that I intend to ask her?

13 **THE COURT:** I got to go. I mean, I don't know
14 what else to do. I'm really trying to be cordial
15 and professional and nice. And I've known both
16 attorneys a long time. You're both imminently
17 qualified attorneys, but I cannot sit up here and
18 tell you what questions to ask. I have to rule on
19 what's brought before me.

20 You've asked her about her education, you've
21 asked her about her training, you've asked her about
22 whether she's been qualified. What you haven't
23 asked her about is what she's going to tell the
24 jury. We're at ease -- how that will assist the
25 jury.

1 (Brief Recess.)

2 THE COURT: Okay. As I understand it, you want
3 to make a proffer outside the presence of the jury;
4 is that correct?

5 MS. MOORE: Yes, sir.

6 THE COURT: All right. You may proceed.

7 MS. MOORE: Thank you, Your Honor.

8 IN CAMERA EXAMINATION

9 BY MS. MOORE:

10 Q Ms. Caldwell, based on your training, education
11 and experience, would your testimony assist this
12 jury in understanding the evidence in this case in
13 your opinion?

14 A Yes.

15 Q In your opinion, does a typical juror
16 understand the concept of delayed disclosure?

17 A No. The majority of individuals not involved
18 in this field assume that children will tell
19 immediately after something happens.

20 Q Based on your education, experience and
21 training, would your opinion testimony assist the
22 jury in understanding the concept of child abuse
23 accommodation syndrome, why children might not tell
24 for years?

25 A Yes.

1 Q Are you familiar with the facts in this case?

2 A No.

3 Q Are you aware that the victim was abused by a
4 family member?

5 A Yes, I do know that much.

6 Q And could you -- based on your experience,
7 education and training, would your testimony assist
8 the jury in understanding why, because of this
9 familial relationship, not disclose?

10 A Yes.

11 Q Are you aware that there was a tentative
12 disclosure in this case?

13 A No, I'm not aware of that. However, that does
14 not surprise me because most disclosures by children
15 are tentative in the beginning.

16 Q And that's based on your education?

17 A Based on the research, my education and my
18 experience.

19 Q And does the typical person understand why
20 children don't disclose everything?

21 A No, most people do not understand that. The
22 only way to -- unless you've gone through the
23 process, understanding the dynamics of child sexual
24 abuse and accomodation syndrome and the delayed
25 disclosure, unless you've studied it or worked it,

1 most people function off of incorrect information or
2 myths.

3 Q But you -- along with your education,
4 experience and training, the specialized knowledge
5 that you possess by these things, would assist the
6 trier of fact in this case?

7 A Yes, I know I can explain that to them.

8 MS. MOORE: Your Honor, that's all I have.

9 THE COURT: Voir dire.

10 IN CAMERA EXAMINATION

11 BY MR. RAST:

12 Q You have not talked to the victim in this case?

13 A No, sir.

14 Q You know absolutely nothing about this case?

15 A No, other than it's a family relationship,
16 that's really all I know.

17 Q Do you know how old the victim was when this
18 allegedly occurred?

19 A No, sir.

20 Q People that have had children know how children
21 react to different situations, do they not?

22 A Under normal circumstances, but not child
23 sexual abuse.

24 Q Oh, child sexual abuse is special?

25 A Yes, sir. As I tell in training, it's not in

1 our parent handbook.

2 **Q** How did you learn about child sexual abuse?

3 **A** Through specialized training through the FBI,
4 the Federal Law Enforcement Training Center, the
5 South Carolina Criminal Justice Academy, the
6 Children's Law Office at USC, my social work,
7 graduate work, my child -- excuse me -- my
8 internship with -- when I was in graduate school, I
9 worked at a residential treatment center and worked
10 directly with victims that had been sexually abused,
11 through numerous workshops, training in state and
12 out of state, plus all the cases I have worked as an
13 officer working with victims and all the child
14 forensic interviews I've conducted.

15 **Q** So, basically, you're going to tell the jury
16 what you've learned in your courses that you took?

17 **A** And from my experience, I can share with them
18 the characteristics of the victim that has
19 experienced or been a victim of child sexual abuse.

20 **Q** All in general terms?

21 **A** Based on my experience and my education and the
22 research, there are typical characteristics that you
23 will find in a victim of child sexual abuse.

24 **Q** In general terms. You have no specifics about
25 this particular case at all?

1 **A** Not about this case, no, sir.

2 **Q** And in some cases, children make up stories
3 later on; is that not true?

4 **A** Yes, that is true.

5 **Q** Not recall them, it's making them up?

6 **A** Correct.

7 **Q** They will exaggerate things?

8 **A** I haven't -- I can't say I've had any that
9 exaggerated. They either can give really graphic
10 details as time passes or how I key in on someone
11 that's not a true victim is that they're very
12 hesitant to -- well, not very hesitant, they cannot
13 explain something they have not experienced.

14 **Q** But they will try to make up something, you
15 have --

16 **A** Without details, yes, sir.

17 **Q** And you don't know what it is in this
18 particular case?

19 **A** No, sir.

20 **Q** And you can't help the jury determine that, can
21 you?

22 **A** I think they can take the information that I
23 can share with them and weigh it with whatever the
24 young lady's testimony was and make their decision
25 from there.

1 **MR. RAST:** Thank you.

2 I have nothing further, Judge.

3 **THE COURT:** Redirect. . .

4 **MS. MOORE:** Nothing, Your Honor.

5 **THE COURT:** All right. Mr. Rast, what's your
6 position?

7 **MR. RAST:** Still have the same objection,
8 Judge.

9 **THE COURT:** Which is?

10 **MR. RAST:** That she does not possess the
11 necessary qualifications to be an expert to render
12 her opinion in this particular field.

13 **THE COURT:** And you're tendering her as an
14 expert in the field of child sexual abuse and what?

15 **MS. MOORE:** Forensic interviewing. I believe
16 it was child abuse assessment.

17 **MR. RAST:** If Your Honor please, I also add
18 we've already had one forensic interviewer qualified
19 to testify in this particular case.

20 **MS. MOORE:** I can limit it, Your Honor, to
21 child abuse assessment.

22 **THE COURT:** Okay. Well, I don't remember any
23 testimony about forensic interviewing from this
24 witness. So you're tendering her as an expert in
25 the field of child abuse assessment?

1 **MS. MOORE:** Yes. But, Your Honor, the -- I
2 think she will be qualified as a forensic
3 interviewer as well, over a thousand interviews.

4 **THE COURT:** All right. I'm going to try one
5 more time. And I apologize to y'all. I know how
6 difficult it is when you're on your feet. Believe
7 me, I understand. I have been there. And I may be
8 completely off base. It may be that I've got
9 something in my head that's just flat wrong.

10 I remember when I practiced law and did social
11 security disability cases, there was one particular
12 administrative law judge in the federal system who
13 would always shout at me when I was trying to
14 propound a hypothetical question. If I live to be
15 150, I will never understand what that judge thought
16 about a hypothetical question that I was missing,
17 but she shouted at me every single time I tried to
18 do it, so I understand the difficulty.

19 As far as this witness' education, training and
20 experience, that's not an issue with me. I find
21 she's qualified in those regards.

22 But just like that recent case that they had
23 where they had this expert imminently qualified in
24 all fields related to automobiles, but then started
25 talking about electromagnetic interference and how

1 cruise controls operated and the Supreme Court
2 reversed it and said they may be imminently
3 qualified in all fields of automotive, but they
4 don't really have any information about this cruise
5 control or any information about electromagnetic
6 interference. Akin to that, there has to be some
7 sort of link between what the expert is going to
8 testify about and some concept that they're
9 communicating to the jury. So the experts generally
10 testify that they have training in the field of X,
11 they're familiar with a theory known as X, it's
12 recognized in the scientific community, those sorts
13 of things.

14 Now, the problem I have with the forensic
15 interviewing is I haven't heard her say she knows
16 one single thing about the forensic interview
17 conducted in this case.

18 **MS. MOORE:** And that's true, Your Honor. She's
19 just going to be given hypotheticals that the jury's
20 already heard from, you know, is it common for a
21 child not to disclose sexual abuse, why isn't it
22 common, does the fact that it's a family member,
23 does that make it more or less common.

24 **THE COURT:** Well, I don't know that she has to
25 be qualified in the field of forensic interviewing

1 to render those opinions or to give that
2 information.

3 **MS. MOORE:** The areas, Your Honor, that I've
4 asked that she be qualified in is the delayed
5 disclosure.

6 BY MS. MOORE:

7 **Q** Do you have training, specific training,
8 education and experience with the concept of delayed
9 disclosure?

10 **A** Yes.

11 **Q** Based on that, your education, experience and
12 training, would that assist the jury in your opinion
13 with this concept?

14 **A** Yes.

15 **Q** Do you have experience, education and training
16 in the -- with child abuse accommodation syndrome?

17 **A** Yes.

18 **Q** And, in your opinion, would that assist the
19 trier of fact in this case understanding these
20 concepts?

21 **A** Yes.

22 **Q** Do you have education, experience --

23 **THE COURT:** You don't need to keep going
24 through those.

25 **MS. MOORE:** Well, I've got, like, five areas

1 that I would ask her to be qualified.

2 **THE COURT:** But, see, those don't help me.
3 You're asking her conclusory questions. You're not
4 asking her what training, what education, what
5 experience, how many courses she's been through that
6 dealt with these various topics.

7 All you're asking her -- I started a while ago
8 to tell y'all I took a brick laying course, I did.
9 I can lay a column. I could show somebody else how
10 to do it. I could tell you what's wrong and what
11 you need to do and how you need to level it, but I'm
12 telling you if I was going to put a column on my
13 house, I wouldn't do it. I'd hire somebody to do
14 it.

15 It's -- the difficulty is the second, what I
16 called, the prong initially way, way back. You've
17 got the one prong that deals with their education,
18 their training, their experience in general terms
19 and then you've got the concepts that they can
20 communicate to the jury that are beyond the jury's
21 normal level of knowledge.

22 I'm ready to rule. You don't have to keep
23 going through that. Mr. Rast can raise an objection
24 as to a specific opinion if one is rendered.

25 I'm going to find this witness qualified as an

1 expert in the field of child abuse assessment and
2 we'll go from there. But now that hasn't been done
3 in the presence of the jury, so if you want to ask
4 questions in the presence of the jury before you
5 tender her again, that's fine. If you want me just
6 to tell the jury that she's been so recognized,
7 that's fine. What do you want me to do?

8 **MS. MOORE:** I think I would just rather her be
9 recognized at this point.

10 **THE COURT:** Okay.

11 **MS. MOORE:** Thank you, Your Honor.

12 **THE COURT:** That's why I was going back to this
13 thing about, like, the car and the cruise control
14 and the electromagnetic interference. It's -- just
15 saying somebody has studied child abuse doesn't
16 really tell me anything except a very, very broad
17 general concept. It doesn't tell me whether they --
18 there are differences between certain types of
19 things.

20 And I concede to you in most every case,
21 there's never an objection to the expert so what's
22 done is exactly what you did, you ask those
23 questions you asked, you tender them as an expert,
24 the other side usually says no objection and then we
25 move on, but they don't have to say no objection, so

1 that's why we had to go through and I've got to try
2 to do my job. I hope I've done it right.

3 I note your exception, Mr. Rast.

4 Bring in the jury.

5 (The jury returns to the courtroom.)

6 **THE COURT:** All right. Ladies and gentlemen,
7 the witness is recognized as an expert in the field
8 of child abuse assessment.

9 You may continue, Solicitor.

10 **MS. MOORE:** Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. MOORE:

13 **Q** Ms. Caldwell, are you familiar with the term
14 delayed disclosure?

15 **A** Yes, I am.

16 **Q** And what specific education and training have
17 you had in this area?

18 **A** Specifically through the Children's Law Office,
19 through the course of Child First, forensic
20 interviewing, as well as all the advanced courses
21 that I've taken through the Children's Law Office
22 and the National Child Advocacy Center.

23 **Q** And can you -- based on your education,
24 experience and training, is it your opinion that a
25 typical person understands the concept of delayed

1 disclosure?

2 **A** No. Typically, there's the myth among
3 individuals that are not in the field of child
4 welfare to think that once a child has been abused,
5 that they tell immediately, that is a total myth.
6 Most children tell months, sometimes years,
7 sometimes never. As an adult, they never tell. The
8 majority of kids do not tell right away.

9 **Q** And what types of factors would influence that
10 in your opinion?

11 **A** In my opinion, the factors are if you think
12 about when you were growing up, what were your
13 parents telling you? Obey them, obey your teachers,
14 anybody in an authoritarian position or that you
15 just absolutely respect all adults. And we give
16 children permission, if you think about it, to walk
17 away from strangers, don't talk to strangers, but we
18 don't give them permission to protect themselves
19 from people they know, love and trust, people in
20 their family or a close friend to the family.

21 **Q** And are you familiar also with the concept of
22 process of disclosure?

23 **A** Yes.

24 **Q** And what specific education and training do you
25 have in that area?

1 **A** Again, as far as the process -- I had the
2 experience long before I ever heard of the process
3 of disclosure, watching child -- I mean,
4 interviewing all the children that I have, it was
5 obvious that there was a process, but through the
6 Children's Law Office at USC and the National Child
7 Advocacy Center, I've attended numerous trainings on
8 the process of disclosure just like the types of
9 disclosure.

10 **Q** And what are the types of disclosure?

11 **A** The types of disclosure are accidental and
12 purposeful. Accidental, which is the majority, is
13 when the child never intended to tell and they -- it
14 accidentally came out. Some of the examples might
15 be an unwanted -- I mean, a pregnancy or it can be a
16 sexually transmitted disease or something a parent
17 overheard a child saying through play or to another
18 peer or maybe a teacher walking by and the child is
19 drawing something that was just absolutely out of
20 the ordinary, drawing pictures that are sexual in
21 nature.

22 Those are just some examples of accidental
23 disclosure. And it could be something that somebody
24 walked in on or, you know, some odd behavior or they
25 actually saw the incident.

1 **Q** And are you familiar with...

2 **A** I'm sorry. You know, I did not finish
3 answering your question. You asked me about the
4 types. The other type is purposeful and that's when
5 a child makes their mind up right then, I'm going to
6 tell. And they do it for various reasons. You see
7 it a little more common when the perpetrator is
8 outside of the family, but typically when the
9 perpetrator is inside the family, you're not going
10 to have a purposeful disclosure.

11 **Q** How would a child's age -- the age of a child,
12 does that affect the disclosure?

13 **A** Yes.

14 **Q** In what way?

15 **A** As children get older, they develop the
16 inhibitions, if you think about yourself or think
17 about your own children, and they know that this is
18 something wrong and -- but they don't understand it.
19 They say it didn't feel right. But unless they've
20 had training like they might do in 6th grade or 8th
21 grade, safety training in the schools, they don't
22 know, they don't understand what's going on because
23 they've never been taught.

24 This is a -- if you think, we are not born with
25 sexual abuse -- I mean, sexual knowledge. This is

1 something that is either experienced, witnessed, you
2 just don't have these ideas that pop in your head.
3 So when you experience something like that and you
4 have no basis for it, developmentally a child really
5 has no clue what's going on, but they're sensing
6 that this isn't right because I'm being invaded.

7 **Q** Are you also familiar with the concept of child
8 sexual abuse accommodation syndrome?

9 **A** Yes.

10 **Q** And based on your education, experience and
11 training, what specific trainings have you had in
12 that area?

13 **A** Again, through the Children's Law Office at USC
14 and the National Child Advocacy Center.

15 **Q** And can you tell the jury what child sexual
16 abuse accommodation syndrome is?

17 **A** Yes. It addresses the different myths that are
18 out there like the one that I just mentioned that
19 they tell right away. Children don't tell right
20 away. It is -- especially when it's inside a unit
21 like a family or a real trusted friend, there's this
22 huge thing of secrecy.

23 Sometimes it might be that this is something
24 special between me and you, or if you tell, I'll go
25 to jail, or if you tell, I'll lose my job and you'll

1 have to move out, or if you tell, you're going to
2 have to go to a foster home, if you tell, you know,
3 your parents are going to hate you or your siblings
4 are going to hate you. So there's a lot of
5 different avenues that perpetrators of sexual abuse
6 will take to make sure that this sexual abuse is
7 kept a secret because obviously the perpetrator has
8 a lot to lose.

9 There's also the accommodation when --
10 especially when you have a child that is -- the
11 perpetrator is someone they trust like a parent and
12 there's this entrapment. So they -- if you're
13 entrapped because this is your parent and the sole
14 person that is your caretaker, then where are you
15 going to go, you're trapped in it. And so you learn
16 to accommodate, learn to accommodate as a means of
17 survival, a means of protecting other family
18 members, other siblings, means to accommodate
19 because there's nowhere else to go, you just have no
20 clue what to do so you just learn to accommodate,
21 and especially again, I stress, when it's somebody
22 that you absolutely trust.

23 Now, if it's that stranger on the street,
24 there's no accommodation. We're talking about when
25 it's a trusted individual, so -- and, again, that

1 goes back to the entrapment, the secrecy of the
2 entire thing. This is not a crime that has
3 witnesses beyond the victim, typically. It's not a
4 crime that has witnesses beyond the victim and the
5 alleged perpetrator.

6 Q And are there specific reasons that it may be
7 difficult for a child to remember details of a
8 traumatic sexual experience?

9 A Yes.

10 Q And what is that?

11 A Well, they'll repress it for one. They don't
12 want to think about it. It's embarrassing. It felt
13 bad so they just want to repress it. And -- even if
14 you're five years old, sex is a very private matter.
15 It's something that you know it's not talked about
16 in school, it's not shared when you're playing, your
17 parents don't talk about it so it's very secretive
18 so they want to repress it. They don't want to talk
19 about it. It's embarrassing. And so often they
20 just don't even understand what's going on. They're
21 not developmentally able to really grasp what's
22 happening to their body and why this person of trust
23 is doing this.

24 Q And do children always disclose all of the
25 events that may have occurred at once?

1 **A** No. It's really unfair -- well, in South
2 Carolina, now we video tape all interviews of kids
3 that are disclosing abuse. And it's really unfair
4 to say that that video tape or that DVD is their
5 statement because children tell over a process.

6 One, like, they start tentatively telling.
7 It's kind of like testing the waters. If I tell
8 this much, let's see how their reaction is going to
9 be. If there's a negative reaction by the first
10 person they tell, they may never tell again. But as
11 they feel safe, as they feel their information is
12 being received positively, in other words, they're
13 being supported, and as they heal, then more comes
14 out, more information. It's just a process with
15 them as time goes on.

16 **Q** In a child that has been sexually abused, do
17 you often see behavioral changes?

18 **A** Yes, very frequently and it's on a broad range.
19 It can be anywhere from bed wetting at any age. It
20 can be withdrawal. It can be aggressive behavior.
21 It can be hurting other children. It can be hurting
22 animals. It can manifest itself in the fear of
23 animals. I've seen a child where a duck, a baby
24 duck, just scared the child to death, but -- and
25 accompanied with nightmares about animals.

1 And it can be just, again, I think I mentioned
2 withdrawal, acting out sexually, being physically
3 aggressive, loss of sleep, a change in their
4 physical appearance. I've been involved with a
5 couple of cases where a young lady was a victim --
6 young ladies were victims of sexual abuse and they
7 went from dressing, you know, more little girly with
8 ponytails to dressing more like a boy, the flannel
9 shirts, cutting their hair almost like a boy, short
10 as boy. So it manifests in so many different ways.
11 There's not a typical reaction I guess you'd say.

12 **MS. MOORE:** Your Honor, that's all I have of
13 this witness.

14 **THE COURT:** Thank you.

15 Cross-examination.

16 **MR. RAST:** May it please the Court.

17 **THE COURT:** Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. RAST:

20 **Q** Ms. Caldwell, have you talked to the victim in
21 this case?

22 **A** No, sir, I have not.

23 **Q** Have you looked at any statements in this case?

24 **A** No, sir, I have not.

25 **Q** Have you looked at any videos in this case?

1 **A** No, sir.

2 **Q** Do you know how old the victim is in this case?

3 **A** Well, I'm going to guess that she might be ten
4 just because I saw her, but I do not know her age.

5 **Q** You don't know anything about this?

6 **A** No, sir.

7 **Q** You never even talked to her?

8 **A** No, sir.

9 **Q** Delayed disclosure could also be that she is
10 making up something that did not happen; is that
11 correct?

12 **A** Delayed disclosure is not connected to a false
13 allegation.

14 **Q** I know. You're talking about truth. But it is
15 possible for somebody to say, okay, this happened.
16 Then everybody say, oh, my little dear, we're so
17 sorry, we feel sorry. Then they would add something
18 else that did not happen?

19 **A** That is a possibility, yes.

20 **Q** And that happens frequently, does it not?

21 **A** No, sir, that does not happen frequently.

22 **Q** But it does happen?

23 **A** But it does happen, yes, sir.

24 **Q** Whenever anyone, social worker, police,
25 anybody, interviewing a victim, they always want the

1 victim to feel good. You don't want the victim to
2 be mad?

3 **A** Yes. Part of our job is not to revictimize the
4 child.

5 **Q** Right. And some of that reinforcement could
6 lead to lying or exaggerations?

7 **A** That's not been my experience.

8 **Q** But it's possible. You have heard that and you
9 have studied that, right?

10 **A** The literature doesn't support that they just
11 keep adding. The literature supports that they just
12 can't provide -- they cannot provide details if they
13 have not been a victim, if they have not experienced
14 the abuse.

15 **Q** Well, they might not be able to provide the
16 details, but they could provide the statement that
17 something was done?

18 **A** It'll be a very vague statement.

19 **Q** Very vague, right?

20 **A** Yes, sir.

21 **Q** Such as, yes, he made me put my hand down his
22 pants, but nothing happened. For how long --

23 **A** It could be that or it could be that the child
24 is minimizing, which is very typical.

25 **Q** And it could be the other one, too?

