

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

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SC Court of Appeals

The Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Appellate Case No. 2017-001669

THE STATE

RESPONDENT

v.

OSCAR JAMES SMALL, JR.

APPELLANT

RECORD ON APPEAL

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1 MS. CORNWELL: Your Honor, State's ready
2 whenever you are.

3 THE COURT: I'm ready.

4 MS. CORNWELL: The State would call the case of
5 State versus Oscar Small, Jr. Mr. Small is charged under
6 indictments 2016-GS-38-0204, criminal sexual conduct with a
7 minor victim under age of eleven in the first degree; and,
8 2017-GS-38-1066, exposing another to the HIV virus.

9 There are several motions that have been filed in this
10 case. After speaking with Defense counsel, I believe we're
11 able to stipulate to most of those motions. We wanted to go
12 ahead and put those on the record.

13 The State has a motion to clear the courtroom of all
14 non-essential courtroom personnel at the time that the minor
15 victim is testifying. I do not believe that Mr. Palmer has
16 an objection to that motion and we would stipulate that on
17 the record.

18 MR. PALMER: That's correct, Your Honor. So
19 stipulated.

20 THE COURT: Okay.

21 MS. CORNWELL: The State also has a motion to
22 sequester all witnesses in this case until such time that
23 they would testify. And I believe that that is stipulated
24 to as well.

25 MR. PALMER: Again, the Defense stipulates, Your

1 Honor, to the sequester.

2 THE COURT: Okay.

3 MS. CORNWELL: The State has a motion to --

4 THE COURT: Let me ask you something. Is that
5 sequestering his witnesses or all witnesses?

6 MS. CORNWELL: Your Honor, we'd ask that we
7 sequester all witnesses. The only exception for that,
8 obviously under the victim's rights act would be to allow
9 our investigating officer in as well as the victim's
10 guardian.

11 THE COURT: Okay.

12 MS. CORNWELL: And, again, for the courtroom
13 clearing, we would ask that they be cleared as well for not
14 asking that they stay in during the victim's testimony.

15 THE COURT: Okay.

16 MS. CORNWELL: The State has a general motion
17 under the rape shield act, not bring up any prior
18 allegations. We do not believe that's a problem in this
19 case. However, just out of an abundance of caution for
20 purposes of the record, we do want to put that motion on the
21 record as well.

22 MR. PALMER: We agree, Your Honor, we don't see
23 that as an issue in the case.

24 THE COURT: Okay.

25 MS. CORNWELL: The State has a motion to allow an

1 out-of-court statement made by the victim under section 17-
2 23-175 of the South Carolina Code of Laws. It's my
3 understanding that as of this morning, Defense is also
4 stipulating to allow that video to come in without
5 objection, so long as we stipulate the video was recorded on
6 December 10th, 2015. I don't believe that there is a date
7 stamp on the actual video. But the State would stipulate
8 that video -- that interview was done on December 10th,
9 2015.

10 THE COURT: Okay. Is that correct?

11 MR. PALMER: Yes, sir. We stipulate to that as
12 well, with that condition.

13 THE COURT: Okay. And is the video -- what format
14 is the video in?

15 MS. CORNWELL: It's on a DVD, Your Honor.

16 THE COURT: Okay.

17 MS. CORNWELL: And we have -- at the time we put
18 the video into evidence, we'll have a TV up here that the
19 computer will attach to and we can play it for the video on
20 the TV with speakers.

21 THE COURT: Is there anything else on that disk
22 but this?

23 MS. CORNWELL: There is not. I will tell Your
24 Honor that given the equipment that they had in 2015, the
25 video -- it was two separate links. It runs out at some

1 point so that the second link -- and then that second link
2 picks up right where the first link ran out. But other than
3 that, I believe it's fairly consistent, is the only thing
4 that's on this.

5 THE COURT: Okay. And the reason I ask -- do
6 y'all have a way to play it in the jury room? I mean, I had
7 this issue last week and so I didn't know at the time it was
8 going into evidence. The jury will get it. Well, if they
9 want to see it again, do we have to bring it out here to
10 show it to them or is there a way to carry it back to the
11 jury room?

12 MS. CORNWELL: We can do it back into the jury
13 room. We can take that TV back there and play it on the
14 computer or I don't know if we have a blank --

15 THE COURT: Well, do you have a blank computer you
16 can send back there.

17 MS. CORNWELL: -- computer, we can probably send
18 something back there.

19 THE COURT: And sometime with a little bit of
20 notice you could figure that out because if they came in
21 here -- sometimes it becomes an issue and then sometimes the
22 computer -- the solicitor's office has a blank computer that
23 doesn't have every case on it and we can send it back. So
24 anyway, I just -- we ended up having to bring the jury back
25 out and playing it to them because they couldn't work it out

1 last week. So I'm just trying to anticipate that problem.

2 MS. CORNWELL: Sure. And, again, I think -- I
3 don't think if we had to bring the jury out that that would
4 be a problem either. But we should be able to put it up
5 back there if we need to.

6 THE COURT: Okay. Yes.

7 MS. CORNWELL: There was originally a motion to
8 suppress or redact the child treatment protocol, which was a
9 written report of Dr. Lamb regarding the medical
10 examination. The State has no intention of moving the
11 physical examination document into evidence. So we would
12 stipulate to that, that we are not going to move the actual
13 report into evidence. We will obviously question our expert
14 as to the report, but the report itself would not be
15 admitted into evidence.

16 THE COURT: Okay. Is that your understanding?

17 MR. PALMER: And, Your Honor, I made that motion
18 last week and instead of stipulating to that, I'm just going
19 to withdraw the motion. So -- and quite frankly, I might
20 want it in. So I'm withdrawing that motion to suppress or
21 redact this report. And just to give the State a heads-up,
22 I may or may not choose to use it for cross-examination of
23 this particular expert.

24 THE COURT: Okay.

25 MR. PALMER: That brings me to my next motion,

1 Your Honor, is to suppress the testimony of that particular
2 expert. Maybe we're doing this out of order, but, Your
3 Honor, I hope that your file contains the motion I filed on
4 July 14th?

5 THE COURT: I don't have anything.

6 MR. PALMER: Okay.

7 THE COURT: The only thing I have is an indictment
8 and a witness list and a motion -- well, I do have one for
9 excluding the expert.

10 MR. PALMER: Yes, sir.

11 THE COURT: Okay.

12 MS. CORNWELL: The State would be in opposition to
13 that motion --

14 THE COURT: Okay. I got you.

15 MR. PALMER: Your Honor, if I may approach?

16 THE COURT: Yes, sir.

17 MR. PALMER: This is just -- this particular
18 expert is Dr. Susan Michelle Lamb.

19 THE COURT: Okay.

20 MR. PALMER: And her report that's in your hands,
21 it's the forensic physical interview of the alleged victim
22 that was conducted in January of 2016.

23 THE COURT: Uh-huh. (Affirmative response.)

24 MR. PALMER: And the reason I'm moving to suppress
25 this expert is quite simply, Your Honor, that the

1 diagnosis/conclusion part that's marked with a paperclip
2 there on -- I think it's page five or six --

3 THE COURT: Uh-huh. (Affirmative response.)

4 MR. PALMER: -- basically concludes that there's
5 no physical evidence of any injury to this child. And so my
6 position is simple that this expert can really add nothing
7 to the case that will help the -- that will assist the
8 finder of fact in determining the case. So why do we need
9 an expert to say that there's no physical injury. And
10 that's as simple as it is, Your Honor.

11 THE COURT: Okay. Do you want to respond to that
12 Madam Solicitor?

13 MS. CORNWELL: Yes, Your Honor. We would object
14 to his motion. I believe that Rule 702 clearly defines when
15 an expert is allowed to testify and when they're not,
16 particularly when there's a specialized knowledge that's
17 based on scientific fact. Dr. Lamb will testify as to her
18 education, her postdoctoral training. I don't believe that
19 there's anything that's going to make her not an expert in
20 the field of pediatric diagnosis examination -- examination,
21 diagnosis and treatment of child abuse victims. With the
22 normal findings that are in this report, I believe that that
23 is going to be outside of a layperson's knowledge, based on
24 the reasons why you would often find a normal examination in
25 cases like this. I believe that she's going to be able to

1 testify that statistically ninety to ninety-five percent of
2 all sexual abuse cases on children come back with normal
3 findings, that because of that it's a lot of -- how
4 children, particular in this case, prepubescent children
5 have a rapid healing in certain genital tissue. She's also
6 going to explain the time delay between the alleged abuse
7 and when the examination occurs. She's also going to be
8 able to testify as to other areas that she looked outside of
9 just the physical examination of the child to make any
10 determination as to whether or not this child's diagnosis is
11 consistent with that of a child who has suffered from sexual
12 abuse. I believe that based on her expertise and how she is
13 going to be able to speak to the jury regarding some common
14 misconceptions regarding sexual abuse, particularly in
15 females, regarding hymen, regarding the transmission of STDs
16 and things of that nature. That would be outside of a
17 layperson's common knowledge and would required specialized
18 knowledge which this expert would clearly have based on her
19 education and training. And for that reason we would simply
20 ask that you deny this motion and allow her to testify as to
21 her findings and the reason behind those findings?