1 **A** It could.

2 **Q** And you have no idea which one?

3 **A** If I was doing the interview, I probably,
4 through experience, would be able to tell.

5 **Q** An interviewer, a forensic interviewer, is not
6 to determine whether or not the child is telling the
7 truth or lying, is it?

8 **A** Yes, that's part of our job is to render an
9 opinion on whether or not the child has given a
10 credible disclosure.

11 **Q** A forensic interviewer is supposed to determine
12 whether or not the child is telling the truth or
13 not?

14 **A** Yes. We render our opinion of whether or not
15 the child has given a credible disclosure.

16 **Q** Suppose in this case the forensic interviewer
17 said that is not my job, would she be wrong?

18 **A** I would disagree with her, yes.

19 **MR. RAST:** Thank you. I have nothing further.

20 **THE COURT:** Redirect.

21 **MS. MOORE:** No questions, Your Honor.

22 **THE COURT:** Thank you, ma'am. You may step
23 down.

24 **MS. MOORE:** May she be excused?

25 **THE COURT:** Any objection to the witness being

1 excused, Mr. Rast?

2 **MR. RAST:** No objection, Your Honor.

3 **THE COURT:** You're free to go. Thank you.

4 Any further witnesses from the State?

5 **MS. MOORE:** No, sir, Your Honor. At this time,
6 the State would rest.

7 **THE COURT:** All right. Ladies and gentlemen, I
8 told you that when the State rests, I had to send
9 you out of the courtroom regardless of whether you'd
10 been in here only a few minutes or whether you'd
11 been in here over an hour. So we've reached that
12 stage where I have to talk to the attorneys about
13 some legal matters. Usually this takes 15 to 20
14 minutes. If it's going to be substantially longer
15 than that, I'll send word to you and bring you back
16 in, tell you where we're going from here.

17 Don't discuss the case yet. Please step in the
18 jury room.

19 (The jury retires to the jury room.)

20 **THE COURT:** Motions.

21 **MR. RAST:** If Your Honor pleases, I move to
22 dismiss the charge of criminal sexual conduct in the
23 first degree on the grounds that there's no reliable
24 evidence of a penetration which is necessary in that
25 particular charge. The reports basically say

1 attempted penetration. Dr. Baker testified that the
2 bruises, if any, or the redness was on the outside
3 of the vagina. I don't think there's any competent
4 evidence to submit to the jury the criminal domestic
5 violence of -- I mean, criminal sexual conduct in
6 the first degree to the jury.

7 I would also move to dismiss the other two
8 indictments on the lewd act in that the evidence is
9 insufficient to support a conviction.

10 **THE COURT:** The Court finds that there is
11 evidence sufficient to support sending the cases to
12 the jury and respectfully denies the motions.

13 **MR. RAST:** I've got some witness, Judge. Can
14 we have about a 15 minute recess?

15 **THE COURT:** That's fine, but I need to go over
16 your client's right to testify.

17 **MR. RAST:** Judge, I would like to do that after
18 our witness has testified, if it would be okay with
19 the Court, or make that decision at that time. If
20 you want to go over his rights fine, but I prefer
21 not to make --

22 **THE COURT:** He doesn't have to tell me -- I
23 don't ever ask him what his decision is.

24 **MR. RAST:** Okay. That's fine as long as we
25 don't have to make that decision now.

1 **THE COURT:** No. No. And if he makes a
2 decision now and he changes his mind, he can do the
3 opposite of whatever his decision may be now.

4 All right. Mr. Elders, I need to ask you some
5 questions and I need your responses under oath, so
6 would you raise your right hand for me.

7 MICHAEL RAY ELDERS,
8 having been duly sworn, testified as follows:

9 **THE COURT:** You can have a seat, just speak out
10 loudly. This lady takes down what we say.

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** Now, Mr. Elders, we've reached the
13 stage of the trial where the State has rested and
14 the next thing that would happen is that the
15 defense, your side, is given the opportunity to
16 present evidence for the jury to consider. Do you
17 understand where we are in the trial?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Now, in that regard, you can call
20 witnesses to testify for you if you like. If you
21 want to testify yourself, you may testify yourself
22 whether or not you call any other witnesses. You
23 understand all that?

24 **DEFENDANT:** Yes, sir.

25 **THE COURT:** But you're under no obligation to

1 put up any case. The burden is entirely on the
2 State and it's going to remain with the State
3 whether you testify or anybody else testifies for
4 you or not. The burden is never going to shift.
5 It's going to stay with the State. Do you
6 understand that?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Now, nobody can force you to
9 testify. And if you choose not to testify, you have
10 an absolute right to remain silent and I'm going to
11 tell that jury they cannot hold your silence against
12 you in any way at all. Do you know that?

13 **DEFENDANT:** Yes, sir.

14 **THE COURT:** The decision about whether you
15 testify is your decision to make and yours alone.
16 Do you know that?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** I expect that you might discuss
19 this with family members or friends or your attorney
20 or anyone whose opinion you value on important
21 decisions, but, ultimately, it's your decision to
22 make. You understand?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** Does he have a prior criminal
25 record that would subject him to impeachment?

1 **MS. MOORE:** No, sir.

2 **THE COURT:** Now, Mr. Elders, today are you
3 under the influence of anything at all, any type of
4 substance that would adversely affect your thinking?

5 **DEFENDANT:** No, sir.

6 **THE COURT:** Do you suffer from any physical or
7 mental conditions that adversely affect your
8 thinking?

9 **DEFENDANT:** No, sir.

10 **THE COURT:** So you're clearheaded and you know
11 what you're doing?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Has anybody attempted to
14 exercise any undue influence over you to get you to
15 choose to testify or not testify?

16 **DEFENDANT:** No, sir.

17 **THE COURT:** Okay. Mr. Elders, what I'm going
18 to do right now is I'm going to make a finding that
19 you understand that you have a right to testify, you
20 have a right not to testify.

21 **DEFENDANT:** Yes, sir.

22 **THE COURT:** You understand that if you choose
23 not to testify, I'm going to tell the jury they
24 cannot hold your silence against you in any way at
25 all. I'm going to find that you made your decision

1 of your own free will and that you understand that
2 it is your decision to make.

3 So I'm going to find that whatever decision you
4 make is free and voluntary and it's your own
5 decision. And I'm going to maintain that finding,
6 so if anybody does attempt to improperly influence
7 you in any way about testifying or not testifying,
8 you let me know that immediately, all right?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Thank you.

11 All right. We're at ease.

12 **MR. RAST:** Thank you, Judge.

13 (Brief Recess.)

14 **THE COURT:** Are you ready, Mr. Rast?

15 **MR. RAST:** Yes, Your Honor, I'm ready.

16 **THE COURT:** Are you ready, Solicitor?

17 **MS. MOORE:** Yes, sir, Your Honor.

18 **THE COURT:** Bring in the jury, please.

19 (The jury returns to the courtroom.)

20 **THE COURT:** All right. Ladies and gentlemen,
21 the next stage of the trial is that the defense is
22 given the opportunity to present evidence for you to
23 consider. This does not change the burden of proof.
24 The burden of proof remains entirely on the State to
25 prove the guilt of the defendant beyond a reasonable

1 doubt, but the defense is given the opportunity to
2 present evidence for you to evaluate whether the
3 State has met its burden of proof or failed to meet
4 its burden of proof. So I invite your close
5 attention.

6 Mr. Rast, call your first witness.

7 **MR. RAST:** I call Dr. John Carroll.

8 **THE COURT:** Come around, please.

9 JOHN MICHAEL CARROLL,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Please be seated. State your full
12 name, spell your last name.

13 **THE WITNESS:** John Michael Carroll,
14 C-a-r-r-o-l-l.

15 DIRECT EXAMINATION

16 BY MR. RAST:

17 **Q** All right. Dr. Carroll, where do you work?

18 **A** I work at Children's Choice Pediatrics.

19 **Q** As what?

20 **A** I'm a pediatrician.

21 **Q** Can you give me your educational background,
22 please?

23 **A** Sure. I received my bachelors degree in
24 biology from Wofford College. I received my medical
25 degree from the University of South Carolina School

1 of Medicine and I did my pediatric training at
2 Palmetto Health Richland Memorial.

3 Q And how long have you been a pediatric doctor?

4 A I've been in private practice, this is my 13th
5 year and three years of pediatric residency, so that
6 will be 16 years.

7 Q Is it limited to pediatrics?

8 A Yes.

9 Q And what is pediatrics?

10 A Basically birth until they decide they don't
11 want to see me anymore.

12 MR. RAST: Judge, I'd like to offer him as an
13 expert as a pediatrics doctor.

14 THE COURT: Voir dire.

15 MS. MOORE: None from the State, Your Honor.

16 THE COURT: He's so recognized. He may render
17 opinions in that field.

18 BY MR. RAST:

19 Q Dr. Carroll, in your business, have you had
20 occasion to have a patient named Minor ?

21 A Yes, I have.

22 Q And how long was Minor a patient of yours; do
23 you know?

24 A She's -- from birth till present.

25 Q All right. Starting back in April of 2009, did

1 you have an occasion to see her on April the 9th of
2 2009?

3 **A** Yes, I did.

4 **Q** And what did you see her for? What was the
5 purpose of the visit?

6 **A** April the 9th was a well check.

7 **Q** What is a well check?

8 **A** It's a routine examination to make sure that
9 they're meeting their developmental milestones, that
10 they're just, in general, healthy, make sure that
11 their immunizations are current, check their vision,
12 blood pressure, things like that.

13 **Q** And how did the examination go on that
14 particular day?

15 **A** It went fine.

16 **Q** Any concerns by her mother or anyone else?

17 **A** No, sir.

18 **Q** Did you inspect her private area on that
19 occasion or not?

20 **A** Did not.

21 **Q** Was there any complaints about anything that
22 she made?

23 **A** No, sir.

24 **Q** It was kind of unremarkable?

25 **A** Yes, sir.

1 Q Nobody said anything to you about sexual abuse?

2 A No, sir.

3 Q When was the next time you saw her?

4 A The next time that I saw her was June the 9th,
5 2009.

6 Q Well, I see where she had an appointment June
7 the 2nd. Did you see her then?

8 A I did not. My business partner did.

9 Q Okay. So you saw her June the 9th?

10 A Yes, sir.

11 Q And what was the purpose for that visit?

12 A She was there for what we call a vaccine only
13 visit. She was receiving her Gardasil vaccines.

14 Q What is that for?

15 A Gardasil is against human papillomavirus, which
16 is -- the studies have shown that 70 percent of
17 cervical cancer is related to this virus and,
18 therefore, this vaccine is a preventative for
19 cervical cancer.

20 Q Is it a shot type vaccine?

21 A Yes, sir. It's a three dose series.

22 Q Was there any problems associated with her on
23 that particular visit?

24 A No, sir.

25 Q Nothing unusual at all?

1 **A** No, sir.

2 **Q** All right. And she was given the vaccine I
3 assume?

4 **A** Yes, sir.

5 **Q** She didn't complain about anything?

6 **A** No, sir.

7 **Q** When was the next time you saw her?

8 **A** December 29th of 2009.

9 **Q** And what was the purpose of that examination?

10 **A** She was sick and she had strep throat and she
11 got another Gardasil vaccine while she was there.

12 **Q** Anything unremarkable about that visit?

13 **A** No, sir.

14 **Q** Any complaints about her vagina area or sexual
15 abuse or anything of that nature?

16 **A** No, sir.

17 **Q** Did ^{Minor} or her mother ever mention anything
18 to you about her being sexually abused?

19 **A** No, sir.

20 **Q** Did they ever come in complaining about her
21 having pain when she urinated?

22 **A** Not to my recollection, no.

23 **Q** Did you have any indication that she was
24 claiming she was sexually abused before you got my
25 subpoena?

1 **A** No, sir.

2 **Q** Not from her and not from her mother?

3 **A** No, sir.

4 **Q** Did you ever remember visually inspecting her
5 vagina area?

6 **A** Not in several years, but I have, yes.

7 **Q** Did you ever see any redness in that area?

8 **A** No.

9 **MR. RAST:** Thank you.

10 I have nothing further, Judge.

11 **THE COURT:** Cross.

12 **MS. MOORE:** Yes, sir, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. MOORE:

15 **Q** Good afternoon, Dr. Carroll.

16 **A** Good afternoon.

17 **Q** Dr. Carroll, is it common for a child to come
18 in and complain that they'd been sexually molested
19 to you as a pediatrician?

20 **A** No.

21 **Q** In fact, if they had, do you have training in
22 that field of forensic examination on children?

23 **A** Forensic exam -- no.

24 **Q** In fact, didn't you have a conversation with
25 Minor about her getting a female pediatrician -- I

1 mean, Shelly, the mother, about Minor getting a
2 female pediatrician to start doing her pelvic -- or
3 genital exams?

4 A Right. Actually both of them, yes. Minor was
5 there.

6 MS. MOORE: Beg the Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 BY MS. MOORE:

10 Q And if someone came in complaining of being
11 sexually molested, do you have any training or
12 experience in evidence collection or doing a
13 forensic sexual exam?

14 A Yes.

15 Q You do. Have you ever done one?

16 A In residency, yes.

17 Q But as a practicing physician, your own
18 practice?

19 A No. We don't have the rape kits and stuff.
20 Those are kept in the hospital ERs basically for
21 chain of custody reasons. Those aren't in private
22 offices. Children that are suspected to be molested
23 are typically referred to the emergency room to have
24 evidence collected and stuff, so.

25 MS. MOORE: Thank you. That's all I have, Your

1 Honor.

2 **THE COURT:** Redirect.

3 **MR. RAST:** I have nothing further, Judge. I'd
4 like to have him excused, please.

5 **THE COURT:** Any objection?

6 **MS. MOORE:** No objection.

7 **THE COURT:** Thank you, Doctor. You may step
8 down. You're free to go.

9 Call your next witness.

10 (Pause.)

11 GENE RAY ELDERS, SR.,

12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please be seated. State your full
14 name, spell your last name.

15 **THE WITNESS:** Gene Ray Elders, Sr.,
16 E-l-d-e-r-s.

17 DIRECT EXAMINATION

18 BY MR. RAST:

19 **Q** Mr. Elders, what's your date of birth?

20 **A** Say again, sir.

21 **Q** What is your date of birth?

22 **A** .

23 **Q** All right. You are Michael Ray Elders' father;
24 is that correct?

25 **A** Yes, sir, that is correct.

1 Q Are you still married to Michael's mother or
2 are you divorced?

3 A We are divorced.

4 Q And you have remarried I believe; is that
5 correct?

6 A That is correct.

7 Q Michael lives with his mother?

8 A Yes, sir.

9 Q What is his mother's condition now?

10 A She has terminal cancer in the brain.

11 Q Is she able to function by herself?

12 A No, sir.

13 Q Is somebody at home with her now?

14 A Yes, sir.

15 Q Is she able to come to court to testify?

16 A No, sir.

17 Q She wouldn't be able. And Mike lives in the
18 same house that she lives in, right?

19 A Yes, sir.

20 Q And who is taking care of her right now?

21 A George, her other son.

22 Q Georgie. Somebody had to be there to take care
23 of her today while you and Ray were here in court?

24 A Yes, sir.

25 Q You and Michael's mother still get along real

1 well from what I understand; is that correct?

2 **A** That is correct, sir.

3 **Q** In fact, you made a statement about your
4 present wife and her are wife-in-laws. Is that the
5 way you look at it?

6 **A** That is right.

7 **Q** Are you helping her financially still?

8 **A** I do all of her financial stuff, pay her bills.
9 I'm on her checking accounts. And what she can't
10 pay at the end of the month, with the blessings of
11 my wife and myself, we pay them for her out of our
12 own account.

13 **Q** I commend you for doing that. There's not many
14 people that would. Have you had occasion to see
15 Mike with his children, Minor and child 1 ?

16 **A** Yes, sir.

17 **Q** Where?

18 **A** At my home.

19 **Q** At your home?

20 **A** Yes, sir.

21 **Q** How does Mike and Minor get along?

22 **A** They were wonderful all the time.

23 **Q** How does Minor respond to Michael? Is she
24 tentative with him, afraid of him?

25 **A** They would drive up and she would hold his hand

1 from the truck all the way to the house. She would
2 sit on his lap in the house. He would ask her,
3 Sweetheart, sit on the couch. . She would go sit on
4 the couch and two minutes later she'd go right back
5 and climb back up on his lap, sit there and just hug
6 his neck and just like she loved him to death all
7 the time.

8 Q How often do you get to see her and Michael?

9 A Well, I saw her and Michael quite frequently
10 when he had opportunity to have her and he would
11 bring her over. If he had her two days, he'd bring
12 her over on Saturday and sometimes Sunday
13 afternoons.

14 Q Would he also bring his son over, too?

15 A Yes, sir. Whenever he had him with him, he
16 would.

17 Q And he had his son with him on frequent
18 occasions?

19 A Not as frequently as --

20 Q Minor ?

21 A Minor .

22 Q But he did have the son with him?

23 A Oh, yeah.

24 Q Have you ever seen him touch his daughter,
25 Minor , in an inappropriate manner?

1 **A** No, sir.

2 **Q** Have you ever seen Michael around any other
3 children beside Minor ?

4 **A** Yes, sir.

5 **Q** Who?

6 **A** All of our granddaughters, all the other
7 children in the family, my daughters.

8 **Q** Have you ever seen him do anything
9 inappropriate with any of these children?

10 **A** No, sir.

11 **Q** Is Michael capable of doing anything
12 inappropriate?

13 **MS. MOORE:** Your Honor, I object.

14 **MR. RAST:** I'll withdraw the question.

15 **THE COURT:** All right. Rephrase your question.

16 BY MR. RAST:

17 **Q** You have never seen him do anything wrong with
18 any of these children?

19 **A** No, sir.

20 **Q** Has anybody ever told you they saw him do
21 anything wrong with any of these children?

22 **A** No, sir.

23 **MR. RAST:** I have nothing further, Judge.

24 **THE COURT:** Cross.

25 **MS. MOORE:** Your Honor, I have no questions.

1 **THE COURT:** Thank you, sir. You may step down.

2 **THE WITNESS:** Thank you.

3 **MR. RAST:** Judge, let me get my next witness.

4 **THE COURT:** All right.

5 (Pause.)

6 GENE RAY ELDERS, JR.,

7 having been duly sworn, testified as follows:

8 **THE CLERK:** Please be seated. State your full
9 name and spell your last name.

10 **THE WITNESS:** My name is Gene Ray Elders, Jr.
11 My last name, E-l-d-e-r-s.

12 DIRECT EXAMINATION

13 BY MR. RAST:

14 **Q** Ray, you are Michael Ray's brother; is that
15 correct?

16 **A** Yes, sir.

17 **Q** Do you live in the same house Michael lived in?

18 **A** Yes, sir.

19 **Q** And I believe that's with your mother; is that
20 correct?

21 **A** Yes, sir..

22 **Q** And who else lives there?

23 **A** My brother, George.

24 **Q** All right. Does your mother have her bedroom?

25 **A** Yeah. My mother have a bedroom to herself.

- 1 Q She has her own bedroom?
- 2 A Yes, sir.
- 3 Q You have a bedroom?
- 4 A Yes, sir.
- 5 Q And I believe you are married at the present
6 time; is that right?
- 7 A Yes, sir.
- 8 Q And your wife's name?
- 9 A Christy Darlene Kirkland.
- 10 Q And she lives in there -- y'all's marriage is
11 kind of off and on?
- 12 A Yes, sir.
- 13 Q When she's there, she stays in the same bedroom
14 you do?
- 15 A Yes, sir.
- 16 Q Georgie has his own bedroom?
- 17 A Yes, sir.
- 18 Q There are three bedrooms?
- 19 A Yes, sir.
- 20 Q Is there any other bedrooms in the house?
- 21 A No, sir.
- 22 Q I believe you had to convert the living room
23 into a bedroom; is that correct --
- 24 A Yes, sir.
- 25 Q -- to have enough?

1 **A** Yes, sir.

2 **Q** Are there any doors on the bedrooms?

3 **A** No, sir.

4 **Q** On any of them?

5 **A** Yeah, in mom's room.

6 **Q** In your mom's room?

7 **A** Yeah, that's the only door.

8 **Q** But the other bedrooms did not have a door?

9 **A** No, sir, they sure don't.

10 **Q** Michael would see **Minor** and his son on visiting
11 days; is that correct?

12 **A** Yes, sir.

13 **Q** Where would **Minor** sleep when she was spending
14 the night?

15 **A** Most of the time she would sleep -- she stayed
16 right there in mama's room.

17 **Q** In your mama's room?

18 **A** Yes, sir.

19 **Q** Would Michael sleep with her?

20 **A** No. No, sir, he would not.

21 **Q** Where would Michael sleep?

22 **A** Mike would sleep in the bed with Georgie.

23 **Q** Pardon?

24 **A** Mike would sleep in the bed with Georgie.

25 **Q** With George?

1 **A** Yes, sir.

2 **Q** All right. How did Michael and Minor react
3 together when you saw them?

4 **A** Just like a regular son and daughter would. I
5 ain't never seen nothing out the way my brother
6 would do wrong. He always treated his daughter like
7 a daughter supposed to be treated.

8 **Q** You never saw him do anything inappropriate
9 with her?

10 **A** No, sir. He's always treated her like a human
11 being.

12 **Q** Did she ever act like she was afraid of him in
13 any manner?

14 **A** No, sir.

15 **Q** Have you seen your brother, Michael, with other
16 children?

17 **A** Yes, sir, around my grandbabies and all that,
18 nothing ever went on.

19 **Q** Have any other children ever spent the night in
20 that house with Michael there?

21 **A** No, sir.

22 **Q** None of your cousins or anything have ever
23 spent the night in the house?

24 **A** No, sir. My daughter's been there. She had --
25 yeah, my daughter spent the night, you know, with

1 the grandbabies, but...