22 THE COURT: Okay. Do you want to respond to that?

23 MR. PALMER: The problem with all that predicted
24 testimony, Your Honor, is that it creates an inference that
25 there's an injury when there's no evidence of injury. I

1 mean, in this case -- and we'll see it tomorrow on the
2 video, the child doesn't even complain that she was injured.
3 And so for the expert to say well, my medical examination of
4 this child revealed no injury; however -- and she says it
5 right there in the report -- that's to be expected given the
6 fact that genital tissue heals rapidly. That's prejudicial,
7 creates an inference that there was an injury, when the
8 science says there wasn't an injury. And I think the only
9 thing this doctor's going to be able to do is say there's no
10 injury, but let me tell you about my opinion that this
11 happened. And, Your Honor, I don't think that's an expert's
12 role in the case. If her testimony is I conducted a
13 thorough, routine examination in this alleged child abuse
14 case and I found no evidence of any injury or transmitted
15 STD. In this case it's alleged that my client exposed the
16 child to HIV. And he is HIV positive. And if her findings
17 are that none of that exists, and then she goes on to
18 testify that, but in my expert opinion the child was injured
19 and exposed without any medical or scientific foundation.
20 She's testifying outside of the scope of her expertise. Is
21 just giving an opinion without scientific or medical
22 foundation. And that's why I'm moving to exclude her as a
23 witness, Your Honor.

24 THE COURT: Okay. But based on the facts, and I
25 don't know what the facts are in this case, but many times

1 in a criminal sexual conduct case with a minor with
2 allegedly this occurred and the doctor's testified that it's
3 possible that that could have occurred and showing no
4 injuries six months or a year later, or the doctor
5 testified, you know, that it is -- it could have occurred
6 and there have been no injuries later or it could have never
7 occurred and there would have been no injuries later. Or
8 that if it had occurred as the facts alleged, then there
9 would have been injury. And that's something, you know,
10 normally an expert in that field testifies to.

11 MR. PALMER: And Your Honor -- I'm not cutting you
12 off am I?

13 THE COURT: No.

14 MR. PALMER: Okay. I agree that's a fair
15 assessment of what an expert should do in a case like this.
16 But I've got a heads-up that this doctor is not going to say
17 that because her report says -- I can't quote it because you
18 have it. But it says [REDACTED] a six-year-old girl who
19 appeared with a clear report for sexual abuse. Okay. I get
20 that. But the next sentence is, which is to be expected,
21 due to the rapid rate at which genital tissue heals. And
22 then it goes on to say there's no evidence of infection.
23 Now, if she had put in there, on the other hand, it also
24 creates the possibility that there was no injury, I would be
25 less inclined to make this motion. But the way her report

1 is worded it seems to be predisposed to a finding of injury
2 in the absence of any injury. If the Court follows.

3 THE COURT: I understand. I just so happened to
4 be the exact same situation in a trial last week. And on
5 cross-examination the lawyer got up and asked the doctor
6 isn't it true, doctor, that if none of this occurred and
7 there never was a sexual assault, then you would have had
8 the exact same finding. And the doctor said yes. So you
9 can solve all of that by simply cross-examining the doctor
10 and asking her that question. So on -- I say, that expert
11 opinion is admissible. Having said that, I want to know
12 what the doctor will say exactly and it may be in the middle
13 of her testimony is something you can object to. And I
14 will, you know, sustain that objection. But, you know, it's
15 also, at least with what the doctor testified to last week,
16 that it is possible the abuse could have occurred and there
17 would have been no signs at some other later date when the
18 child was examined. And this is the reason it couldn't.
19 But it also could have been nothing had ever happened and
20 that came out in trial as well. The Defense attorney asked
21 that question and the doctor said certainly, you know. And
22 I would have had the same finding. But -- you can explain
23 that to the jury and that that necessarily was not in the
24 purview of the jury's knowledge.

25 So I'm going to let it in. Having said that, you know,

1 you can object at any time during the testimony if it gets
2 too far afield and we'll see what happens.

3 MR. PALMER: Understood, Your Honor. Thank you.

4 THE COURT: Okay.

5 MR. PALMER: I have two more motions.

6 THE COURT: Okay. Shoot.

7 MR. PALMER: They were filed this morning. I've
8 provided copies to the State. And I believe that we're
9 going to have a stipulation, but I'd like to put it on the
10 record. And if Your Honor doesn't have them, I'm going to
11 hand them up.