2 Q That's what I'm talking about. How old is your
3 daughter?

4 A My daughter's 26 years old.

5 Q And she has children, too?

6 A Yes, sir.

7 Q And she and her children have spent the night
8 there?

9 A Yes, sir.

10 Q On more than one occasion?

11 A Yes, sir.

12 Q Michael been around her children?

13 A Yes, sir.

14 Q Ever any problem?

15 A No, sir.

16 Q You've never seen anything wrong?

17 A No, sir.

18 Q Has anybody ever told you they saw anything
19 wrong?

20 A No, sir.

21 MR. RAST: I have nothing further, Judge.

22 THE COURT: Cross.

23 MS. MOORE: Yes, sir.

24 *****

25 *****

1 CROSS-EXAMINATION

2 BY MS. MOORE:

3 Q So you're the defendant's brother, correct?

4 A Yes, ma'am.

5 Q And you know the victim in this case, Minor ?

6 A Yes, ma'am.

7 Q Do you have a close relationship with her?

8 A No, ma'am.

9 Q And you know Shelly, her mom?

10 A Yes, ma'am.

11 Q You've known her for a long time, haven't you?

12 A Yes, ma'am.

13 Q And your wife, Christy, she's in Alabama,
14 right?

15 A Yes, ma'am.

16 Q When Minor would come to the house, she slept
17 with Michael in your mom's room on the air mattress
18 on the floor; isn't that true?

19 A No, that ain't always true.

20 Q Not always true, but she did, correct?

21 A No, ma'am, not always, no. She would go in
22 there and lay down on the mattress. Mike would sit
23 there till she went to sleep and Mike would go get
24 in the bed with Georgie.

25 Q But she did sleep with him on the air mattress,

1 that's correct?

2 **A** She slept -- yeah, she slept on a air mattress,
3 you're exactly right, but she did not sleep in the
4 same bed with Mike.

5 **Q** But you were there that day that Johnny Hutto
6 came over and got in a fight with your brother,
7 weren't you?

8 **A** Yes, ma'am. It wasn't a fight. They just
9 argued. Johnny was drunk.

10 **Q** Johnny was drunk, but Johnny told him that he
11 was a sick F'er?

12 **A** Exactly.

13 **Q** And that that wasn't right that he was touching
14 Minor . You remember that, don't you?

15 **A** No. All I remember was Johnny was cussing Mike
16 and I don't know what it was for, you know, but I
17 just know he was cussing him.

18 **Q** And Christy was there as well?

19 **A** Yes, ma'am.

20 **Q** And Minor was there as well?

21 **A** Right. Christy heard everything.

22 **Q** And isn't it true, sir, that you told Christy
23 that if anyone came to testify against your brother,
24 that something would happen to them; isn't that
25 true?

1 **A** No, ma'am, that is not true.

2 **Q** When she was here about two weeks ago, you

3 didn't tell her that?

4 **A** No, ma'am, I sure did not.

5 **Q** Tell us what you said.

6 **A** I ain't said -- I ain't said nothing to her.

7 When I left here, I went straight home.

8 **Q** Where was she staying when she came here?

9 **A** They stayed at a motel on Knox Abbott Drive.

10 **Q** Why didn't she stay with you?

11 **A** I don't know. I reckon she had her boyfriend

12 with her.

13 **Q** But you deny making that statement to her?

14 **A** I did not make that statement.

15 **Q** So everyone that's come in here and said that,

16 Johnny Hutto that was in the house, ^{Minor}, that they

17 slept in that bed, you're telling this jury that

18 they didn't sleep in the bed?

19 **A** No. Johnny and Mike, when everything started,

20 everything started on the outside of the house.

21 Johnny was drunk, you know, and then Johnny started

22 on Mike.

23 **Q** When ^{Minor} would come over, isn't it true that

24 Christy, your wife, she made sure she was there at

25 the house; isn't that true?

1 **A** Yes, ma'am.

2 **Q** Because she was afraid for -- she was afraid
3 for Minor , wasn't she?

4 **A** I don't know, but I know all them days that she
5 was there, Christy was there.

6 **Q** Every time that Minor was there Christy was
7 there, right?

8 **A** Yes, ma'am.

9 **Q** And she told you that she suspected abuse,
10 didn't she?

11 **A** No. She didn't -- she didn't tell me nothing.
12 All she said was, you know, Minor don't need to be
13 here.

14 **MS. MOORE:** That's all I have, Your Honor.

15 **THE COURT:** Redirect.

16 **MR. RAST:** I have nothing further, Judge.

17 **THE COURT:** Thank you, sir. You may step down.

18 **MR. RAST:** Let me get my next witness.

19 **THE COURT:** Yes, sir.

20 (Pause.)

21 ASHLEY NICOLE WOOTEN,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Please be seated. State your full
24 name and spell your last name.

25 **THE WITNESS:** My name is Ashley Nicole Wooten.

1 My last name is spelled W-o-o-t-e-n.

2 DIRECT EXAMINATION

3 BY MR. RAST:

4 Q Ashley, do you know Michael Ray Elders sitting
5 over here?

6 A Yes, sir.

7 Q How do you know him?

8 A He's my uncle.

9 Q And who is your father?

10 A Gene Ray Elders, Jr.

11 Q You have known Michael about all of your life
12 then, have you not?

13 A Yes, sir.

14 Q Have you ever seen Michael with his daughter,
15 Minor ?

16 A Yes, sir.

17 Q Have you seen him with his son, Mikey?

18 A Yes, sir.

19 Q How often would you see him with his children?

20 A A lot.

21 Q Whereabouts do you live in relationship to
22 where he lives?

23 A Well, I live in Gaston and they live in Cayce.

24 Q Not that far away?

25 A No, about 20 minutes.

1 Q Do you have children?

2 A Yes, sir.

3 Q How many?

4 A I have two girls.

5 Q How old?

6 A Seven and three.

7 Q Have you ever seen Michael do anything

8 inappropriate with Minor ?

9 A No, sir.

10 Q Have you ever seen him touch her in a spot he

11 should not touch her in?

12 A No, sir.

13 Q Have you ever seen him do anything

14 inappropriate with any child?

15 A No, sir.

16 Q Have your children been around him before?

17 A Yes, sir.

18 Q Have they ever spent the night in the same

19 house with him?

20 A Yes, sir.

21 Q On more than one occasion?

22 A Yes, sir.

23 Q Have they ever spent the night there without

24 you there?

25 A No, sir.

1 **Q** Would you have any fear in letting them spend
2 the night there without you being there?

3 **A** No, sir.

4 **Q** You have no concern with Michael Ray Elders at
5 all with your children?

6 **A** No, sir.

7 **Q** Or any child?

8 **A** Huh-huh.

9 **Q** Has anybody ever told you he's bothered any
10 child?

11 **A** No, sir.

12 **Q** Has any child ever told you they felt funny
13 around him or anything?

14 **A** No, sir.

15 **MR. RAST:** Thank you. I have nothing further.

16 **THE COURT:** Cross.

17 **MS. MOORE:** Your Honor, I have no questions.

18 **THE COURT:** Thank you, ma'am. You may step
19 down.

20 **MR. RAST:** Judge, I think this might be a good
21 time to take a break.

22 **THE COURT:** All right. Ladies and gentlemen,
23 we're going to recess for lunch now. I need you
24 back in the jury room, please, at 1:45. Thank you.
25 Don't discuss the case.

1 (The jury was excused for lunch.)

2 **MR. RAST:** If Your Honor pleases, I'd like to
3 take this lunch hour to discuss with my client about
4 whether or not he wants to testify. I have no other
5 witnesses other than him.

6 **THE COURT:** Yes, sir.

7 We're at ease for lunch.

8 **MR. RAST:** Thank you, Judge.

9 (Whereupon, there was a luncheon recess.)

10 **THE COURT:** All right. Do you have any other
11 witnesses, Mr. Rast?

12 **MR. RAST:** No, Your Honor. My client decided
13 he is not going to testify. I can go ahead and make
14 my motion, if you want to, while the jury's out.

15 **THE COURT:** Hold on just a second.

16 (Pause.)

17 **THE COURT:** All right. Mr. Elders, your lawyer
18 is telling me that you've chosen not to testify; is
19 that correct?

20 **DEFENDANT:** Yes, sir.

21 **THE COURT:** Is that your own decision, made of
22 your own free will?

23 **DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. Thank you, sir.

25 Does the State have any reply?

1 **MS. MOORE:** No.

2 **THE COURT:** All right. You want to make your
3 motions, Mr. --

4 **MR. RAST:** I just want to renew the same
5 motions I made earlier, Judge, just for the record.

6 **THE COURT:** All right. The Court has
7 considered the motions at the close of all the
8 evidence and there are sufficient facts presented to
9 allow the cases to go to the jury on each of the
10 indictments.

11 (Pause.)

12 **THE COURT:** All right. What I'm going to do is
13 I'm going to bring the jury in, give them the
14 instruction about the defendant not testifying and
15 then ask if the State has any reply and then send
16 the jury out and we'll talk about the charge.

17 Bring the jury back in, please.

18 (The jury returns to the courtroom.)

19 **THE COURT:** All right. Mr. Rast, do you have
20 any other witnesses?

21 **MR. RAST:** No. The defense rests, Your Honor.

22 **THE COURT:** Thank you very much.

23 All right. Ladies and gentlemen of the jury,
24 please give me your attention. I need to give you
25 an instruction at this point and emphasize to you

1 that the fact that Mr. Elders elected not to testify
2 is not a factor to be considered by you in any way
3 in your deliberations and in your consideration on
4 the question of whether he is guilty or not guilty.
5 His decision not to testify should not be considered
6 by you in any manner whatsoever against him. An
7 accused has a constitutional right to remain silent
8 and the assertion of that right cannot be considered
9 by you in your deliberations.

10 Under your oath, you are to reach no inference
11 and you are to draw no conclusion whatsoever from
12 the fact that Mr. Elders elected not to testify.
13 His decision not to testify should not be discussed
14 by you in the jury room. It should not enter your
15 minds in making your decisions on these cases. The
16 State has the entire burden of proof. The accused
17 has no burden to prove anything at all.

18 Does the State have any reply evidence?

19 **MS. MOORE:** No, sir, Your Honor, we don't.

20 **THE COURT:** Thank you.

21 Ladies and gentlemen, you now have all of the
22 evidence that you're going to have to decide these
23 cases. And there are two stages that remain, the
24 closing arguments and the charge. The charge is
25 where I tell you the law.

1 We're at another one of those points where I
2 have to discuss legal issues with the attorneys and
3 I have to do this outside of your presence. This
4 takes usually about 20 minutes. It can last a
5 little bit longer. So what I'm going to have to do
6 in a moment is ask you to step in the jury room and
7 bear with us while we get through what we have to
8 do.

9 You will get the case this afternoon. So
10 you'll get the closing arguments and then I'll give
11 you the charge on the law and shortly after that,
12 you'll get the cases to decide.

13 So if you would step back in the jury room, not
14 discuss the cases, I'll get you back in here as
15 quickly as I can. Thank you.

16 (The jury retires to the jury room.)

17 **THE COURT:** All right. I haven't finished the
18 charge yet so we'll just be at ease. As soon as
19 I've got it done, I'll let you know. Thank you.

20 **MR. RAST:** Judge, would I have enough time to
21 run out to the car and call my office?

22 **THE COURT:** Yes, sir, you've got plenty of
23 time. What I'll do is I'll do this. When I get it
24 finished in a draft form, I'll print it out, give it
25 to y'all, let you read over it and then we'll talk

1 about it, okay.

2 (Brief Recess.)

3 **THE COURT:** All right. I've given both sides a
4 copy of the draft charge and copy of the draft --
5 verdict forms. Any comments from the State?

6 **MS. MOORE:** No, sir Your Honor.

7 **THE COURT:** Defense?

8 **MR. RAST:** None, Your Honor.

9 **THE COURT:** Thank you.

10 Do you want to open, Ms. Moore?

11 **MS. MOORE:** On the law, no, sir, Your Honor.

12 **MR. RAST:** Judge, I think she should be
13 required to open on the law.

14 **THE COURT:** Well, I'm just going to tell y'all,
15 I've studied that a little bit. We've talked about
16 it in our judges' meetings. I just don't know of
17 anything other than tradition that requires them to
18 open on the law. Do you want to open on the law?

19 **MS. MOORE:** No, sir.

20 **MR. RAST:** Judge, I've got a long tradition, I
21 would like for her to.

22 **THE COURT:** I understand, but I don't think
23 there's anything in the statute, in a case or
24 anywhere else that establishes that. It's just
25 something that they always have done and none of us

1 can find any authority for it.

2 So I'll note your objection, Mr. Rast, but you
3 give the first closing argument, the State gives the
4 last closing argument. And if I'm wrong, maybe the
5 Supreme Court will clarify it. But are you ready,
6 Mr. Rast?

7 **MR. RAST:** Yes, Your Honor.

8 **THE COURT:** Okay. Bring the jury in, please.

9 Now, anybody wants to be in here, can be in
10 here. I know we've had the sequestration, but if
11 anybody wants to be in, they can come in.

12 (The jury returns to the courtroom.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 as I indicated to you, the next two stages of the
15 trial are the closing arguments and the charge.
16 Now, I told you at the outset of the trial that in
17 the opening statements, the attorneys were not
18 permitted to engage in argument. At this point,
19 they are permitted to use the art of advocacy to
20 attempt to get you to see things as they would like
21 you to see them on behalf of their respective
22 positions. It doesn't change the burden of proof.
23 The burden of proof remains with the State at all
24 times.

25 Now, the way this will work is that the defense

1 attorney will make his closing argument and then,
2 because the State has the burden of proof, the State
3 gets to go last and make the last closing argument.
4 I always take a break between when they finish and
5 when I start. Usually, it's a very short break,
6 that's just so I can get set up and be ready to
7 deliver the charge to you. It's going to take me 24
8 minutes to tell you the law, so -- sometimes I take
9 a break between the two closings and sometimes we
10 just keep going. We'll just play it by ear. I
11 invite your close attention.

12 Mr. Rast, you're recognized for your closing
13 argument.

14 **MR. RAST:** May it please the Court.

15 **THE COURT:** Yes, sir.

16 CLOSING ARGUMENT

17 **MR. RAST:** Y'all have heard the evidence. This
18 entire case started on a lie. Three o'clock in the
19 morning Shelly gets a phone call, Johnny Hutto saw
20 Mike put his hands down ^{Minor} pants. You know
21 that did not happen. That started this entire
22 situation.

23 Johnny testified, No, I didn't. I never said
24 it. I have never seen Mike do anything wrong with a
25 child other than his daughter sitting on his lap.

1 That is not a crime. Fathers and grandfathers can
2 have kids sitting on their lap, that's not a crime
3 at all.

4 Johnny Hutto also testified that he gave Cayce
5 a statement right after this started. It was in the
6 file. Detective McCord never saw the statement.
7 She never interviewed Johnny Hutto. The Solicitor
8 had the statement in their file. This case should
9 have been investigated better than it was.

10 The Solicitor served a subpoena on Johnny
11 Hutto. They told him Monday after they talked to
12 him, we don't want you, bye, leave. They didn't
13 know I had served a subpoena on him. When they saw
14 him up here this morning to testify for me, they
15 decided they'd better call him, it looks better to
16 you. What Johnny Hutto said, well they said he
17 said, never occurred.

18 Bear in mind Michael Elders has got no criminal
19 record at all. His wife has had him arrested five
20 times trying to put him in jail. He doesn't drink.
21 He doesn't do cocaine. Shelly does do cocaine. She
22 did it back then. She got this little girl to tell
23 this story. And all of these reports, all of these
24 forensic interviewers and Palmetto Health people had
25 the statement that Minor was saying that Johnny

1 Hutto (sic) put his hands down her pants on the
2 porch. That never happened. Where did that come
3 from? It never occurred.

4 What is real interesting, too, you heard **Minor**
5 testify. She didn't say too much, did she? She
6 used the phrase sexual abuse. She used the word
7 privates. The Solicitor asked her, Where did Mike
8 touch you? In my privates. Where? In my private.
9 Where, where? In my private. The same exact
10 technology or words that her mother used in her
11 statement; Sexually abused my daughter by touching
12 in privates.

13 I don't care what Shelly tells you, kids do not
14 refer to that area as privates when they're little.
15 They've got names for it tutu, wee-wee, tush,
16 whatever. Those are not **Minor** words, but those
17 are the words she used with everybody she talked to.

18 What is extremely interesting also, Laura (sic)
19 Caldwell, the expert from SLED, testified as an
20 expert after the Judge qualified her, it is the job
21 of the forensic interviewer to determine whether the
22 child is telling the truth or not. But you remember
23 Ms. Dupre when she testified, or Ms. Baker,
24 whichever one, It's not my job to determine whether
25 the child is telling the truth or not. She said it

1 three times because I asked her, That's not my job,
2 that's not my job.

3 Well, that's the only reason for a forensic
4 interview, to see if the child is telling the truth.
5 I submit to you she made that statement because she
6 didn't believe the child, but she didn't want to say
7 she didn't believe her. It's not my job to
8 determine whether she's telling the truth or not.
9 But, yet, the other expert from SLED said that is
10 definitely the reason for the forensic interview.

11 The expert, Ms. Caldwell, from SLED also said,
12 yes, some children do lie, but when they lie, they
13 forget about details. They can't remember details
14 when they're lying.

15 Minor testifying, I'm up here asking her
16 questions, Can you remember the first time this
17 occurred? No. Can you remember the last time? No.
18 Can you remember the specifics of any time? No.

19 She didn't know the details because she had
20 made it up. Her mother had told her to. She's
21 sitting here looking over my shoulder at her mother
22 the whole time she's testifying. She didn't say
23 much at all.

24 Now, we had the video of the forensic interview
25 when she was ten. She's sitting in a room with

1 another lady. She's talking freely. Ain't nobody
2 else in there. She's not under oath. She's only
3 ten years old, say what mama said. Goes back to
4 what the Solicitor said in her opening statement, A
5 child trusts adults. You trust your parents, trust,
6 trust. She trusted her mama.

7 She comes in the courtroom. She's 12. She's a
8 little bit older. She's under oath. She
9 understands what it means a little bit more now.
10 Her daddy is sitting over there and y'all are
11 sitting here. Everything changed. She didn't
12 remember anything. She couldn't be specific about
13 anything.

14 The Solicitor asked her, How do you feel to
15 your daddy? I love my daddy. And I'm sure she
16 does, but she couldn't sit here and say all of that
17 stuff. She didn't say much of anything if you
18 recall.

19 One of the crimes my client is charged with is
20 criminal sexual conduct of the first degree, which
21 means in this case that he inserted his finger in
22 her vagina, but there's no evidence of that in any
23 of the forensic people that testified. They
24 testified attempted to, attempted, he never did it.
25 So he can't be guilty of criminal sexual conduct in

1 the first degree. I submit that he's not guilty of
2 any of this.

3 This is just a situation where one lie made a
4 snowball effect into this case that's took us three
5 days to try. Every statement that is attributed to
6 the child who was told Johnny Hutto saw him do this,
7 so she's thinking, well, maybe it did happen. You
8 got to trust your mama. You got to trust the adult.
9 If Johnny saw it happen, then it must have happened,
10 but it did not happen. I feel sorry for that little
11 girl.

12 Remember this, too, she's been going to Dr.
13 Carroll ever since she was born, never a mention of
14 any of this to Dr. Carroll. Ms. Baker who testified
15 said that the redness in there would cause pain on
16 urination. If she was having pain, wouldn't she
17 call her family doctor to tell him? No, did not.
18 Dr. Carroll didn't know anything about any of this
19 and he's the doctor that'd been seeing the little
20 girl all of her life.

21 And, again, every phrase she used, sexual
22 abuse, private parts, kids don't talk that way.

23 I don't want to leave something out. This is a
24 serious matter to my client.

25 Her mother also told the people at Palmetto

1 Health, My daughter says there was no penetration.
2 That's another point in there, there was no
3 penetration. There were times when it did not
4 happen.

5 She's in a house over here with Mike's family
6 when this was supposed to have happened. Nobody
7 knew anything with all these people living there.
8 She didn't tell her grandmama. She didn't tell her
9 uncles. She made no statement to anybody. Nobody
10 in Mike's family has ever seen him do anything
11 terrible to a child.

12 But what about Shelly's family? Shelly's on
13 cocaine. They're making phone calls left and right,
14 she and all her family, to people at three o'clock
15 in the morning to get something stirred up that
16 never happened.

17 She had him arrested for CDV three times, none
18 of that would put him in jail. He won all of that.
19 Stalking one time, he won that. Telephone, he won
20 that. So she's trying again now for the sixth time
21 to put Mike in jail and he hasn't done anything.
22 They haven't proved he did anything. No one has
23 seen anything. She didn't tell anybody.

24 Also, there's something that -- Did Mike
25 threaten you? Yes, he told me if I tell somebody,

1 they might get hurt. Did you believe him? No, I've
2 never seen my daddy hurt anybody.

3 Where did that come from? She wasn't afraid of
4 him. That's still her daddy. She's doing what her
5 mama told her to do and looking over my shoulder
6 trying to get directions while she's testifying.
7 She can't remember any time anything happened,
8 that's what she said when I was asking her a
9 question. That goes back to what Dr. Caldwell said,
10 when they make up a story, they don't know the
11 details of it. When she's on that witness stand,
12 she didn't give y'all any details about anything.

13 Now, Lysa Dupre has testified it's not her job
14 to determine whether a child is telling the truth or
15 not. She's giving the forensic interview. What is
16 the forensic interview for? Why do you video tape
17 it if you're not supposed to determine whether she's
18 telling the truth or not? That's exactly the whole
19 point in it. That's what Laura Caldwell said, that
20 is the point of forensic interview, not according to
21 Ms. Dupre, but I'm telling you that's because she
22 didn't believe the child, but she didn't want to say
23 it. We're in a courtroom trying it and she didn't
24 want to say she did not believe the child.

25 And I believe Minor even admitted when I asked

1 her, she testified downstairs that she -- Mike never
2 asked her to touch him, she said, yes, she said
3 that.

4 Another weird thing, you know, from the
5 forensic interview, we found out that Mark, her
6 stepfather, not really a stepfather, he had to go to
7 prison because of Shelly. Shelly put him in prison.
8 She likes calling the law on people.

9 She said she'd never seen her dad hurt anyone.

10 The other thing, Dr. Caldwell testified that in
11 a case where a child has been abused, the child's
12 behavior changes. It turns very aggressive. She
13 gets moody. She does this, she does that. But on
14 the forms for the forensic interview, there was no
15 evidence of any of this type of behavior.

16 I specifically asked her, they had blocks, no
17 behavior changes reported. Anxiety, she had
18 anxiety. Trauma reactions, no, no trauma.
19 Flashbacks, no. Fearfulness, no. Nightmare, sleep
20 problems, no. This is the form filled out by Lysa
21 Dupre. This is what she checked.

22 But, yet, her mother said she slept in a closet
23 for two months. What mother is going to let her
24 daughter sleep in a closet for two months? That's
25 something Shelly came up with, nobody else said

1 that. It's not in any doctors' report. It's not in
2 any of these experts' report. And these experts for
3 -- anxiety, yeah, that's because she was being
4 questioned, she had a little anxiety, but nothing
5 else, none of the aggressiveness, nothing else
6 associated with being sexually abused.

7 I also asked Dr. Baker, Is there a reason for
8 the redness down there besides sexual abuse? Not in
9 my opinion. And then we find out her opinion is
10 based on the facts that were told to her about
11 Johnny Hutto seeing all of this abuse. She said she
12 can't ignore that. She has to take that into
13 consideration.

14 Ladies and gentlemen, you know as well as I do
15 there are other ways a child can get red down there.
16 She's got three brothers, they roughhousing with her
17 brothers, out playing, she's rubbing it herself,
18 that does not mean sexual abuse.

19 And the doctor -- excuse me -- not the doctor,
20 Ms. Dupre said several times -- not Dupre, I'm
21 sorry -- Baker, several times, I have to consider
22 what was told me. I have to consider the
23 information that was gave me, all of which was based
24 on a lie as you remember, but that's why her opinion
25 is there was sexual abuse. The redness itself did

1 not give her that opinion. She testified, I have to
2 take the other into consideration. So she took all
3 of these other lies into consideration in forming
4 her opinion and that's all it was was just an
5 opinion.

6 I'm sure I have forgot to mention something,
7 but y'all heard the same testimony I heard and I'm
8 trusting in you, don't make a mistake, don't send
9 Mike to prison. Thank you.

10 **THE COURT:** Thank you, Mr. Rast.

11 Ms. Moore, are you ready for your closing
12 argument?

13 **MS. MOORE:** Yes, sir, Your Honor. If it please
14 the Court.

15 **THE COURT:** Yes, ma'am.

16 **MS. MOORE:** Minor is the perfect
17 victim, ladies and gentlemen, the perfect victim for
18 this type of assault, a little girl eight years old
19 who has been deprived her real father her entire
20 life, a little girl who wanted a relationship with
21 her dad because she saw her brother, he was allowed
22 to go see his dad, but she wasn't until she turned
23 eight. Oddly enough, when she turns eight years
24 old, she's allowed to spend time with her dad
25 finally. I bet now she wishes she had never been

1 included in his life.

2 I bet now she wishes things would have just
3 stayed the same because when she turned eight years
4 old, he began to prey on her. I guess she was old
5 enough at that point.

6 Shortly after she began spending time with her
7 dad, maybe a year when she's nine or ten years old,
8 she doesn't really remember, but we're talking about
9 a child here, a little girl, eight, nine, ten,
10 however old she was, that is a young child. She
11 wasn't keeping a journal. She doesn't know when the
12 first time was. All she knows is that shortly after
13 she starts seeing this man who is her father, and in
14 my opening, I told you this case is about trust and
15 betrayal and how we, as children, trust our parents,
16 and Laurie Caldwell reiterated my theme, children
17 are raised to obey adults, and so this man that she
18 so desperately wanted a relationship with began
19 sexually molesting her as soon as she got -- finally
20 gets contact with him. But she kept going over
21 there. She never wanted to tell.

22 She did tell -- she did testify that she loved
23 him, that's her dad. And he told her not to tell,
24 said she'd regret it if she told. In the little
25 girl's mind, she believed him.

1 This case is about trust and betrayal. This is
2 the ultimate betrayal. When a parent preys on their
3 own child, takes advantage of a little girl's trust
4 and steals her innocence, there is no bigger
5 betrayal in this world.

6 And is it reasonable to believe that she's
7 lying about this, some vendetta that her mother has
8 against this man? Is it reasonable to believe that
9 Shelly Elders would put her daughter through this at
10 ten years old, that she would submit her to a sexual
11 examination?

12 Robin Baker, the sexual assault nurse examiner,
13 our expert witness, came in here and told you how
14 painful penetration is on a prepubescent child, a
15 ten-year-old, how painful that would be. Imagine
16 how painful the exam itself is, not only painful
17 physically, but emotionally. What could Shelly
18 Elders possibly have against him to put her own
19 child through that?

20 Not only did she have to submit to this sexual
21 assault exam, she had to go and talk with Lysa
22 Miller-Dupre, the forensic interviewer. And you've
23 got the DVD, if y'all need to watch it again, you
24 can watch it again, it wasn't long. And she told
25 Ms. Miller-Dupre what happened. No, she didn't

1 include the fact that her dad made her touch his
2 penis, but she did tell Robin Baker that. She read
3 her whole report out. She told her that.

4 But when I asked her, why didn't you tell, why
5 didn't you tell them, tell Ms. Miller-Dupre about
6 that, I was nervous. She was nervous, but she came
7 in here at 12 years old and took that stand and told
8 a room full of strangers that. She didn't want to
9 go into intimate details of things, so she told you
10 the bare minimum, but she told you exactly what
11 happened. She can't remember the first time, the
12 worst or the last time, but she knows that almost
13 every other weekend that she had visitation with her
14 own father that these things happened.

15 Imagine how hard it would be as adults to get
16 on that stand and tell intimate details of your own
17 sex lives and imagine being 12 years old and doing
18 that. I ask you to imagine that. But she did tell
19 Robin Baker that.

20 And Laurie Caldwell, the expert retired SLED
21 agent after 25 years, qualified as a child abuse
22 assessment expert, she said, Children disclose in
23 bits and pieces a little at a time. They test the
24 waters. Once they feel safe enough, they can tell a
25 little bit more at a time and that is completely

1 consistent with the research at the Children's Law
2 Center, she told you that. That is so common.

3 Mr. Rast made a big deal about Lysa
4 Miller-Dupre doesn't believe Minor She didn't say
5 that. She said she can't make a determination.
6 It's not her job to determine whether she's telling
7 the truth or a lie. But I asked her, Was that
8 interview problematic? And she said, No.

9 She does believe her, ladies and gentlemen,
10 otherwise the record would say it was problematic.
11 It wasn't.

12 I submit, ladies and gentlemen, our most
13 compelling witness was Robin Baker, the sexual
14 assault nurse examiner. She told you, yes, she has
15 to get the history of the assault. That's important
16 to gather so that when she looks at the physical
17 evidence, they match the story that's given.

18 Minor says that her dad put his hands down her
19 pants and touched her private area inside. And the
20 Judge will instruct you on the law, but, basically,
21 criminal sexual conduct with a minor first degree is
22 a sexual battery of the victim under the age of 11.
23 Clearly, it was established that she was born
24

25 A sexual battery is any intrusion, however

1 slight, into any part of a person's body or of any
2 object into the genital area, that's a brief way to
3 say it. But Robin Baker showed you these pictures,
4 State's Exhibit 3 through 6, of this little girl's
5 vaginal opening. He couldn't get it inside because
6 she's only ten. He got it as far in as he could.
7 That's the redness. It's not supposed to be that
8 red. This didn't come from a bicycle accident,
9 roughhousing with your brothers because in a little
10 girl, the labia isn't formed, it's closed, remember
11 she said that. It's all closed. It's not open.

12 When she had to do her exam, she had to put her
13 in the frog position, a little saline to open it up
14 because it was so dry. There was no fluid because
15 she was ten years old. She's not estrogenized.
16 There's no lubricant. So when you try to put a
17 finger inside a ten-year-old, it's painful and it's
18 not easily accomplished and it leaves injuries
19 consistent with what Minor said happened. How does
20 a ten-year-old know to say that? Is she so
21 manipulative that she can concoct this story that
22 has scientific backing? Is that reasonable?

23 One of my last questions to her, in her expert
24 opinion, she said, These injuries were the result of
25 a sexual assault.

1 Remember the words, Penetration however slight.
2 That's penetration, ladies and gentlemen, that is
3 criminal sexual conduct with a minor first degree.

4 The two counts of lewd acts are when he puts
5 his hands down her pants and touches the outside.
6 That's one count of lewd act.

7 There's a second one for you to consider when
8 he makes her touch his penis. She said it on the
9 stand. She tells Robin Baker. She doesn't tell the
10 forensic interviewer, that doesn't mean she's lying.
11 It's that process of disclosure. It's those bits
12 and pieces. It's not lying, ladies and gentlemen.
13 It's a ten-year-old child having to talk about adult
14 issues. Not only did she have to live with
15 something an eight and nine or ten-year-old should
16 never even have to know about, she had to deal with
17 that every other weekend and then now she has to
18 talk about it over and over. But she's been very
19 consistent.

20 Even her own doctor, Dr. Carroll, her
21 pediatrician, it's not uncommon for children not to
22 come in and report abuse, that wasn't uncommon at
23 all. He did say that Minor and her mom came in and
24 told him that they now wanted a female pediatrician
25 to do a genitalia exam. He did say that.

1 And Johnny Hutto, Johnny Hutto did not see the
2 defendant put his hands down her pants, but he saw
3 enough, made him mad enough to tell him he was a
4 sick F'er, that ain't right. They had an argument
5 in the yard.

6 And his own sister-in-law is the one that got
7 the ball rolling, Ray's wife. Ray told you that.
8 She saw it. The defendant's own brother told you
9 this Christy, who's now in Alabama, yes, she gets
10 the ball rolling, she finally tells a couple of
11 people. She tells Felicia who calls her mom who
12 calls Shelly. I know that was a little bit
13 confusing and you know how stories get kind of mixed
14 up as they go along, but Christy had enough sense to
15 finally tell on her own brother-in-law.

16 And Ray told you that Christy was always over
17 there when Minor was there. She made sure she was
18 there. And his quote was that Christy said Minor
19 don't need to be there. I submit to you Christy
20 knew what was going on.

21 And Johnny Hutto, yeah, he didn't see, he
22 didn't see that. He saw enough. But he did also
23 tell you on cross that a neighbor threatened to kick
24 his you know what for bothering his daughter,
25 honking the horn at young girls in the neighborhood.

1 When Mr. Rast asked him if he'd seen anything
2 inappropriate, Johnny Hutto told you that.

3 What else did Ray tell you? Let's go back to
4 Ray for a minute. Although Ray was real adamant
5 about the fact that there weren't any doors in the
6 house except in his mother's room, he said, you
7 know, sometimes he did sleep on the air mattress
8 with Minor on the floor, but just until she went to
9 bed.

10 Well, how long does it take to slip your hands
11 down your daughter's pants and fondle her genitals?
12 How long does that take? And would she scream out?
13 Mr. Rast asked Robin Baker, Is it enough for her to
14 holler out? And she said, No, it'd be enough --
15 it'd be painful enough for her to tell him to stop,
16 but probably not holler out.

17 How loud is a touch? How loud would that be?
18 How many seconds would it take for him to slip his
19 hands down her pants and do that even with doors
20 open and people in the house to a little girl who
21 trusted her dad and was told not to tell?

22 Mr. Rast in his closing made a point to talk
23 about the defendant's family, if they ever saw him
24 touch Minor inappropriate. They didn't. They're
25 also his family members. If they trusted their own

1 kids with him, they all said yes.

2 However, the defendant's niece even said, Yeah,
3 I have a three and a seven-year-old. They've stayed
4 over there, but I've always been over there with
5 them. She never said that she wasn't there with
6 them. She said she would, but strangely enough
7 she's never left her kids over there.

8 Laurie Caldwell made a very profound statement
9 that especially familial sexual assaults are a crime
10 of secrecy. And they are, ladies and gentlemen.
11 There aren't any witnesses. If there were, we'd be
12 flooded in this courthouse. There are no witnesses
13 except the perpetrator and the victim.

14 And when the victim is a little girl, he's
15 hoping she's never going to have the courage to
16 tell. He's hoping -- he's banking on that trust,
17 that love that he has for his daughter and that love
18 that she has for him to be able to get away with
19 this. But Minor always been consistent with
20 what's happened.

21 And she's not the one that went and told her
22 mother. Her mother got the phone call from her
23 sister who got word from the defendant's
24 sister-in-law telling her he's been touching her
25 inappropriately. So when she wakes up her daughter

1 at three o'clock in the morning, her daughter has
2 the courage to finally tell.

3 And so when Shelly calls the defendant and
4 tells him, I know what you've been doing to her, he
5 doesn't say anything. He doesn't want to know the
6 details. He doesn't want to know what was said.
7 All he says is, She's an F'ing liar, about his own
8 daughter, which is ironic because when he's served
9 with the warrant, he basically says the same thing,
10 Is this about my daughter? She's a little liar.
11 About his own daughter, didn't even care about the
12 details because he knew what the details were. He
13 knew what he did. He knew he'd finally been caught.

14 Monday was a big day for Minor , a
15 12-year-old sixth grader took that witness stand and
16 had the courage to tell you the truth, had the
17 courage to finally expose the secret. The secret is
18 out and the truth is told and the betrayal now has
19 ended.

20 Again, I ask you how hard it is -- or how hard
21 do you think it is or was for her to get up here and
22 say that? She had the courage to stand up, this
23 little sixth grader, against her own father for
24 sexually molesting her. And I ask you, ladies and
25 gentlemen, have the courage to stand up for her,

1 have the courage to stand up for her and find him
2 guilty of criminal sexual conduct with a minor first
3 degree, lewd act for touching her genitals, private
4 area or whatever she calls them, and the lewd act
5 for him making her touch his penis, his little
6 ten-year-old daughter. Thank you.

7 **THE COURT:** Thank you, Solicitor.

8 Ladies and gentlemen, I'm going to ask you to
9 step in the jury room. You'll be back there about
10 five minutes and then I'll send for you to come out.
11 As I told you, it's going to take around 24 minutes
12 to tell you the law. We'll give the case to you.

13 Obviously, I have absolutely no input on how
14 long you consider the case and you have no idea how
15 long that would take because you hadn't talked about
16 it at all. If you want to make some preliminary
17 phone calls, just tell the bailiff and he'll get you
18 to a phone during this break, but you'll get the
19 case close to four o'clock, a little after 4:00,
20 okay. Thank you.

21 (The jury retires to the jury room.)

22 **THE COURT:** We're at ease.

23 (Brief Recess.)

24 **THE COURT:** All right. Everybody that wants to
25 be in needs to be in. Everybody that's going out

1 needs to go out.

2 Ladies and gentlemen, during the charge, you
3 need to stay still and stay quiet, don't be moving
4 around, don't do anything to distract the jury.
5 Absent an emergency, I expect you to stay still and
6 stay quiet. In the event of an emergency, act
7 appropriately, but don't be distracting this jury.
8 If you're moving around, I'm probably going to stare
9 you down. Don't distract the jury.

10 Bring the jury in, please.

11 (The jury returns to the courtroom.)

12 CHARGE OF THE COURT

13 **THE COURT:** Members of the jury, all of the
14 evidence has been presented, you've heard the
15 arguments of counsel and now it's time for me to
16 instruct you on the law that applies to the case.
17 Please continue to pay close attention during this
18 next stage.

19 First, you need to understand some basic ground
20 rules. You, the jury members, are the sole judges
21 of the facts. You decide all of the issues of fact.
22 You alone determine the truth of the evidence, its
23 effect, its value and its weight. You alone judge
24 the credibility of witnesses, in other words,
25 whether or not a witness' testimony is believable.

1 In that regard, you may believe all that a
2 witness said or none of it. You may believe part of
3 what a witness said and not believe the balance.
4 You may believe one witness against many or many
5 against one. You may consider any interest, bias or
6 prejudice that you feel that a witness has in the
7 case. You may consider the demeanor and the
8 appearance of the witness and the opportunity for
9 knowledge that the witness had. You may consider
10 whether a witness has been consistent or
11 inconsistent. And you may consider the lack of
12 evidence presented by the State.

13 But you're not to exercise these considerations
14 arbitrarily. What I want you to do is to use your
15 common sense, use your sense of logic and reason and
16 your good judgment.

17 Now, the rules of evidence allow for opinion
18 testimony to be given under certain circumstances.
19 And during the trial, testimony was presented by
20 persons designated as expert witnesses. The rules
21 of evidence allow someone by virtue of education,
22 training and experience to render opinions as
23 experts. You may accept or reject the opinions and
24 testimony of an expert witness just as you may any
25 other witness in whole or in part.

1 It's not proper for me to give you a charge on
2 the facts of the case. I can't discuss the facts
3 with you. I'm not even permitted to convey to you
4 an impression as to what, if any, personal opinions
5 I may develop about the case as it goes along. So
6 if, during any stage of the trial, you develop an
7 opinion that I have an impression -- that I have a
8 personal opinion about the facts, you must remove
9 that totally from your mind. You're the sole judges
10 of the facts.

11 I'm the judge of the law that applies in the
12 case and under your oath, you have to accept and
13 apply the law as I give it to you. That means you
14 have to abandon any conflicting ideas that you might
15 have as to what the law is or what it should be. I
16 give you the law, you apply it to the facts as you
17 determine them to be and in that way, you reach your
18 verdict.

19 It's also my job to decide what evidence is
20 admissible. If I've ruled something inadmissible or
21 instruct you to disregard something, you're not to
22 consider those things in arriving at your verdicts.
23 Base your verdicts on the competent evidence before
24 you, consider the testimony of the witnesses and the
25 exhibits admitted in the trial.

1 I remind you, ladies and gentlemen, that the
2 fact that Mr. Elders elected not to testify is not a
3 factor to be considered by you in any way in your
4 deliberations and in your consideration on the
5 question of whether he is guilty or not guilty. His
6 decision not to testify must not be considered by
7 you in any manner whatsoever against him. An
8 accused has a constitutional right to remain silent
9 and the assertion of that right cannot be considered
10 by you in your deliberations whatsoever against
11 Mr. Elders.

12 Under your oath, you are to reach no inference
13 and you are to draw no conclusion from the fact that
14 Mr. Elders elected not to testify. His decision not
15 to testify should not be discussed by you in the
16 jury room. It should not enter your minds in making
17 your decisions on these cases. As I've told you
18 repeatedly, the burden is entirely upon the State to
19 prove every essential element of the offenses
20 charged against Mr. Elders and an accused has no
21 obligation to prove anything at all.

22 I need to explain to you that there are two
23 types of evidence that are generally presented
24 during a trial. There's direct evidence and there's
25 circumstantial evidence. Direct evidence is

1 evidence of direct perception, including the
2 testimony of a person who asserts or claims to have
3 actual knowledge of a fact, such as an eyewitness.
4 Circumstantial evidence is proof of a chain. It's
5 proof of a chain of facts and circumstances
6 indicating the existence of a fact.

7 Now, the law makes absolutely no distinction
8 between the weight or the value to be given to
9 either direct or circumstantial evidence, nor is a
10 greater degree of certainty required of
11 circumstantial evidence than of direct evidence.
12 What you need to do is weigh all of the evidence in
13 the cases. And after weighing all of the evidence,
14 if you're not convinced of the guilt of the
15 defendant beyond a reasonable doubt, you must find
16 him not guilty.

17 The defendant in these cases, Michael Ray
18 Elders, is presumed to be innocent. This is no mere
19 legal theory. It is a fundamental and substantial
20 right to which everyone is entitled. It's been
21 described as being like a robe of righteousness
22 that's placed around an accused and it remains with
23 him through every stage of the trial. It continues
24 to exist after you go back to your jury room to
25 deliberate so that he is presumed to be innocent

1 unless and until you, the jury, determine that the
2 State has proven him guilty beyond a reasonable
3 doubt.

4 A defendant is not required to prove his
5 innocence. He is not required to prove anything.
6 The burden is on the State to prove the guilt of the
7 defendant beyond a reasonable doubt and it's
8 required that every essential element of each
9 offense charged be proven by the State beyond a
10 reasonable doubt.

11 Now, that doesn't mean that the State has to
12 prove the guilt of the defendant beyond all doubt or
13 beyond every doubt. The appropriate standard is
14 proof beyond a reasonable doubt.

15 Some of you may have served as jurors in civil
16 court and if you have, you know that the burden of
17 proof in civil court is a lesser standard. It
18 requires establishing that something is more likely
19 than not and we call that the greater weight or a
20 preponderance of the evidence.

21 But in a criminal court setting, such as we're
22 in now, the standard is much higher and the proof
23 must be much stronger than what's required in civil
24 court. In criminal cases such as these, the State
25 has to prove the guilt of the defendant beyond a

1 reasonable doubt.

2 So what do I mean by that term? Proof beyond a
3 reasonable doubt is proof that leaves you firmly
4 convinced of the defendant's guilt. There are few
5 things in the world that we know with absolute
6 certainty and in criminal cases, the law does not
7 require proof that overcomes every possible doubt.

8 If, based on your consideration of the
9 evidence, you are firmly convinced that the
10 defendant is guilty of a crime charged, then you are
11 to find him guilty of that crime. If, on the other
12 hand, you think there is a real possibility that he
13 is not guilty, you must give him the benefit of the
14 doubt and you must find him not guilty on that
15 charge.