12 THE COURT: Okay.

13 MR. PALMER: One of them's been redacted slightly
14 because there was some excess language left over before we
15 edited.

16 THE COURT: Okay.

17 MR. PALMER: The first motion, Your Honor, is to
18 prohibit or limit corroborative testimony. It's based on
19 Dawkins and Smith, which are attached to the motion. And
20 it's simply this. If we have a non-expert witnesses in this
21 case, as expected, would be police officers. Their
22 testimony of what the alleged victim may have told them is
23 strictly limited to time and place of occurrence, not any
24 details that would bolster or corroborate the alleged
25 victim's testimony. That's one motion. And I guess the

1 State can be heard on that before I make the other one.

2 THE COURT: You want to be heard?

3 MS. CORNWELL: Your Honor, the State doesn't have
4 any objection to that motion. I think the State law clearly
5 states that whether or not a statement -- whether or not a
6 disclosure was made, the time and place and location of that
7 disclosure and that is it. They're not allowed to give
8 details, that would hearsay. So the State has no objection
9 to that motion.

10 THE COURT: Okay. And I think that's the law as
11 well.

12 MR. PALMER: Yes, sir. And the second one is
13 probably along the same vein it's to prohibit opinion
14 testimony with three exceptions listed therein, unless the
15 witness is qualified as an expert.

16 THE COURT: Okay.

17 MS. CORNWELL: And the State would stipulate to
18 that as well, Your Honor. The only opinion testimony we'll
19 be seeking will be of the experts.

20 THE COURT: Okay. All right.

21 MR. PALMER: That's it, Your Honor.

22 THE COURT: Okay. Anything else?

23 MS. CORNWELL: And, Your Honor, I think the only
24 other thing is, there is a charge, as Your Honor heard,
25 exposure to HIV. Defense and I have stipulated to the fact

1 -- and it is HIV positive. So we are not going to put any
2 witnesses up from DHEC or anything like that to confirm
3 that. I gave a copy of the stipulation in the documents I
4 gave you. I've also given that to Mr. Palmer.

5 THE COURT: Okay. Is that right, Mr. Palmer.

6 MS. CORNWELL: I believe that he objected to the
7 way that that is phrased. I believe that we would simply
8 ask that once our officers are able to testify that he did -
9 - the Defendant did tell him he was HIV positive that we
10 will read into the record that stipulation.

11 MR. PALMER: That's true, Your Honor. And Mr.
12 Smalls admitted that from the beginning.

13 THE COURT: And is there any question that at the
14 time this alleged act occurred that he was positive and he
15 knew he was positive?

16 MR. PALMER: There's no question about that, Your
17 Honor.

18 THE COURT: Okay. Okay.

19 MS. CORNWELL: Based on the stipulations, that's
20 all we're going to have as far as motions today.

21 THE COURT: Okay.

22 MR. PALMER: Yes, sir.

23 THE COURT: And what, we're going to get started
24 at 9:30 in the morning.

25 MS. CORNWELL: The jury comes in at 9:30. We'll

1 do qualifications, as I've spoken to Your Honor. And I do
2 have the victim's family here so -- originally we had stated
3 we start this case around 1:00 if Your Honor's okay with
4 that, we can go ahead and get running right 1:00.

5 THE COURT: I'll do whatever suits y'all. You
6 know, I'm usually pretty quick in qualifying and so if we
7 start -- of course, you've got to do roll call first.

8 MS. CORNWELL: Well, we've already done roll call.

9 THE COURT: So we don't have to do that?

10 MS. CORNWELL: We don't have to do that. So if
11 you can -- I mean --

12 THE COURT: I'll have the panel qualified in
13 fifteen or twenty minutes, in general. And then in this
14 case, it should take us another fifteen or twenty minutes.
15 I ask the questions and that's it. I don't tell any war
16 stories. I don't -- you know, I get right to the meat of it
17 and get done so I'm pretty quick about that. So whenever --
18 you know, whatever suits y'all suits me. You know, I don't
19 care. They pay me whether I'm sitting here or sitting back
20 there.

21 MS. CORNWELL: And, Your Honor, just -- maybe I
22 misunderstood. When you say call the roll. You mean call
23 the roll on the jury?

24 THE COURT: Yeah, the jury.

25 MS. CORNWELL: Okay. Yes, we would still have to

1 do that in the morning. And I don't know how long that --
2 you know, I usually let the clerk do it. If they want me
3 out here, I will and I don't know how long that takes and
4 what issues.