16 There's no obligation on the part of Mr. Elders
17 or the defense to raise any doubt or any other
18 possibility. He is presumed to be innocent. The
19 State has the entire burden of proof and the State
20 has to prove to you that the defendant is guilty of
21 the offense charged to the exclusion of any other
22 real possibility.

23 I instruct you, ladies and gentlemen, that
24 evidence of good reputation and character may be
25 considered and go toward the issue of whether a

1 person possesses a character inconsistent with the
2 commission of the crime charged, such evidence alone
3 may be sufficient to constitute a reasonable doubt.
4 The weight that you give such evidence is for you to
5 decide in your good judgment in deciding whether or
6 not the State has proven that the defendant
7 committed the crime.

8 All right. Now, let's turn to the specific
9 charges that are alleged in these cases. The
10 defendant is charged in three separate indictments
11 with separate crimes involving separate alleged
12 incidents. One of the indictments charges criminal
13 sexual conduct with a minor in the first degree.
14 The other indictments charge the defendant with
15 committing a lewd act upon a child. Each charge has
16 to be evaluated separately and decided on its own
17 merit or lack of merit.

18 All of the indictments allege that the conduct
19 took place in Lexington County between January 1,
20 2008 and June 28, 2009 and all allege that the minor
21 or child in question was Minor who is
22 alleged to have been born on
23 .

24 One indictment alleges that the defendant
25 committed the crime of criminal sexual conduct with

1 a minor in the first degree in that the defendant
2 committed a sexual battery upon the minor,
3 specifically, it's alleged digital penetration by
4 inserting his finger into the vaginal area of the
5 vaginal opening of the minor who is alleged to have
6 been less than 11 years of age at the time.

7 The indictments for lewd act upon a child both
8 allege that Mr. Elders, who is alleged to be over
9 the age of 14 years, willfully and lewdly committed
10 a lewd or lascivious act upon or with the body or
11 the parts of a body of the minor who is alleged to
12 have been under the age of 16 years and that he did
13 so with the intent of arousing, appealing to or
14 gratifying the lust or passions or sexual desires of
15 himself or of the minor.

16 In one of these indictments, it is alleged that
17 this involved Mr. Elders touching the vaginal area
18 of Minor The other indictment for lewd act
19 alleges that this involved having Mr. Elders put his
20 hands -- put the hands of Minor on his
21 penis.

22 I caution you now as I did at the outset of the
23 trial, that the indictments have no evidentiary
24 value.

25 Now, in evaluating a criminal case, one of the

1 first things you need to understand is that the
2 State has to prove to you that the offense in
3 question occurred in Lexington County, South
4 Carolina. If not, then you cannot convict the
5 defendant of any offense.

6 The next thing you have to understand is that
7 the indictment defines the timeframe of the charge,
8 so the State has to prove that the specific crime in
9 question occurred during the timeframe alleged in
10 the indictment. If the State fails to prove that a
11 crime charged occurred in the timeframe alleged in
12 the indictment, then you must find the defendant not
13 guilty on that charge.

14 I'm now going to explain to you the law that is
15 related to the charge of criminal sexual conduct
16 with a minor in the first degree. A person is
17 guilty of criminal sexual conduct with a minor in
18 the first degree if he engages in sexual battery
19 with a person who is less than 11 years of age. The
20 State has to prove to you beyond a reasonable doubt
21 that the defendant engaged in sexual battery with
22 Minor .

23 Now, this term sexual battery is a defined term
24 and the definition includes any intrusion, however
25 slight, of any part of a person's body into the

1 genital opening of another person's body except when
2 that intrusion is accomplished for medical treatment
3 purposes.

4 Now, the State also has to prove to you beyond
5 a reasonable doubt that Minor was less than
6 11 years of age at the time of the alleged offense
7 of criminal sexual conduct.

8 So to recap, in order for the defendant to be
9 found guilty of criminal sexual conduct with a minor
10 in the first degree, the State has to prove to you
11 beyond a reasonable doubt that Mr. Elders engaged in
12 sexual battery of digital penetration of Minor

13 vagina in Lexington County during the
14 timeframe alleged in the indictment and that Minor

15 was less than 11 years of age at that time.

16 Now, the law provides that the testimony of a
17 victim in a case with criminal sexual conduct with a
18 minor does not require corroboration. And a jury
19 may convict someone of criminal sexual conduct with
20 a minor based only on the testimony of a victim if
21 that testimony proves all of the essential elements
22 of the offense to the satisfaction of the jury
23 beyond a reasonable doubt.

24 Now, corroborating evidence would be evidence
25 that supports the testimony of the purported victim.

1 It's up to you to review all of the evidence and to
2 give it such weight, if any, that you decide it
3 should receive.

4 Now, I need to talk to you about the crime of
5 lewd act. In addition to the charge of criminal
6 sexual conduct with a minor, the defendant is
7 charged with two separate offenses of committing a
8 lewd act upon a child. It is unlawful for a person
9 over the age of 14 years to willfully and lewdly
10 commit or attempt a lewd or lascivious act upon a
11 child under the age of 16 years with the intent of
12 arousing, appealing to or gratifying the lust or
13 passions or sexual desires of the perpetrator or the
14 child.

15 Now, a person acts willfully when he acts
16 voluntarily and intentionally with a specific intent
17 to commit the unlawful act. A lewd act is one that
18 is obscene, lustful, indecent, lecherous or wanton.
19 A lascivious act is one that is lewd, indecent,
20 obscene or tends to excite lust or deprave the
21 morals in respect to sexual relations.

22 Here, the lewd act alleged in one indictment is
23 touching the genitals of Minor and the lewd
24 act alleged in the other indictment is having the
25 minor place her hand on the defendant's penis.

1 So to recap, in order to prove the defendant
2 guilty of the charge of committing a lewd act upon a
3 child, the State has to prove to you beyond a
4 reasonable doubt each of the following elements:
5 First, that the lewd act occurred during the time
6 specified in the indictment; second, that the
7 incident occurred in Lexington County; third, that
8 the defendant was over 14 years of age at the time
9 of the offense; fourth, that he willfully and lewdly
10 committed a lewd or lascivious act upon Minor

11 ; fifth, that Minor was under the age
12 of 16 years at the time of the incident; and, sixth,
13 that the defendant committed the act with the intent
14 of arousing, appealing to or gratifying his lust,
15 passions or sexual desires or those of the child.

16 And the final thing I need to tell you about
17 the law is that the defendant is entitled to every
18 reasonable doubt arising in an entire case. If,
19 upon any issue of fact essential to a conviction,
20 you have a reasonable doubt as to how that issue
21 should be resolved, you must resolve that doubt in
22 favor of the defendant. If, upon reviewing an
23 entire case, you have a reasonable doubt as to
24 whether the defendant has been proven guilty of the
25 offense charged, he is entitled to that doubt and a

1 verdict of not guilty on that charge.

2 On the other hand, if, after reviewing an
3 entire case, you find that the State has proven
4 every essential element of the crime charged against
5 the defendant beyond a reasonable doubt, it is
6 equally your duty to find the defendant guilty of
7 that charge. And that's the law.

8 Ladies and gentlemen, when you go back to your
9 jury room to decide these cases, you're going to
10 have with you all of the exhibits that have been
11 admitted in the trial. We'll probably roll that
12 T.V. stand and DVD player back there so that you can
13 have access to it if you want to use it, that's
14 completely up to you. You're also going to have
15 with you these verdict forms.

16 Now, I told you we'd probably roll that back
17 there and I need to backtrack some. I get the jury
18 rooms mixed up. Sometimes it gets kind of crowded
19 in one of these rooms if we roll stuff in there, so
20 we usually wait for the jury to ask for it. So if
21 it's not in there and you want it, you tell the
22 bailiff and they'll bring it in there.

23 These verdict forms are the pieces of paper on
24 which you're going to tell us your decisions on
25 these cases and you'll see that there are three of

1 them, one for each indictment. I'm going to go over
2 them with you now in no particular order. And I'm
3 supposed to tell you that you're not to infer from
4 the order in which I state these things that I'm
5 trying to suggest one thing over another. I've got
6 to say one thing first, one thing second and so on.

7 Now, this verdict form, you'll see on each one,
8 it has the caption, which is the State versus
9 Mr. Elders. Then it has a case number, that's
10 really no concern of yours. And then I put in the
11 center here underlined what charge this particular
12 verdict form deals with.

13 This one reads, As to the charge of criminal
14 sexual conduct with a minor in the first degree.
15 You have two possible forms of verdict on that
16 charge. So it reads, We, the jury, unanimously find
17 the defendant, and you're to choose one or the other
18 option. The first option is you find the defendant
19 not guilty. The second option is that you find the
20 defendant guilty of criminal sexual conduct with a
21 minor in the first degree.

22 Now, it includes some other language here
23 because of something the law provides that again is
24 of no concern to you as to the consequence of this,
25 but it reads, Guilty of criminal sexual conduct with

1 a minor in the first degree including proof beyond a
2 reasonable doubt that the defendant performed sexual
3 battery by intrusion, however slight, of his finger
4 into the minor's vagina. So you have those two
5 possible forms of verdict, not guilty or guilty, as
6 I read that to you.

7 This verdict form reads, As to the charge of
8 committing a lewd act upon a child. And since
9 you've got two different lewd act charges, I went on
10 to describe so that you can identify which one the
11 form goes with. This one reads, Involving touching
12 the genital area of the child. You have two
13 possible forms of verdict, We, the jury, unanimously
14 find the defendant not guilty, or, We, the jury,
15 unanimously find the defendant guilty of committing
16 a lewd act upon a child.

17 This verdict form reads, As to the charge of
18 committing a lewd act upon a child involving the
19 defendant putting the child's hand on the
20 defendant's penis, we, the jury, unanimously find
21 the defendant not guilty, or, We, the jury,
22 unanimously find the defendant guilty of committing
23 a lewd act upon the child. It may say minor, but
24 it's -- I've read the definitions to you.

25 Folks, how you go about your verdicts --

1 reaching your verdicts, how you go about taking your
2 votes and your deliberations, all of that is in your
3 discretion subject to this requirement, the verdicts
4 must be unanimous. All 12 of you must agree before
5 the Foreman can record a verdict. When you come
6 back in the courtroom and your verdicts are read,
7 you can be asked individually if that was your
8 verdict and if it is still your verdict. So please
9 understand you cannot do anything to change the
10 requirement of a unanimous verdict, all 12 must
11 agree.

12 When you've reached your verdicts, knock on the
13 door and the bailiff will respond to your knock.

14 Okay. I've told you now probably a couple
15 dozen times or more not to discuss the case until I
16 tell you to. Well, it's not time yet. The law says
17 that I have to go over with the attorneys what I
18 just told you and that's just common sense, we don't
19 want you back there deciding these cases using the
20 wrong law.

21 Now, the truth is that during that last long
22 break, I printed out for the lawyers what I intended
23 to tell you and we've already been over this, but I
24 don't ever read it verbatim and sometimes I say
25 things I don't even know I said so they have to be

1 given a chance to point out to me any mistakes I may
2 have made.

3 If I agree with them that I need to clarify
4 something, I'll bring you out and do that, but if
5 I'm satisfied with what I told you, here's the
6 signal you need to look for as to when you start
7 talking about the case: When the exhibits and the
8 verdict forms are brought into the jury room and the
9 door is shut, the bailiff's out and it's just the 12
10 of you in there, you start talking about the case,
11 you don't have to wait another second, but don't
12 talk about it until then.

13 Thank you very much for your attention. You
14 may retire to your jury room.

15 (The jury retires to the jury room.)

16 **THE COURT:** Please state for the record
17 exceptions, additions or objections to the charge,
18 from the State?

19 **MS. MOORE:** Your Honor, the only thing, and
20 I've never done this, but we went through the
21 reasonable doubt on page five, the last sentence,
22 If, based on your consideration of the evidence, you
23 are firmly convinced the defendant is guilty of a
24 crime charged, you must find him guilty of that
25 crime. I can't remember the exact word that you

1 used, but it wasn't you must find him guilty.

2 However, you did say, If, on the other hand,
3 you think there's a real possibility he's not
4 guilty, you must give him the benefit of the doubt.

5 Now, you did say that on that. My concern is
6 that, and I should have written it down while you
7 were talking, but it wasn't must.

8 **THE COURT:** Hold on a second. Let me see
9 what's showing up on the real time notes.

10 (Pause.)

11 **THE COURT:** According to the real time notes,
12 what I stated was, If, based on your consideration
13 of the evidence, you are firmly convinced that the
14 defendant is guilty of a crime charged, then you are
15 to find him guilty of that crime. If, on the other
16 hand, you think there's a real possibility that he
17 is not guilty, you must give him the benefit of the
18 doubt and you must find him not guilty on that
19 charge.

20 I note your objection, but I think that what I
21 told them is an accurate statement of the law.

22 **MS. MOORE:** Thank you, Your Honor.

23 **THE COURT:** Anything else?

24 **MS. MOORE:** No, sir.

25 **THE COURT:** Defense?

1 **MR. RAST:** Nothing, Judge.

2 **THE COURT:** All right. Check the exhibits and
3 the verdict forms, please. When you're satisfied,
4 give those to the bailiff.

5 (Pause.)

6 **THE COURT:** All right. Folks, I really
7 appreciate the respect you've shown to the Court.
8 The jury's got the hardest job in the courthouse.
9 We'll place it in their hands and see what happens.
10 It's been a pleasure trying the case with you folks.
11 We're at ease pending a verdict.

12 **MR. RAST:** Enjoyed it, Judge, as always.

13 **MS. MOORE:** Thank you, Judge.

14 (The jury commences its deliberations at
15 4:04 p.m.)

16 (A recess transpired.)

17 (Court's Exhibit Number 3, jury note, marked
18 for identification purposes.)

19 **THE COURT:** I received a note from the Foreman
20 that reads, When was the taping made with Lysa
21 Miller-Dupre? I've had this marked as Court's
22 Exhibit 3 and my law clerk has shown it to the
23 attorneys. My understanding is that while it may be
24 on the record, that there's disagreement as to
25 whether the jury can be instructed on this. What do

1 y'all need to put on the record?

2 **MR. RAST:** Judge, I don't think we can answer
3 the question for them. They have to base it on the
4 testimony if they want to hear the testimony again.

5 **THE COURT:** All right.

6 **MR. RAST:** I mean, it was said during the
7 testimony when it was.

8 **THE COURT:** What's the State's position?

9 **MS. MOORE:** Leave it to your discretion, Your
10 Honor.

11 **THE COURT:** Well, they're asking me a question
12 of fact and I'm not permitted to comment on
13 questions of fact. So all I can tell them is if
14 they want some or all of the testimony replayed,
15 they can ask for that.

16 Bring the jury in.

17 (The jury returns to the courtroom at 4:57
18 p.m.)

19 **THE COURT:** Mr. Foreman, I received a note from
20 the jury that reads, When was the taping made with
21 Lysa Miller-Dupre? Is that the jury's question?

22 **FOREMAN:** That's correct.

23 **THE COURT:** Ladies and gentlemen of the jury,
24 as I explained to you at the outset of the trial,
25 you and I have different roles and I am not

1 permitted to comment on any issue of fact. That is
2 an issue of fact so I cannot answer your question.
3 If you want to hear some or all of the testimony
4 replayed, you can send out a note and we will try to
5 accommodate you, but I cannot answer your question,
6 I'm sorry, because it's a fact question.

7 All right. Thank you. If you'll step back in
8 the jury room. If you need anything else, send me a
9 note.

10 (The jury retires to the jury room to
11 continue its deliberations at 4:58 p.m.)

12 **THE COURT:** Exceptions, additions, objections
13 to the instruction, from the State?

14 **MS. MOORE:** None from the State.

15 **THE COURT:** Defense?

16 **MR. RAST:** None, Your Honor.

17 **THE COURT:** We're at ease pending a verdict.
18 Thank you.

19 (A recess transpired.)

20 **THE COURT:** All right. Ladies and gentlemen,
21 I've been informed the jury has a verdict.
22 Obviously, I have no way of knowing what the jury
23 has decided. I give instructions in every single
24 case and I'm going to give some instructions now and
25 I expect them to be followed.

1 These types of cases in particular frequently
2 have a great deal of emotion associated with them
3 for understandable reasons. But this is a courtroom
4 and we do our best to try to handle these disputes
5 in a rational way and separate ourselves from the
6 emotion of the situation.

7 This jury has been asked to make very, very
8 difficult decisions. None of them, I'm sure, wanted
9 to be put in the position they're in. I will not
10 tolerate any sign of approval or disapproval with
11 the jury's verdict. I don't want to see anybody
12 shaking their head in agreement or disagreement with
13 the verdict. I don't want to hear any kind of
14 outburst. I don't want to see anything that is
15 disrespectful to the jury or the process or the
16 Court. And if I do, I have the power to cite you
17 for contempt of court. I have the power to send you
18 to prison for six months without a jury trial.

19 Now, I have never had a problem in nearly 20
20 years of being a judge when I gave that admonition.
21 I don't expect one now. Some things have been
22 reported to me and I have observed some sort of odd
23 behaviors during this trial, so I cannot emphasize
24 in strongest -- in any stronger terms that I'm not
25 putting up with any foolishness.

1 Bring the jury in.

2 (The jury returns to open court to report
3 its verdict at 5:43 p.m.)

4 **THE COURT:** Madame Clerk.

5 **THE CLERK:** Mr. Foreman, have you reached a
6 verdict?

7 **FOREMAN:** Yes, we have.

8 **THE CLERK:** Please pass your forms to the
9 bailiff.

10 (The bailiff hands the verdicts to the
11 Judge.)

12 VERDICT OF THE JURY

13 **THE COURT:** All right. State of South
14 Carolina, County of Lexington, the State versus
15 Michael Ray Elders, case number 2009-GS-32-02677.
16 As to the charge of criminal sexual conduct with a
17 minor in the first degree, we, the jury, unanimously
18 find the defendant guilty of criminal sexual conduct
19 with a minor in the first degree including proof
20 beyond a reasonable doubt that the defendant
21 performed sexual battery by intrusion, however
22 slight, of his finger into the minor's vagina,
23 signed by the Foreman.

24 Case number 2011-GS-32-00364, as to the charge
25 of committing a lewd act upon a child involving

1 touching the genital area of the child, we, the
2 jury, unanimously find the defendant guilty of
3 committing a lewd act upon a minor, signed by the
4 Foreman.

5 Indictment 2011-GS-32-00365 as to the charge of
6 committing a lewd act upon a child involving the
7 defendant putting the child's hand on the
8 defendant's penis, we, the jury, unanimously find
9 the defendant not guilty, signed by the Foreman.

10 Mr. Foreman, ladies and gentlemen of the jury,
11 if I've accurately stated your verdicts, that is
12 guilty on the charge of criminal sexual conduct with
13 a minor in the first degree, guilty on the charge of
14 lewd act in which it is alleged that the defendant
15 touched the genital area of a child and not guilty
16 on the charge of lewd act in which it is alleged
17 that the defendant put the child's hand on his
18 penis, please signify by raising your right hand.

19 All 12 hands are raised.

20 Are there any matters to take up prior to the
21 jury being discharged, from the State?

22 **MS. MOORE:** Nothing from the State, Your Honor.

23 **THE COURT:** From the defense?

24 **MR. RAST:** I would request the jury be polled,
25 Judge.

1 **THE COURT:** Do you want to do them separately
2 or collectively?

3 **MR. RAST:** Separately.

4 **THE COURT:** Separately?

5 **MR. RAST:** Yes, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen --
7 I assume you don't want them polled on the not
8 guilty verdict.

9 **MR. RAST:** No, Judge.

10 **THE COURT:** All right. Ladies and gentlemen,
11 what's going to happen is that the clerk is going to
12 call the roll. She's going to have to go through it
13 twice. And when she calls your name, if you'll just
14 raise your hand so she knows where to look and then
15 you can put your hand back down as soon as she's
16 made eye contact with you. And she's going to ask
17 you basically these two questions, Was this your
18 verdict and is it still your verdict?

19 So she'll begin by asking you about the charge
20 of criminal sexual conduct with a minor in the first
21 degree, then she'll call your name, was this your
22 verdict and then is it still your verdict, answer
23 her truthfully.

24 Madame Clerk, do you have the list?

25 **THE CLERK:** Yes, sir, I do.

1 **THE COURT:** As to the charge of criminal sexual
2 conduct with a minor in the first degree, if you'll
3 sound the roll on that, please.

4 **THE CLERK:** When I call your name, please raise
5 your right hand. Katherine Frick, is this your
6 verdict and is it still your verdict?

7 **JUROR:** Yes, ma'am.

8 **THE CLERK:** Perry Loonam, is this your verdict
9 and is it still your verdict?

10 **JUROR:** Yes, ma'am.

11 **THE CLERK:** Kevin Prosser, is this your verdict
12 and is it still your verdict?

13 **JUROR:** Yes.

14 **THE CLERK:** Katherine Warren, is this your
15 verdict and is it still your verdict?

16 **JUROR:** Yes, ma'am.

17 **THE CLERK:** Russell Mellette.

18 **THE COURT:** No, I think we excused
19 Mr. Mellette.

20 **THE CLERK:** Darrell Taylor, is this your
21 verdict and is it still your verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Marjorie Saville, is this your
24 verdict and is it still your verdict?

25 **JUROR:** Yes, ma'am.

1 **THE CLERK:** Teresita Buckles, is this your
2 verdict and is it still your verdict?

3 **JUROR:** Yes, ma'am.

4 **THE CLERK:** Robert Golden, is this your verdict
5 and is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Robert Conger, is this your verdict
8 and is it still your verdict?

9 **JUROR:** It is.

10 **THE CLERK:** Patty Miller, is this your verdict
11 and is it still your verdict?

12 **JUROR:** Yes, it is.

13 **THE COURT:** All right. All 12 jurors responded
14 affirmatively as to the charge of criminal sexual
15 conduct with a minor first degree.

16 All right. Ladies and gentlemen --

17 **MR. RAST:** If Your Honor pleases, I waive my
18 request for the other charge.

19 **THE COURT:** Okay. Thank you..

20 All right. Ladies and gentlemen, thank you
21 very much for your service. I do want to talk to
22 you briefly before you go, but there's some matters
23 I have to address with the attorneys, but I need to
24 give you some instructions and some information that
25 might be helpful to you, but I have to ask you to

1 step back in the jury room while I deal with these
2 legal issues. I'll be back there as quickly as I
3 can. Thank you.

4 (The jury was excused.)

5 **THE COURT:** Are there any motions?

6 **MR. RAST:** I have a motion, Judge.

7 **THE COURT:** Yes, sir.

8 **MR. RAST:** I move for -- make a motion for
9 arrest of the jury verdict of guilty in favor of the
10 verdict of not guilty or, in the alternative, for a
11 new trial on the grounds that the evidence taken as
12 a whole is insufficient to support a conviction.

13 **THE COURT:** All right. Thanks very much. The
14 motions are respectfully denied.

15 Do you have sentence sheets?

16 **MS. MOORE:** Yes, sir, Your Honor. I left my
17 copies of the indictments so I'm not sure which lewd
18 act was the --

19 **THE COURT:** The one that was guilty?

20 **MS. MOORE:** Yes, sir.

21 **THE COURT:** I gave them to the -- it was the
22 one -- they found not guilty on the one where it's
23 alleged about touching his penis.

24 (Pause.)

25 **THE COURT:** Does the State have anything else

1 on sentencing?

2 MS. MOORE: No, sir, Your Honor. I believe
3 Your Honor's heard from the victim, from the
4 victim's mother as to the impact it's had on her
5 daughter. We would respectfully request the maximum
6 charge on both of these sentences to run consecutive
7 from the State. We believe Mr. Elders is a predator
8 and a threat to society. Thank you, Your Honor.

9 THE COURT: Okay. Would you all please cuff
10 Mr. Elders and bring him around?

11 (Pause.)

12 THE COURT: Mr. Rast, be happy to hear from
13 you.

14 MR. RAST: If Your Honor pleases, I think
15 you've heard the evidence. My client has no record.
16 He's 47 years old. I think he finished the sixth
17 grade in school. He's been working hard. He's been
18 a resident of Lexington County his whole life. He
19 was paying child support, paid it on time until he
20 became arrested.

21 I don't know what else I can say, Judge. He's
22 never done anything violating the law, that he was
23 convicted of anyway.

24 THE COURT: Mr. Elders, you have a right to
25 appeal from these decisions.

1 **DEFENDANT:** Yes, sir.

2 **THE COURT:** And from any sentence I may impose
3 upon you.

4 **DEFENDANT:** Yes, sir.

5 **THE COURT:** It has to be done in writing and it
6 has to be done quickly, so make sure you advise
7 Mr. Rast to file a notice of intent to appeal if
8 that's what you want to do, all right.

9 **DEFENDANT:** I do.

10 **THE COURT:** Okay. Now, realizing that if you
11 say anything that's in any way an admission of guilt
12 that might be held against you, do you want to say
13 anything to me now about your sentence?

14 **DEFENDANT:** No, sir.

15 (Pause.)

16 SENTENCE OF THE COURT

17 **THE COURT:** Nothing further, the sentence of
18 the Court on indictment 2009-GS-32-2677, criminal
19 sexual conduct with a minor in the first degree, is
20 that you be committed to the South Carolina
21 Department of Corrections for 30 years plus costs
22 and assessments. Sentence on lewd act is 15 years
23 plus costs and assessments. The sentences are
24 concurrent.

25 You're given credit for jail time under

1 24-13-40, that will be calculated and applied by the
2 department of corrections. Pay your court costs
3 within nine months of being released from prison.
4 I'm recommending as a condition of any release, that
5 you have no contact with the victim.

6 **MR. RAST:** Thank you, Judge.

7 **THE COURT:** Thank you.

8 **MS. MOORE:** Thank you, Your Honor.

9 **THE COURT:** I appreciate how everybody
10 conducted themselves in light of my directions.
11 Court's in recess.

12

13 END OF PROCEEDINGS

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 28th of February, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 5, 2011

s/Stacy L. Sheppard

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of Lexington)

FILED

Michael Elders # 345023)

Full name and prison number (if any) of Applicant)

2012 AUG -2 P 4:01

v.)

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

APPLICATION FOR

State of South Carolina)

) POST-CONVICTION RELIEF

2012CP3203136

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Lexington County General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Warrant I-203356 - Criminal Sexual Conduct w/ Minor 1st Degree (30 years)
 - (b) 2011-GS-32-00364 - Lewd Act with a Minor (15 years)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 3/2/11 - I-203356 - 30 years **FILED**
- (b) 3/2/11 - 2011-GS-32- 00364 - 15 years concurrent
- (c) _____ **2012 AUG -2 P 4:01**
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Withdrawn
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: **FILED**
- (a) Ineffective Assistance of Trial Counsel 2012 AUG -2 P 4: 01
- (b) Due process violation BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to investigate
- (b) Failure to timely object
- (c) Abandonment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

FILED

(a) _____

(b) _____

(c) _____

2012 AUG -2 3 4:01

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes _____
- (c) your sentencing? yes _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Elizabeth Franklin-Best _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. William Rast 1316 Augusta Road West Columbia, SC 29169 _____
- ii. Elizabeth Franklin-Best 900 Elmwood Ave. Suite 101 Columbia, SC 29201 _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial _____
- ii. Appeal _____
- iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

Respectfully Submitted,



Tristan M. Shaffer
1928 Barnwell St.
Columbia, SC 29201
(803) 771-0042
(803) 771-4233

Attorney for the Applicant

BETH A. CARRIG
CLERK OF COURT
LEXINGTON SC

2012 AUG -2 3 4:01

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH CIRCUIT

COUNTY OF LEXINGTON

Michael Eders # 345023

FILED
 2012 AUG -2 4:01

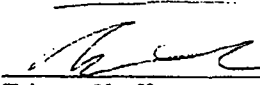
vs.

State of South Carolina, BETH A. CARRIGG
 Defendant. CLERK OF COURT CERTIFICATE OF SERVICE
 LEXINGTON SC

2012CP 3203136

The undersigned attorney hereby certifies that on August 2, 2012 the Application for Post Conviction relief was served in the above referenced case upon the Attorney for the State, Kaelon E. May, via mail, at P.O. Box 11549 Columbia, South Carolina 29201

Respectfully Submitted,


 Tristan Shaffer
 Attorney for Applicant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. No. 2012-CP-32-3136
	)	
Michael R. Elders, #335023	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed August 2, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the October 2009 term of the Court of General Sessions for Lexington County for Criminal Sexual Conduct with a Minor, First Degree, (2009-GS-32-02677) and was indicted at the February 2011 term of Court of General Sessions for Lexington County for two counts of Committing a Lewd Act Upon a Minor, (2011-GS-32-00364; 00365). He was represented by William Y. Rast, Esquire.

On February 28, 2011, the Applicant proceeded to trial after which he was found guilty on the Criminal Sexual Conduct with a Minor, First Degree, charge and on one of the Committing a Lewd Act Upon a Minor charges. He was acquitted on the other Committing a Lewd Act Upon a Minor charge. The Applicant was sentenced by the Honorable William P. Keesley, to confinement for a period of thirty years for Criminal Sexual Conduct with a Minor, First Degree, and fifteen years for Committing a Lewd Act

Upon a Minor. (2009-GS-32-02677 and 2011-GS-32-00364). The sentences were imposed to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The Applicant was represented by Elizabeth A. Franklin-Best, Esquire, on direct appeal. The Applicant withdrew his appeal. The South Carolina Court of Appeals dismissed Applicant's appeal by Order pursuant to Rule 221(b), of the South Carolina Appellate Court Rules.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, appellate records, and Applicant's trial transcript. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance Counsel;
 - a. Failure to investigate
 - b. Failure to timely object
2. Due process violation
 - a. Abandonment

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The

Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

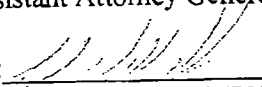
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 15th, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Michael R. Elders,
APPLICANT,

-VS-

State of South Carolina,
RESPONDENT.

)
)
) Post-Conviction Relief
) Hearing
) 2012-CP-32-3136
)
)
)
)
)
)

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE

AUGUST 14, 2013

LEXINGTON, SOUTH CAROLINA

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

Tristan M. Shaffer, Esq.
For the Applicant

J. Walt Whitmire, Esq.
For the State

REMA K. GANTT THOMAS
CIRCUIT COURT REPORTER

I N D E X

	PAGE NO.
Exhibit List.	3
Opening Remarks	4
Testimony of witnesses	
William Rast	
Direct.	18
Cross	48
Redirect.	51
Applicant Rests	54
State Rests	55
Closing arguments	
By the Applicant.	55
By the State.	58
By the Applicant.	60
By the State.	61
Court Reporter's Certification.	64

E X H I B I T S

	Page No.
Applicant's Exhibit Number One, Video.	9
Applicant's Exhibit Number Three, Photo.	9
Applicant's Exhibit Number Four, Photo	9
Applicant's Exhibit Number Five, Photo	9
Applicant's Exhibit Number Six, Photo.	9

1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 THE COURT: All right, Mr. Whitmire.

4 MR. WHITMIRE: Your Honor, it's the last
5 matter of the day, Michael Elders v. State of South
6 Carolina, 2012-CP-32-3136. Mr. Elders was indicted
7 for CSC first and a lewd act. The State calls the case
8 for trial. Mr. Elders was represented by William Rast.

9 The jury returned a guilty verdict to two of
10 the three charges. Mr. Elders appealed his sentence
11 and conviction. Mr. Elders ultimately withdrew that
12 appeal and filed a timely notice of application for
13 post-conviction relief. He is present and represented
14 by Tristan Shaffer, and Mr. William Rast is present.

15 THE COURT: All right. And, Mr. Whitmire,
16 do I have --

17 MR. WHITMIRE: Your Honor, I haven't had a
18 chance to go through this this morning. That's what
19 I was doing, and have a chance to put it up.

20 THE COURT: Okay.

21 MR. WHITMIRE: My apologies.

22 THE COURT: No problem.

23 MR. SHAFFER: Your Honor, just as a
24 housekeeping matter, we have some of the State's
25 exhibits from the actual trial itself.

1 THE COURT: Yes, sir.

2 MR. SHAFFER: And they are under seal. I
3 imagine you would like them introduced and marked as
4 exhibits for this purpose as well, is that correct?

5 THE COURT: Yes, because you'll have to
6 refer to them. You will refer to them just by the
7 exhibit numbers that they had, so that there won't be
8 any confusion?

9 MR. SHAFFER: Yes, Your Honor. I can refer
10 to them by the exhibits that they had.

11 THE COURT: That's fine.

12 MR. SHAFFER: We do need to put them under
13 seal, though, Your Honor.

14 THE COURT: That's fine.

15 MR. SHAFFER: They were broken last term of
16 court by Judge Addy.

17 THE COURT: Okay.

18 MR. WHITMIRE: I believe I'm custodian of
19 one of the exhibits.

20 MR. SHAFFER: There's also another exhibit.
21 There was a video, as well.

22 THE COURT: Okay.

23 MR. WHITMIRE: Your Honor, we unfortunately
24 gave the last one to Judge Addy.

25 THE COURT: Hold on one second. The Court

1 Reporter is looking at me.

2 COURT REPORTER: You said that they would
3 use the exhibit numbers --

4 THE COURT: That they used.

5 COURT REPORTER: -- from the trial. So does
6 that mean that we are not going to mark them with new
7 exhibit numbers to introduce them here?

8 THE COURT: Well --

9 COURT REPORTER: I just don't know.

10 THE COURT: The only reason I was going to
11 say do it that way is that way, going through the
12 transcripts, we'd be both referring to the same exhibit
13 number. And if we can refer to them that way, that
14 might be --

15 Did you list them that way on your docket,
16 Madam Court Reporter?

17 COURT REPORTER: I can. I can give them
18 whatever number we want to.

19 THE COURT: Okay. Well, let's use those
20 same numbers.

21 COURT REPORTER: Okay.

22 THE COURT: That way --

23 COURT REPORTER: Okay. So we're keeping
24 what numbers on them?

25 MR. SHAFFER: This is --

1 COURT REPORTER: And you've got one. You
2 need to tell me what number is on it.

3 MR. WHITMIRE: Yes, ma'am.

4 MR. SHAFFER: These will be Exhibits Three
5 through Six.

6 COURT REPORTER: Three, four, five, and six?

7 MR. SHAFFER: Yes, that's correct.

8 COURT REPORTER: I'm just going to put
9 today's date on them.

10 MR. SHAFFER: Okay.

11 (Whereupon, Applicant's Exhibits Number
12 Four and Six were marked for identification purposes.)

13 MR. SHAFFER: And this is five.

14 COURT REPORTER: So this will be five.

15 (Whereupon, Applicant's Exhibit Number Five
16 was marked for identification purposes.)

17 COURT REPORTER: So I've got four, five, and
18 six?

19 MR. SHAFFER: That's correct.

20 COURT REPORTER: Four, five, and six. And
21 then this is going to be --

22 MR. SHAFFER: This is three, as well.

23 COURT REPORTER: All right.

24 (Whereupon, Applicant's Exhibit Number
25 Three was marked for identification purposes.)

1 MR. SHAFFER: This is one.

2 COURT REPORTER: One.

3 (Whereupon, Applicant's Exhibit Number One
4 was marked for identification purposes.)

5 MR. SHAFFER: And at the conclusion of this,
6 I imagine we'll put them back under seal. Thank you.

7 COURT REPORTER: Mr. Whitmire, did you tell
8 me you had one?

9 MR. WHITMIRE: Just one. It's right beside
10 you.

11 MR. SHAFFER: And that's the number one.
12 This is the video.

13 COURT REPORTER: So he's got that marked for
14 the applicant. Is that --

15 MR. SHAFFER: I had put it as Applicant's
16 One. Is that okay? That's fine.

17 COURT REPORTER: All right, Your Honor, I've
18 marked Applicant's One, Three, Four, Five, and Six.

19 MR. SHAFFER: And I think we were going to
20 put all these in under stipulation, Your Honor.

21 THE COURT: Okay.

22 Is that correct, Mr. Whitmire?

23 MR. WHITMIRE: Correct, stipulation, no
24 negotiation.

25 (Whereupon, Applicant's Exhibits One,

1 Three, Four, Five, and Six were entered in the record
2 under stipulation.)

3 THE COURT: Okay.

4 Mr. Whitmire, one other thing. I don't know
5 that it's necessary, but usually I get a copy of your
6 ???

7 MR. WHITMIRE: I'll draft one. Your Honor,
8 I do apologize.

9 THE COURT: No problem.

10 MR. WHITMIRE: I arrived late last night.
11 May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 This is Case 2012-CP-32-3136, Michael R.
14 Elders, Applicant, versus State of South Carolina,
15 Respondent. This is Mr. Elders' post-conviction
16 relief request.

17 Mr. Whitmire, anything you need to put on the
18 record?

19 MR. WHITMIRE: Your Honor, Mr. Shaffer has
20 timely amended his application for post-conviction
21 relief. He has memorialization of that today.

22 THE COURT: Okay.

23 MR. SHAFFER: Your Honor?

24 THE COURT: Thank you, sir.

25 MR. SHAFFER: Thank you, Your Honor.

1 THE COURT: I appreciate it.

2 MR. SHAFFER: And since I have not filed that
3 yet, could we make that a Court's exhibit?

4 THE COURT: Is this your original?

5 MR. SHAFFER: Yes, Your Honor. Is it
6 signed?

7 THE COURT: Yes. Do you have a copy?

8 MR. SHAFFER: Yes, Your Honor.

9 THE COURT: Okay. What we'll do is I'll let
10 you give the original to the Clerk so she can file it,
11 and then you can give me a copy.

12 MR. SHAFFER: All right, thank you, Your
13 Honor. Is there any way that I could give the Clerk
14 a copy after this?

15 THE COURT: Oh, yes, yes.

16 MR. SHAFFER: Okay, thank you, Your Honor.

17 THE COURT: You can give her that. Do you
18 have a copy for me to review?

19 MR. SHAFFER: No, Your Honor. My other copy
20 is marked.

21 THE COURT: Okay. Can you make a copy of
22 that?

23 Hand it to her, and she'll make a copy.

24 MR. SHAFFER: Thank you, Your Honor.

25 THE COURT: And you've already provided a

1 copy to Mr. Whitmire?

2 MR. SHAFFER: Yes, Your Honor, we have.

3 THE COURT: All right, Mr. Shaffer, I
4 believe the ball is in your court.

5 MR. SHAFFER: Thank you, Your Honor. Just
6 a few small housekeeping matters. One is we had
7 originally planned on -- in addition to the
8 supplemental grounds, we had originally in April
9 planned on arguing ineffective assistance of counsel
10 for failure to call an expert witness.

11 I'm retained in this case, Your Honor.
12 However, my client is indigent. His family doesn't
13 have any more money to pay. I had e-mailed Judge Russo
14 concerning this matter and said it would likely take
15 around \$3,000 to \$5,000 and asked if he would be
16 inclined to grant funding. He responded that he would
17 not.

18 Because of that, we're essentially going to
19 have to forego that matter, just because it was denied
20 by Judge Russo, the chief admin at the time. We did
21 speak to several people. And just for the record, Your
22 Honor, essentially this is a child sex abuse case.

23 The expert we would have hired likely would
24 have said that the -- and we actually spoke to the expert
25 -- that there's various other causes that could have

1 been -- there was some redness, but there's various
2 other causes. Most likely, I believe -- the
3 terminology the expert used was typical poor hygiene
4 for a 10-year-old girl.

5 Essentially, I spoke to a nurse
6 practitioner. I also spoke to a doctor about this, as
7 well. We got favorable statements from both. One we
8 decided not to use just because it was too favorable.

9 MR. WHITMIRE: Your Honor, I'm going to
10 object and just add speculation on the merits ???
11 motion.

12 MR. SHAFFER: And, Your Honor, I'm not going
13 to bring it for the purposes of the actual jury --

14 THE COURT: This is just for proffer?

15 MR. SHAFFER: Yes, Your Honor. This would
16 basically be a proffer.

17 THE COURT: All right.

18 MR. SHAFFER: The various other things that
19 could have caused it are -- include -- and these are
20 people who have reviewed those photos that we've
21 introduced into evidence, along with 23 other photos
22 that the Solicitor's Office gave me in digital format.

23 But essentially they said aggressive wiping,
24 candida -- which is basically a type of a yeast
25 infection -- it's C-A-N-D-I-D-A -- irritation from

1 urine, or possibly a urinary tract infection could have
2 caused the redness that is seen in the pictures.

3 And they also said as someone who had viewed,
4 she estimated, more than 500 patients around the same
5 age group age with similar redness, and that the type
6 of redness is not indicative of child sex abuse. She's
7 not a child sex abuse expert. She's a nurse
8 practitioner, Your Honor.

9 THE COURT: All right. I'll let you proffer
10 it.

11 MR. SHAFFER: Thank you, Your Honor. We
12 appreciate that.

13 THE COURT: Okay.

14 MR. SHAFFER: To give you a little bit of
15 background on this case -- and I'll run through the
16 facts if you'll allow me, Your Honor.

17 THE COURT: I don't mind you summarizing
18 them.

19 MR. SHAFFER: Thank you, Your Honor.

20 THE COURT: Okay, go ahead.

21 MR. SHAFFER: Our view of it is that -- well,
22 essentially my client is accused of sexually assaulting
23 his daughter. It all started when or how the police
24 got involved is sort of a long story. But essentially
25 this is what happened.

1 A relative had seen him driving up with her
2 in his lap. He indicated he was trying to teach her
3 how to drive the truck. The relative thought it was
4 inappropriate. He was drunk and basically threatened
5 him.

6 That incident got passed around the family
7 through about four other people and finally got back
8 to the mom. And by the time it got back to the mom,
9 it was Johnny Hutto, the guy who had seen it, it was
10 basically Johnny Hutto had seen him inappropriately
11 touch her. And then the mom confronted the child, and
12 it escalated from there.

13 Our primary allegation in this -- and all of
14 them are noted -- but the primary thing we're going to
15 be talking about today, I imagine, is the forensic
16 interviewer. They called the forensic interviewer to
17 the trial. The trial counsel directly asked the
18 forensic interviewer -- or said
19 -- "Isn't it true that your job is to determine whether
20 or not the child is telling the truth?"

21 She initially said no. They called a second
22 forensic interviewer, who had not seen the child, later
23 on. He asked the same question. The second forensic
24 interviewer said, "Yes, that's true. We determine
25 whether or not the child is telling the truth," which

1 is inappropriate under South Carolina law.

2 The argument essentially was -- well, the
3 forensic interviewer who saw her isn't even saying that
4 her job is to tell the truth. She didn't use the word
5 "compelling," but she used plenty of other statements
6 that were beneficial. And that's primarily what we're
7 going to be talking about that today. But we'll touch
8 on some of the other issues as well, Your Honor.

9 THE COURT: Okay.

10 MR. WHITMIRE: Your Honor, if I may briefly
11 respond with a similar statement. Assuming there was
12 an error, failure to object, on the allegations that
13 Mr. Shaffer has alluded to, Your Honor, the State would
14 stipulate that the controlling law is Jennings v. State
15 of South Carolina 394 SC 474, which addresses any error
16 under a harmless error rubric.

17 Furthermore, the State moves to summarily
18 dismiss the allegation about having the forensic
19 interviewer qualified. Croom v. State was a case in
20 this year, the first time our Supreme Court stated it
21 is improper to hold a forensic interviewer at fault.
22 Before then, it was not case law. And, Your Honor,
23 counsel is not under a duty to be clairvoyant.

24 THE COURT: Thank you, sir.

25 MR. SHAFFER: And, Your Honor, regarding

1 that, essentially we're saying that we're talking about
2 the second forensic interviewer, and the first was
3 unqualified. The second forensic interviewer
4 actually was qualified as a child abuse assessment
5 expert.

6 I think that under our law that that is not
7 a recognized specialty. It's not anything that a jury
8 needs help with. Essentially it's saying she's an
9 expert in knowing if there's child sex abuse or not.
10 It's not something -- it's a matter for the jury to
11 determine, and it's not something that they would even
12 need. I believe even under cases before that, that
13 would not pass as a recognized specialty, Your Honor.

14 THE COURT: Okay.

15 MR. WHITMIRE: If we could to respond, and
16 I'll stop, Your Honor.

17 THE COURT: Okay.

18 MR. WHITMIRE: Regarding the specific
19 allegation, there is no case law on point currently that
20 says a qualified sex abuse expert can't testify
21 regarding delayed disclosure and other such things, as
22 long as that testimony does not constitute bolstering
23 or impermissible hearsay outside of time and place.
24 Then regarding the statements the different forensic
25 interviewers made, also the jury would hear the issue

1 of credibility of witnesses.

2 THE COURT: All right, thank you, sir.

3 MR. WHITMIRE: Thank you, Your Honor.

4 MR. SHAFFER: Thank you, Your Honor.

5 THE COURT: In the notice of review and
6 return in this case, Mr. Shaffer, a notice of appeal
7 was filed, and apparently they filed an initial brief,
8 is that correct, and then they withdrew the appeal at
9 his request?

10 MR. SHAFFER: Your Honor, I'm not sure if he
11 did or not. The backstory behind it is essentially
12 that Betsy Franklin represented him -- from Appellate
13 Defense represented him at the direct appeal. She had
14 said, "Hey, we're going to appeal this, but we're not
15 going to win. You have a really good PCR argument."

16 MR. WHITMIRE: Your Honor, just for the
17 record, just to object as to hearsay, and then Mr.
18 Shaffer can continue.

19 MR. SHAFFER: And this is the answer to the
20 question. This obviously isn't evidence, Your Honor.

21 THE COURT: Right.

22 MR. SHAFFER: But essentially she advised
23 him to go forward with the PCR and said they would likely
24 create a better result for him than waiting on a direct
25 appeal, Your Honor. And that's what he did. He

1 withdrew it.

2 THE COURT: Okay, all right. So are you
3 ready to go?

4 MR. SHAFFER: Yes, Your Honor.

5 THE COURT: All right, call your first
6 witness.

7 MR. SHAFFER: The applicant calls Bill Rast.
8 (Whereupon, the witness was sworn.)

9 CLERK OF COURT: Have a seat and state your
10 name, please, sir.

11 THE COURT: Mr. Rast, I appreciate your
12 being with us.

13 MR. RAST: That's all right, nothing else to
14 do.

15 THE COURT: All right, your witness.

16 WILLIAM RAST, having first been duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SHAFFER:

20 Q Good morning, Mr. Rast.

21 A Good morning.

22 Q Good afternoon, actually. You represented
23 Mr. Elders, correct?

24 A Right.

25 Q Were you retained, or were you appointed?

1 A Retained.

2 Q When did you get retained in this case?

3 A Right after he was arrested. I've known
4 Mike for a long time. And I was going to represent him
5 on this. He said he wanted me to, so right from the
6 beginning. I think his daddy paid me.

7 Q When you say you represented him a long time,
8 you previously represented him on cases where?

9 A Well, a lot of them were family matters,
10 child support, some of it criminal action from his
11 ex-wife.

12 Q So his wife, the mother of --

13 A That's right.

14 Q -- the alleged victim in this case?

15 A Right.

16 Q Brought previous criminal matters?

17 A Yes.

18 Q Were you able to get a favorable result on
19 those previous criminal matters?

20 A All of them were dismissed.

21 Q All right.

22 A Found not guilty or dismissed the charges.

23 Q Okay. How many -- could you estimate the
24 number of criminal matters his wife?

25 A I think it was between three and six,

1 somewhere in there.

2 Q Okay. Now, was there any plea offer in this
3 case?

4 A No.

5 Q And did Mr. Elders want a plea offer?

6 A He told me he wasn't guilty the whole time.
7 He never did ask about a plea offer that I can remember,
8 and no one ever -- no, there was no plea offer made.

9 Q Okay. So he wanted to go to trial on it?

10 A Right.

11 Q What was your strategy about going to trial?

12 A Prove that the whole thing was made up,
13 concocted by his wife and various other people.

14 Q And, in your opinion, did forensics play a
15 big role in this case?

16 A Not a real big one, in my opinion, no.

17 Q It was mainly a credibility case?

18 A Right.

19 Q So it was basically his credibility against
20 his wife's credibility and daughter's?

21 A That's true.

22 Q Do you recall someone named Johnny Hutto?

23 A Yes.

24 Q How was Johnny Hutto involved in this
25 situation?

1 A Johnny Hutto basically started when he saw
2 Mike driving around with his daughter sitting in his
3 lip in the car. He made some comment that by the time
4 it got around to everybody, it had escalated to where
5 Mike had abused his daughter when Johnny Hutto said
6 that's not what he said.

7 Q Okay. And he testified to that at trial that
8 that's not what he said, right?

9 A That's correct.

10 Q But by that point, police were involved --

11 A Right.

12 Q -- and everyone believed what they were going
13 to believe, right?

14 A That's correct.

15 Q Okay. Going forward, you waived the opening
16 statement, right?

17 A Right.

18 Q Okay. Why exactly did you do that?

19 A When I started practicing in 1965, the
20 Solicitor was authorized to read the indictment or
21 summarize it to the jury. The defense could make no
22 opening statement. That's the way I got started, and
23 I kind of liked it.

24 I've continued doing that. Very seldom will
25 I make an opening statement. I do not want to say

1 something that the Solicitor can not approve. I don't
2 want to say something I can't approve. And I don't
3 think a jury is going to base its decision on an opening
4 statement. So I generally waive it.

5 Q Now, what is your opinion on objecting during
6 opening statements and closing arguments? Do you
7 generally do it?

8 A It depends on what is said. If it's
9 something that bad, yes, I'll object to it. Mostly,
10 it's just talking.

11 Q Now, did you consult any experts in this
12 case?

13 A No, I did not.

14 Q Any private investigators?

15 A No.

16 Q Did you talk to the forensic interviewer
17 before trial?

18 A Yes.

19 Q And --

20 A Well, there were two of them you're talking
21 about. I talked to the first one, that one that did
22 the videotape of the child.

23 Q Do you know why they called a second forensic
24 interviewer?

25 A I objected to it. We had a long argument and

1 discussion. The victim left out something in the
2 forensic interview that they had an indictment for.
3 That's the one indictment we won. I believe they were
4 trying to call the second one to talk about a child's
5 recall of evidence or sometimes they don't mention it
6 right away.

7 Q So they were calling them to explain away the
8 fact that the child didn't say something?

9 A That the child did not say something in the
10 original interview that she was saying later on.

11 Q I imagine if they had not called them, you
12 would have argued that the child didn't remember
13 something, right?

14 A Well, I argued that anyway. And like I said,
15 that's the one indictment that they came back not guilty
16 on.

17 Q And you believe the fact that she didn't
18 remember something might go to her credibility?

19 A I think it went to her credibility. In my
20 opinion, she did not make a very strong witness in the
21 courtroom anyway.

22 Q So I guess it's safe to say the second witness
23 was to combat your credibility argument, right?

24 A Right.

25 Q And you said she didn't make a very strong

1 witness in the courtroom. What do you mean by that?

2 A She couldn't tell me when the first incident
3 occurred, when the last one occurred. She couldn't
4 remember anything.

5 Q Do you recall her looking at her mother
6 during your --

7 A Oh, the whole time. And her mother admitted
8 it when she testified. She said, "Yes, she was looking
9 at me. I'm her support."

10 Q Okay.

11 A Which I thought was important.

12 Q And you brought up the fact that her mother
13 had a drug problem, right?

14 A Right.

15 Q Did you bring up the fact that her mother had
16 previously tried to place charges on him?

17 A Had previously --

18 Q I'm sorry -- had previously tried to get him
19 arrested or had him arrested several times?

20 A Oh, yes, all of that came out.

21 Q Because all that went to credibility of them
22 --

23 A Right.

24 Q -- and possible motive for her lie?

25 A That was our position.

1 Q Okay. Did you move at any point -- you
2 remember the video, right?

3 A Right.

4 Q Did you move at any point to redact part of
5 the video?

6 A No.

7 Q When that nurse got on the stand, Ms. Robin
8 Baker, do you recall that?

9 A Yes.

10 Q And do you recall her testifying about an
11 incident where the applicant allegedly tried to play
12 truth or dare with another minor?

13 A Yes.

14 Q Was that in the video?

15 A Yes, it was.

16 Q Okay. And you objected to that when the
17 nurse was called, right?

18 A I don't really recall, to tell you the truth.

19 Q Okay. But would you disagree if I told you
20 you had objected?

21 A No.

22 Q You essentially -- would you disagree if I
23 said you objected under relevance and said it basically
24 wasn't relevant to this issue?

25 A Right. Might have, I don't remember. It's

1 been two and a half years ago.

2 Q I understand. But do you remember objecting
3 during the video or asking for the video to be changed
4 where the jury wouldn't have heard that?

5 A No, I don't remember doing that.

6 Q Okay. Now, I believe it was during Johnny
7 Hutto's testimony, he had mentioned that the applicant
8 had previously honked the horn at under-age girls in
9 the neighborhood. He would blow his horn whenever he
10 saw under-age girls. Do you recall that?

11 A Yes, I do.

12 Q Do you know if you objected to that?

13 A I don't think I did.

14 Q Okay. Do you think that that possibly made
15 him worse in the jury's eyes?

16 A I don't think honking the horn would lead to
17 sexual conduct with your daughter. I just don't think
18 it's anything that would lead.

19 Q But you would say honking the horn at an
20 under-age girl might be a sign of flirting?

21 A It could be, yes.

22 Q Okay. And the jury might have interpreted
23 it as a sign that he was flirting with under-age girls,
24 right?

25 A I don't know what a jury would say. But it's

1 possible.

2 Q Did you sign it is possible?

3 A Yes.

4 Q Okay. Now, the way you handled the forensic
5 interviewers, you asked them directly -- the first one
6 -- if her job was to determine whether or not she was
7 telling the truth?

8 A That's right.

9 Q And how did she answer that?

10 A If I recall correctly, she said that was not
11 her job.

12 Q Okay. And you asked the second interviewer
13 the same question, right?

14 A That's right.

15 Q And what did the second interviewer say?

16 A That was her job.

17 Q Okay. And you also -- do you believe that
18 the forensic interviewer had said -- believed her or
19 not, the first forensic interviewer?

20 A Well, I don't quite understand your
21 question.

22 Q I apologize.

23 A The first forensic interviewer basically
24 testified that she showed the tape. I think the tape
25 is the important thing, not what she really said. And

1 for her to admit it was not up to her to determine
2 whether the child was telling the truth or not, I
3 thought was good for us.

4 Q Why did you think it was good for y'all?

5 A Because she didn't say she thought the child
6 was telling the truth and let me room to argue that she
7 wasn't.

8 Q But she did say she did not think she was
9 being coached, right?

10 A Right.

11 Q And she did say that she recommended the
12 child for I think the term was evidence-based therapy,
13 right?

14 A Right.

15 Q And she did say that she didn't find the
16 statement from the child problematic in any way, right?

17 A That's true.

18 Q Do you not think that any of those statements
19 could make the jury think that maybe she did believe
20 her?

21 A If you take all of those statements
22 individually, yes. But based on the whole of her
23 testimony and the video of the interview, I mean, that's
24 basically up to the jury.

25 Q But the Solicitor took those statements

1 individually, right --

2 A Right.

3 Q -- in their closing argument?

4 A Right.

5 Q And, in fact, she said if she didn't find it
6 problematic, she didn't find it was coaching, obviously
7 she believed her?

8 A Well --

9 Q Something to that effect?

10 A That could be argued, yes.

11 MR. SHAFFER: Court's indulgence just a
12 moment.

13 THE COURT: Okay.

14 Q But you would agree that she said that if she
15 didn't believe her, she would have found it
16 problematic, right? Do you have a transcript?

17 A I don't have a transcript with me, but I don't
18 recall that.

19 MR. WHITMIRE: Your Honor, asked and
20 answered. Mr. Rast already gave his answer during the
21 question.

22 MR. SHAFFER: I'll refresh his memory, if
23 that's all right, Your Honor.

24 THE COURT: Have you got those pages
25 printed?

1 MR. SHAFFER: Yes, Your Honor. This is 386,
2 Your Honor.

3 THE COURT: Page 386?

4 MR. SHAFFER: Yes, Your Honor. I'll give
5 you the line in just a second. I believe it's lines
6 3 through 11, Your Honor.

7 Q Could you read that and see if that refreshes
8 your recollection?

9 A You're talking about Deborah Moore's closing
10 argument?

11 Q That's correct.

12 A Oh. She said she can't make a
13 determination. It's not her job to determine whether
14 she's telling the truth or a lie. Then she asked, "But
15 I asked her, 'Was that interview problematic?' and she
16 said no."

17 Q And then if you wouldn't mind, since you've
18 read a little, could you go through 9 through 11,
19 please?

20 A "She does not believe her, ladies and
21 gentlemen. Otherwise, the record would say it was
22 problematic. It wasn't. That's what she said."

23 Q She said she does believe her, right?

24 A Yes.

25 Q So she's saying that the first interviewer

1 does believe her, or else she would have said it was
2 problematic --

3 A Right.

4 Q -- right?

5 A Right.

6 Q Okay. So basically she took the fact that
7 you had asked that question to bolster her credibility
8 through the witness, right?

9 A That's what she's supposed to do in a closing
10 argument.

11 Q But you don't think that that was harmful to
12 him?

13 A Everything she said in the closing argument
14 is harmful to him. That's why she said it.

15 Q I mean, this case is all about credibility.

16 A Right.

17 Q Don't you think that having someone with Ms.
18 Baker's reputation might help the credibility or assist
19 the credibility of the young girl who didn't testify
20 well?

21 A If you look at it that way, yes.

22 Q Okay. And that might have actually hurt the
23 outcome of the case, right?

24 A It might have, might not have. I can't tell
25 you that.

1 Q Okay. But you never objected at any point
2 to them arguing that that was the job of the forensic
3 interviewer, right?

4 A No.

5 Q Are you familiar with South Carolina case law
6 on that issue?

7 A On the what?

8 Q I apologize. Are you familiar with South
9 Carolina case law on that issue?

10 A Probably not as familiar as you are with the
11 case law.

12 Q I would hope so. Otherwise, I'm not doing
13 my job, sir. Are you familiar that basically you can't
14 have an expert say that someone is telling the truth
15 or someone is lying?

16 A Right.

17 Q Okay. And that was the law then, right?

18 A Right.

19 Q Okay. But you directly asked someone who
20 might not have been qualified as an expert but basically
21 was an expert to give an opinion? You did?

22 A Not that I remember, no.

23 Q I mean, you asked the first forensic
24 interviewer to give an opinion?

25 A No, I asked her if she was --

1 Q If that was her job to give an opinion?

2 A Right -- to tell the truth.

3 Q Okay. So you brought up that issue --

4 A Right.

5 Q -- it's safe to say, okay. Now, you had
6 something about the proper way to -- the proper thing
7 for them to say during closing argument or what they're
8 supposed to say during closing argument. Do you know
9 what a -- you're familiar with the golden rule
10 violation, obviously, right?

11 A Right.

12 Q Tell us about a golden rule violation.

13 A What do you mean, tell you about it?

14 Q I mean, what is a golden rule violation?

15 A I don't know what you're talking about.

16 Q Okay.

17 Your Honor, several of my ineffective
18 assistance of counsel failure to object to different
19 argument, if Your Honor will allow me to, I think it
20 easier than going through them with Mr. Rast to go ahead
21 and brief them.

22 THE COURT: Don't you have them with you?

23 MR. SHAFFER: Yes, Your Honor, I do.

24 THE COURT: Okay. And you've handed me
25 that, so I'll note that you have listed in your

1 exceptions, just for example, the last one, ineffective
2 assistance of counsel for failure to object to the State
3 vouching for the credibility of Robin Baker, transcript
4 186, lines 12 through 14, which we've just gone over,
5 is that correct?

6 MR. SHAFFER: That's correct.

7 THE COURT: Okay. So I'll note that. You
8 don't need to repeat that.

9 MR. SHAFFER: Thank you, Your Honor. And
10 number two, though, I would like to go through at the
11 close of this and actually go through -- there's two
12 different ways I've seen people do this.

13 One is to actually tell the judge what the
14 arguments are later, or the other one -- because I've
15 listed several pages for inappropriate closing
16 argument. The other way is go through with the
17 attorney each and every individual line and say, "Do
18 you think this is objectionable? Do you think that's
19 objectionable?" And if you would prefer, I can do
20 that, but for time's sake.

21 THE COURT: I think you should ask him either
22 why he didn't object or "Do you think it's
23 objectionable?" So if you want to go through it that
24 way, you can. He's got a copy of the transcript so he
25 can see it.

1 MR. SHAFFER: Thank you, Your Honor.

2 Q If you could, go to transcript page 163,
3 lines 11 through 20.

4 A 163?

5 Q That's correct. I apologize. It's 16
6 through 20, not 11 through 20.

7 A All right.

8 THE COURT: You said page 163?

9 MR. SHAFFER: Yes, Your Honor.

10 THE COURT: Okay. Line 16?

11 MR. SHAFFER: That's correct -- 16 through
12 20, Your Honor.

13 Q And in that line, do you believe that the
14 prosecutor -- that's from the opening statement of the
15 prosecutor -- do you think she's asking the jury to
16 basically step in the shoes of the little girl?

17 A To some extent, yes.

18 Q Now, if you could, turn to the one page right
19 before that.

20 A Right before it?

21 THE COURT: 162?

22 MR. SHAFFER: That's correct, Your Honor.

23 THE COURT: Okay.

24 A And you said one what?

25 Q 162.

1 A Okay.

2 Q And if you could, look at lines 14 through
3 19.

4 A All right.

5 Q And do you believe that -- would you say it's
6 safe to say that essentially they're asking the Court
7 -- or they're saying that parents have a duty to protect
8 kids in general?

9 A Sure.

10 MR. SHAFFER: Your Honor, I will get to some
11 of the better ones.

12 THE COURT: Okay.

13 Q Now, if you could, turn to page 392. And if
14 you could, look at lines 14 through 19.

15 A All right.

16 Q And essentially she's saying she told the
17 truth, right?

18 A Right.

19 Q And that's Ms. Moore in her closing argument,
20 right?

21 A Right.

22 Q And if you could, also look on that page at
23 lines 20 through 23 -- or actually 20 through line 1
24 on the next page. If you could, read over that.

25 A All right.

1 Q And she's basically asking the jury to stand
2 up for the little girl, right?

3 A Right.

4 Q That they have some duty as citizens to stand
5 up for the little girl, okay. Have you ever read the
6 case State v. Liberte -- it's L-I-B-E-R-T-E?

7 A Yes.

8 Q And essentially that would say that several
9 of those arguments are improper, right?

10 A They seem to think so. This was a case of
11 credibility. She's arguing that her witness is
12 credible. I was arguing that mine was credible and
13 hers were not. And this was basically the whole thing
14 of the trial.

15 Q They seem to think so means the Court of
16 Appeals seems to think so?

17 A I'm sorry, what now?

18 Q When you say "they," you meant the Court of
19 Appeals seems to think that that's improper, right?

20 A Right.

21 Q Okay. Now, did you object to any of those
22 arguments?

23 A No, I didn't.

24 Q And you said you have not heard -- you don't
25 know what a golden rule violation is?

1 A Not as called the golden rule violation, no.

2 Q No. Do you think it's proper for them to ask
3 the jury to stand in the shoes of the victim?

4 A That is not technically correct. They
5 should not do that.

6 Q Okay. But some of those things they were
7 asking are to stand in the shoes, right?

8 A Right.

9 Q Did you object to any of those statements?

10 A No, I did not.

11 Q Why didn't you?

12 A We were in the trial. This is the closing

13

14 [LAPSE BETWEEN END OF SIDE 14 AND BEGINNING OF 15.

15 SOMETHING MAY BE MISSING HERE.]

16

17 A Right.

18 Q Now, when the second forensic interviewer
19 got up to testify -- Ms. Caldwell, I believe her name
20 is -- did you object to her being qualified as an expert?

21 A Yes, I did.

22 Q What was your grounds for doing that?

23 A That her testimony was not something that was
24 necessary for a jury to believe, or we didn't need an
25 expert to go into what she was going to say -- an

1 improper field for an expert.

2 Q Okay. So you objected based off the
3 improper field?

4 A Right.

5 Q Are you sure you didn't object because she
6 was not qualified as an expert, you said?

7 A Well, I objected to several things. We had
8 a long discussion before she was ever allowed to
9 testify. The judge took two breaks, if I'm not
10 mistaken.

11 Q Now, if you could, turn to transcript 318 --
12 or transcript page 318 -- and look at lines 10 through
13 12.

14 A All right.

15 Q Now, right before that, the judge had asked
16 you to clarify what your objection was, right?

17 A Right.

18 Q And what was your response to that?

19 A That she does not possess the necessary
20 qualifications to be an expert to render her opinion
21 in this particular field at that time.

22 Q Now, you said that you also objected to the
23 appeal as a whole. Do you recall where you objected
24 to that at?

25 A Not right offhand. Like I said, it was a

1 long time before the judge ever did allow her to
2 testify. I don't recall exactly when it was. We kept
3 arguing with the Solicitor to proffer testimony, and
4 the judge got upset and took a break to give the
5 Solicitor more chance, came back, went through it
6 again. The Solicitor still couldn't do it. Then they
7 took another break. I don't know exactly where it was
8 in here.

9 Q If I had told you that I read that whole
10 section and that I didn't see it in there, wouldn't you
11 disagree with me?

12 A No, I wouldn't, because I haven't read it in
13 a while.

14 Q Okay.

15 A I'm just going on memory.

16 THE COURT: Mr. Shaffer, let me ask you.
17 Turn to page 316.

18 MR. SHAFFER: 316? Yes, Your Honor.

19 THE COURT: It looks like he's going through
20 lines 15 and 16. He says, "So basically you're going
21 to tell the jury what you learned in courses that you
22 took?" all right?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. SHAFFER: Okay, thank you, Your Honor.

1 THE COURT: Go ahead.

2 MR. SHAFFER: I apologize. I know that he
3 questioned something around that. I'm just not sure
4 if that objection is in there, Your Honor. I
5 apologize.

6 THE COURT: I understand what you're getting
7 at, but I also just want to be clear for our witness.

8 MR. SHAFFER: Yes, sir.

9 THE COURT: Okay, I'm sorry.

10 MR. SHAFFER: It's okay.

11 THE COURT: Go ahead.

12 MR. SHAFFER: Thank you, Your Honor.

13 Q Now, you said that -- do you recall the
14 mother's family? Did they like Mr. Elders?

15 A No.

16 Q Why didn't they like him?

17 A I really don't know, but they didn't like
18 him.

19 Q But they testified they suspected him prior
20 to this incident essentially?

21 A That's what they said.

22 Q Okay. So they claimed in the testimony that
23 they had expected that he was sexually abusing her?

24 A Right.

25 Q And do you recall if you objected to that

1 testimony?

2 A I don't recall whether I did or not, to tell
3 you the truth.

4 Q If you could, could you turn to page 213, read
5 lines 10 through 15, and see if that refreshes your
6 recollection?

7 A All right.

8 Q Now, after reading that, do you recall if you
9 objected to that testimony?

10 A It doesn't appear that I did, no.

11 Q In fact, you brought it up, correct?

12 A Right.

13 Q So you specifically asked the jury if the
14 mother's family previously suspected him?

15 A I think so, yes.

16 Q Do you think that's helpful to Mr. Elders,
17 that the family previously suspected him?

18 A Well, when nobody has seen any evidence of
19 it, yes.

20 Q Do you think that's helpful?

21 A I did -- at that point in time, yes, the way
22 their attitude was.

23 Q I mean, did you ever hear --

24 A They suspected him, but they had no evidence,
25 none at all.

1 Q But this is prior to hearing Johnny Hutto,
2 right?

3 A Right.

4 Q Have you ever heard the term "Where there's
5 smoke, there's fire"?

6 A Yes.

7 Q Sometimes people will believe that, right?

8 A That's true.

9 Q So sometimes people will believe if they
10 suspected him, maybe he did it?

11 A Right, that's true.

12 Q So that likely could have been used against
13 him, right?

14 A It could have been.

15 Q Okay.

16 A And it could have been used in other ways,
17 also.

18 Q How do you want it to be used?

19 A That they didn't like him. They suspected
20 something or planned they suspected something. They
21 were looking for something to get on him.

22 Q Did you address that any further throughout
23 the trial?

24 A I'm sure I did somewhere.

25 Q Do you recall where?

1 A No. It's been a while.

2 Q Now, I believe we had already gone over this.
3 But the truth or dare statement was introduced through
4 the SANE nurse and the video, right?

5 A Right.

6 Q Okay. And you did not object to the video,
7 but you objected on relevance from the SANE nurse,
8 right?

9 A Right.

10 Q Did you object under hearsay at any point?

11 A I can't remember what the objection was, to
12 tell you the truth.

13 Q Do you recall the SANE nurse testifying as
14 to who actually committed the crime?

15 A To what, now?

16 Q Do you recall whether the nurse had
17 identified him as being the one the girl said molested
18 her?

19 A I don't recall that specifically, no.

20 Q If I was to tell you that the SANE nurse had
21 said -- and actually, if you could, go to 266.

22 A All right.

23 Q And, if you could, look at lines 14 through
24 line 15 on the next page. If you could, just look over
25 that briefly. Now, some of that gets into stuff other

1 than time and place, right?

2 A Right.

3 Q Did you object under hearsay to any of that?

4 A No, because it was all brought out either
5 before or later on, when she testified and when she was
6 on the video.

7 Q But do you think it might have helped her
8 credibility to have someone say, "Hey, she said the
9 exact same thing earlier"?

10 A It's possible.

11 Q Okay, thank you. Do you know -- well, tell
12 me this. Are you supposed to say things like this to
13 a witness -- are you -- "Other witnesses have said other
14 things. Are you sure that's the way it is?" Do you
15 know if that's objectionable? Would you say that's
16 objectionable or not?

17 A What?

18 Q I apologize. Do you think it's
19 objectionable to say "Other witnesses have said this.
20 Why are you saying different?" Can you say that?

21 A I don't know what you're getting at.

22 Q I apologize.

23 MR. WHITMIRE: I'm going to object, Your
24 Honor. Mr. Shaffer just presented testimony not
25 relevant to the witness's representation in this case.

1 THE COURT: Mr. Shaffer, if you've got a
2 specific question about a specific incident, if you
3 would just refer him to that and ask him why he didn't
4 object, that might help everything.

5 MR. SHAFFER: Thank you, Your Honor.

6 Q If you could, go to page 361, lines 15 through
7 22.

8 THE COURT: Lines what?

9 MR. SHAFFER: 15 through 22.

10 A All right.

11 Q Did you find that objectionable?

12 A Yes.

13 Q Did you object?

14 A No, I didn't.

15 Q Why not?

16 A It was Mike's brother testifying. He
17 insisted on testifying. Mike wanted him to testify.
18 I really had no idea he was going to get up there and
19 try to hurt his brother.

20 Q But you didn't object to him saying that?

21 A It came up before I realized what he was
22 saying.

23 Q Okay. Now, I think I only have one final
24 question or one final line of questioning. Under page
25 386, if you could, look through lines 12 through 14.

1 A You said 386?

2 Q That's correct.

3 A All right. Okay.

4 Q And in this statement, they're saying -- the
5 State's arguing that "Robin Baker was the most
6 compelling witness." Robin Baker was the SANE nurse,
7 right?

8 A Right.

9 Q But they're saying she's the most compelling
10 witness?

11 A Right.

12 Q Do you find that objectionable?

13 A Saying that this is the most compelling
14 witness? I don't find anything wrong with that in the
15 closing argument. That was her opinion.

16 MR. SHAFFER: Your Honor, the Court's
17 indulgence just a moment.

18 THE COURT: All right.

19 MR. SHAFFER: No further questions.

20 THE COURT: Thank you.

21 Anything on cross-examination?

22 MR. WHITMIRE: Just a handful of questions,
23 Your Honor.

24 THE COURT: Okay.

25 CROSS-EXAMINATION

1 BY MR. WHITMIRE:

2 Q Good afternoon, Mr. Rast.

3 A Good afternoon.

4 Q As I recall your testimony, you had
5 represented Mr. Elders on previous charges, is that
6 correct?

7 A That's correct.

8 Q You're familiar with his family?

9 A Yes.

10 Q And at trial, Mr. Elders' brother and I
11 believe it's his father testified on his behalf?

12 A That's correct.

13 Q Were any other members of Mr. Elders' family
14 helpful in your investigation of the case?

15 A Not really, no.

16 Q Did any of them meet with you beforehand in
17 your preparations?

18 A I'm trying to remember. I don't recall
19 anybody else other than his father and his brother. I
20 think his mother was very sick and ill at the time.

21 Q Mr. Rast, did you review State's evidence
22 with Mr. Elders?

23 A Yes, I did.

24 Q In reviewing the State's evidence, did you
25 explain to him the video was going to come in?

1 A Yes.

2 Q And did you explain to him the medical
3 examiner's findings?

4 A Yes.

5 Q And did Mr. Elders desire testifying in his
6 trial?

7 A No.

8 Q Did you want him to testify in his trial?

9 A I told him the jury wanted to hear him say
10 he did not do it. I explained to him what the judge
11 would charge the jury if he did not testify but that
12 the jury wanted to hear him say he did not do it.

13 Q Were there any reasons that Mr. Elders would
14 not have made a good witness, like past convictions?

15 A Not that I -- no, he had no past convictions.

16 Q As trial developed, did you have any reason
17 to object to Robin Baker's expert qualification as a
18 sexual assault examiner?

19 A No.

20 Q And if I recall, didn't the expert find to
21 a medical degree of certainty that the victim suffered
22 from sexual trauma?

23 A Yes.

24 Q And the video did come in on page 147?

25 A Right.

1 Q Then, I believe, if you recall this, didn't
2 the victim testify that Mr. Elders was the only person
3 who had ever touched her or violated her?

4 A That's correct.

5 Q Despite all of that, did you have another
6 discussion with Mr. Elders about testifying at trial?

7 A I had discussions with him about testifying
8 all through the case. I thought he was going to testify
9 until he decided not to.

10 Q Instead of going through each specific
11 incidence in your cross-examination, I'm just going to
12 generally ask you, Mr. Rast. Were you trying to show
13 that Mr. Elders was the product of a witch-hunt from
14 family members during trial?

15 A Yes, I was.

16 Q So when they gave inflammatory answers, do
17 you think it helped his case to show bias?

18 A Yes.

19 MR. WHITMIRE: No further questions, Your
20 Honor.

21 Thank you, Mr. Rast.

22 MR. RAST: All right.

23 THE COURT: Anything on redirect related to
24 the questions under cross?

25 MR. SHAFFER: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q You said you thought it would help to show
4 bias that they thought he was a sex offender --

5 A Right.

6 Q -- beforehand? You thought it would be
7 beneficial for a whole family full of people to say
8 "He's a pedophile"?

9 A When you're talking about a family that is
10 filing criminal charges against a man that's using
11 cocaine and everything else, yes, I did think that would
12 be beneficial.

13 Q Okay. So you thought that that would be
14 beneficial --

15 A Right.

16 Q -- and that's why you introduced it?

17 A Right.

18 Q But you admit that it could also hurt him,
19 too?

20 A Depends on how the jury looks at it.

21 Q Generally, you try to keep bad acts out,
22 right?

23 A Most of the time, yes.

24 Q And in fact, that's one of the determinations
25 of whether or not somebody testifies through your

1 advice?

2 A Right.

3 Q Because if they have bad acts in the past,
4 you don't want them testifying --

5 A No.

6 Q -- to expose that? But you expose
7 them --

8 MR. WHITMIRE: Objection, unless it relates
9 to Mr. Rast's specific representation in this case.

10 THE COURT: Okay, I note your objection.

11 Go ahead, Mr. Shaffer.

12 MR. SHAFFER: Your Honor, I --

13 THE COURT: I think I know what --

14 MR. SHAFFER: -- think you understand where
15 I'm -- thank you, Your Honor.

16 Q Now, you also that you didn't find that --
17 well, you said that the nurse examiner -- the sexual
18 assault nurse examiner -- found to a medical degree of
19 certainty that the redness was caused by sexual abuse,
20 is that right?

21 A Now, you said it --

22 THE COURT: Did he cover that in his cross?

23 MR. SHAFFER: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. SHAFFER: He asked if they found to a

1 medical degree of certainty.

2 THE COURT: Okay.

3 Q Do you recall answering that question?

4 A No.

5 Q Do you not recall him saying that she found
6 that it was caused by sexual abuse, right? the nurse
7 examiner said that she was sexually abused, right?

8 A In their opinion, right.

9 Q Okay. In her opinion --

10 A Right.

11 Q -- she was sexually abused? But you also got
12 her to admit that there are several other things that
13 could have caused that type of redness, right?

14 A Right.

15 Q Do you recall what that was, those other
16 things were?

17 A Not offhand, no.

18 Q Do you mind turning to page 283, lines 1
19 through 10, reviewing that, and see if it refreshes your
20 recollection?

21 A All right.

22 Q It's correct to say that she said that
23 "Possibly a urinary tract infection could have caused
24 redness like that," right?

25 A That's correct.

1 Q She also said that feces could irritate that
2 area, correct?

3 A That's correct.

4 Q So she admitted that the redness might have
5 been caused by other things, right?

6 A Right.

7 MR. SHAFFER: No further questions.

8 THE COURT: Anything on recross?

9 MR. WHITMIRE: No recross, Your Honor. I'd
10 just ask that Mr. Rast be excused.

11 THE COURT: Any objection?

12 MR. SHAFFER: None, Your Honor.

13 THE COURT: Mr. Rast, thank you for visiting
14 with us today.

15 MR. RAST: Thank you, Judge.

16 THE COURT: Yes, sir.

17 All right, Mr. Shaffer, who's next for you?

18 MR. SHAFFER: Your Honor, we actually rest.
19 We're not calling him.

20 THE COURT: Okay.

21 (Whereupon, the applicant rests.)

22 All right, does the State have any witnesses?

23 MR. WHITMIRE: No, Your Honor. The State
24 rests. I have a brief closing argument once Mr.
25 Shaffer has had an opportunity.

1 (Whereupon, the State rests.)

2 THE COURT: Okay. If you all want to do
3 closing arguments, that's fine.

4 MR. SHAFFER: Thank you, Your Honor.

5 THE COURT: Brief closing arguments.

6 MR. SHAFFER: Your Honor, there were several
7 things we went over that are objectionable regarding
8 arguments that were made. But the primary thing that
9 we'd like to focus on today, we want to preserve
10 everything obviously, but the fact that he had
11 introduced prior acts purposefully, the honking of the
12 horn, the truth or dare with the other girls.

13 Trial counsel let that stuff in. The other
14 thing we'd like to focus on is the fact that he is
15 basically saying that the whole job of the forensic
16 interviewer is to determine whether or not he's telling
17 the truth. Well, she never said she wasn't telling the
18 truth.

19 She never came anywhere close to that. In
20 fact, she said several things that are beneficial to
21 the State saying "Yes, I believed her," basically. She
22 said she didn't find it problematic; the testimony
23 problematic.

24 She also said that there was no evidence of
25 any coaching. She also said that she recommended her

1 for evidence-based therapy, which is essentially
2 saying to the jury, "We're recommending her for therapy
3 because there's evidence of sexual assault." You
4 know, saying it's not problematic is saying basically
5 "I believe her."

6 Saying it's not coached is saying "Yes,
7 there's no reason for her to lie." He introduced that
8 purposefully under the idea that somehow that's going
9 to help his client out, which I'm not sure how it helped
10 him out. I think it really detrimented him in this
11 situation.

12 Now, I'm sure the State's going to argue
13 overwhelming evidence of guilt. You know, that's why
14 partially we wanted an expert to come testify, to get
15 funding for. But, you know, this is anything but
16 overwhelming. The nurse examiner said herself that
17 the redness could have been caused by other things.

18 She says that it's consistent with sexual
19 assault and doesn't say that it was sexual assault.
20 Well, she does say that, but I believe that we could
21 have probably had an expert say the opposite. I think
22 she's overreaching with what she had said.

23 But she certainly says other things can cause
24 this. And basically every time directly asked "If
25 you're relying on the physical evidence alone," the

1 nurse examiner essentially says, "I'm relying on the
2 physical evidence and the history, because that's what
3 you do in a sexual assault."

4 I guess I would direct the Court to 284, lines
5 3 through 5, where she says -- this is the nurse examiner
6 -- says, "You have to go by the history and the physical
7 finding, and that's with any sexual assault case."
8 Essentially, she's saying "Part of my testimony is
9 based off the history," which is the history from the
10 little girl.

11 So I certainly don't think that this is
12 overwhelming evidence of guilt. You know, Mr. Elders
13 has not had a chance to rebut that with his own expert.
14 But I believe that even under the testimony alone that
15 that would not be overwhelming evidence of guilt.

16 Mr. Rast said it was a credibility case. He
17 let her credibility get bolstered time and time again
18 through every one of the witnesses. He let her
19 credibility get bolstered through the SANE nurse by
20 saying basically she said the same thing previously.

21 He let her credibility get bolstered by the
22 first sexual assault examiner, who said, "I find it
23 compelling. I found no evidence of coaching. I
24 recommended her for evidence-based therapy." Lorie
25 Caldwell basically got up there and said, "Yes, it's

1 not unusual for her not to disclose everything at
2 first," basically saying "Hey, forgive her for telling
3 you more now than telling you later."

4 I mean, this was a credibility case, and he let
5 her credibility get bolstered over and over again. And
6 that's primarily why we think this is ineffective
7 assistance of counsel, Your Honor.

8 THE COURT: Okay.

9 MR. SHAFFER: Thank you.

10 THE COURT: Thank you, sir.

11 MR. WHITMIRE: May it please the Court?

12 THE COURT: Yes, sir.

13 MR. WHITMIRE: In regards to the Croom and
14 Jennings line of cases, I'd like Your Honor to recognize
15 this case occurred in 2011. At that time, Jennings was
16 the defining law. Croom was in 2012. But Jennings in
17 particular, if I recall correctly, took issues with "I
18 as forensic interviewer find this compelling. I find
19 this very truthful."

20 In this case, there's no such really strong
21 evidence or claims -- I'm sorry, the particular
22 testimony given by the forensic interviewers of
23 bolstering. Furthermore, Jennings specifically
24 announced that we will apply a harmless error rule,
25 presuming Your Honor finds error with Mr. Rast's

1 decision not to object at these portions of trial.

2 Your Honor, the State would also submit the
3 physical evidence presented in this case due to sexual
4 assault experts constituted overwhelming evidence of
5 guilt. The first defense witness called in Mr. Elders'
6 was the victim's pediatrician, Ms. Byrd, where every
7 possible other explanation that Mr. Shaffer has
8 presented this Court today were laid out in front of
9 the jury.

10 Mr. Shaffer has presented no expert here
11 today to rebut how the sexual assault trauma expert's
12 testimony in Mr. Elders' trial was inaccurate or
13 problematic. Therefore, it's merely a matter of
14 speculation. Furthermore, the State submits the
15 forensic interview tape constitutes significant
16 evidence of guilt coupled with the physical evidence.

17 In Watson v. State, our Supreme Court ruled
18 -- Your Honor, that's 370 SE 68 -- our Supreme Court
19 ruled it was reasonable to believe a forensic interview
20 tape constituted much more damaging evidence against
21 a defendant than corroborative testimony and hearsay
22 testimony outside time and place.

23 With that being said, Your Honor, the State
24 submits that overwhelming evidence of guilt supports
25 Mr. Elders' conviction. Additionally, assuming Your

1 Honor finds potential error in the other allegations
2 -- most of them, to my recollection, are of harmless
3 error -- I would be happy to answer any questions you
4 may have.

5 THE COURT: Okay.

6 MR. SHAFFER: Your Honor, if I may briefly
7 reply, there is Dawkins, which is a 1989 South Carolina
8 Supreme Court case, it's on point. For our position,
9 it's on point. That is 297 SC 386 377 SE Second 298.
10 That's a 1989 South Carolina Supreme Court case.

11 THE COURT: All right.

12 MR. SHAFFER: Your Honor, also the reason we
13 obviously can't rebut overwhelming evidence of guilt
14 is because we don't have -- we didn't get funding for
15 an expert. So he was denied money for an expert.
16 Trial attorney didn't get an expert. If we had that,
17 it might be a totally different situation. I
18 understand that we have the burden here today.

19

20 THE COURT: Mr. Shaffer, you indicated that
21 the expert was just going to testify as to other causes
22 of the redness, is that correct?

23 MR. SHAFFER: Yes, Your Honor, that's
24 correct. The expert would have testified that she's
25 viewed over 500 cases where sexual abuse is not

1 indicated and with similar redness.

2 THE COURT: All right. And that's in the
3 record, is that correct?

4 MR. SHAFFER: Your Honor, I would say it's
5 in the record, but I don't believe the State's position
6 is that it's in the record. If the State's position
7 is the SANE nurse said that it could have been something
8 else, then I'm fine with that. But they're saying it's
9 overwhelming evidence of guilt based solely on the SANE
10 nurse, Your Honor.

11 THE COURT: I don't know that that's what
12 he's saying. Your expert, the one that you wanted pay
13 for, was just going to testify about other possible
14 causes of the redness, is that correct?

15 MR. SHAFFER: Yes, Your Honor. They would
16 say that the redness that was viewed in those photos
17 and the symptoms that were listed by the SANE nurse in
18 her testimony are not out of the ordinary when sexual
19 abuse is not indicated.

20 THE COURT: Okay.

21 MR. WHITMIRE: And, Your Honor, the
22 transcript speaks for itself. In particular, just to
23 give you a page reference, pages 343 through I believe
24 344, in which the victim's pediatrician goes through
25 his treatment of the victim. I'd ask the Court just

1 to give the weight you see appropriate to that, but the
2 State submits it's overwhelming evidence.

3 Because of what Mr. Shaffer's essentially
4 alleging here today, these other causes, our attorney
5 was effective. With her pediatrician up, he tried to
6 show the jury the best he could what else could lead
7 to it. And I would say the transcript speaks for itself
8 for you to give the weight you see appropriate.

9 THE COURT: Okay, thank you, sir.

10 Thank you, gentlemen.

11 MR. SHAFFER: Thank you, Your Honor.

12 THE COURT: What I'll do is I will read the
13 transcript which you all were kind enough to provide
14 to me, and I'll get back to you all with my decision.

15 MR. SHAFFER: Thank you, Your Honor. And is
16 there any way -- would you like proposed orders or
17 briefing or anything like that?

18 THE COURT: I don't mind. If you all want
19 to do it, that's fine with me. When I was practicing
20 law, I hated to do that. But if you want to do it.

21 MR. SHAFFER: I'm half-done, Your Honor.
22 I'm half-done.

23 THE COURT: Okay. Then if you want to
24 submit it.

25 And then, Mr. Whitmire, if you will respond