5 MS. CORNWELL: I believe that they can do it
6 without you.

7 THE COURT: Once they give it to me, I can qualify
8 them in fifteen minutes at the most.

9 MS. CORNWELL: If you want to start at 11:00 -- do
10 you think we can get the jury qualified and everything by
11 then, I'm okay with that. I just want to make sure that I
12 don't have my victim sitting up here for hours on end.

13 THE COURT: Well, I'll do it any way y'all want to
14 do it. You know, if you want to start at 11:00, I'll be
15 ready. I should have everything ready to go by 11:00, but
16 if y'all want to do it at 1:00, I'll -- it doesn't matter to
17 me. I'll do it any way y'all want to.

18 MS. CORNWELL: We could try to start at 11:00 then
19 and that way hopefully when we break for lunch, my victim
20 can go home.

21 THE COURT: Okay. You know, the only time -- if
22 we've got a jury locked up somewhere or keeping them here
23 and they're blaming me for it, then I'm going to push you on
24 time. The rest of that, it doesn't matter. You know, I'm
25 not going to be pushing. Y'all do whatever you want to. I

1 just don't want to leave a jury locked up somewhere and not
2 be moving them along.

3 MS. CORNWELL: Sounds good. We'll start at 11:00
4 then.

5 THE COURT: All right.

6 MR. PALMER: Yes, sir. That's fine.

7 THE COURT: And how long do y'all think this case
8 is going to take to try?

9 MS. CORNWELL: The State would anticipate being
10 done on our part Wednesday and whatever --

11 MR. PALMER: I'm going to have a few witnesses, so
12 I think we'll be well into Thursday, Your Honor.

13 THE COURT: Okay. I was just trying to get the
14 time line. All right. Last week they said a day and a half
15 and it took us five. We got out at 4:30 Friday afternoon.
16 So --

17 MS. CORNWELL: I'm terrible picking those times.

18 THE COURT: Most lawyers are, so -- because
19 there's a lot of things that you don't know and you can't
20 control and, you know, I understand that. That's the nature
21 of the game. All right. I'll see y'all at 9:30 in the
22 morning.

23 MR. PALMER: Thank you, Your Honor.

24 (Court in recess July 24, 2017.)

25

1 (Court in session July 25, 2017 at
2 9:30 a.m.)

3 (Jury panel in at 9:30 a.m.)

4 THE COURT: Solicitor, call your case.

5 MS. CORNWELL: Thank you, Your Honor. The state
6 would call indictment 2017-GS-38-1669, The State versus
7 Oscar James Small, Jr., the charge is criminal sexual
8 conduct with a minor under age eleven in the first degree.
9 The State would also call indictment the case 2017-GS-38-
10 1066, the State versus Oscar James Small, Jr., the
11 indictment is for exposing another to the HIV virus.

12 THE COURT: What indictment number was that?

13 MS. CORNWELL: It is 2017-GS-38-1066. I believe I
14 have a scrivener's error on that indictment that I gave Your
15 Honor. I apologize.

16 THE COURT: All right. That's okay. Thank you.

17 Ladies and gentlemen, if you'll give me your attention,
18 we're about to begin the trial of the State versus Oscar
19 James Small, Jr.

20 Is there any member of the jury panel connected by
21 blood or marriage, close personal friends or social
22 relations with Mr. Small? If so, please stand?

23 (No one stands)

24 THE COURT: I'm going to read out a list of
25 potential witnesses and I need to know the same information.

1 If you know -- if you're connected by blood or marriage,
2 close personal friends or social relations with any of these
3 potential witnesses.

4 Kim Manning -- am I mis --

5 MS. CORNWELL: [REDACTED]

6 THE COURT: [REDACTED] Demetrius Roberts;
7 Destiny Roberts; Detra Davis Small; Deborah Robinson;
8 Theodore Small, Jr.; Chief Joshua Detter?

9 MS. CORNWELL: Your Honor, it's Chief Joshua
10 Detter.

11 THE COURT: Okay. He's at Holly Hill Police
12 Department?

13 MS. CORNWELL: He is. And the witness before him
14 is Theodore Shaw, Jr., not Theodore Small.

15 THE COURT: I'm sorry. Theodore Shaw, Jr.; Deputy
16 Clifford Doroski; Deputy Cody McCormick; Deputy Devrinn
17 Washington; Investigator Lorianne Garrison; Pamalyn Darby;
18 Susan Lamb; Dr. Carol Swiecicki.

19 MS. CORNWELL: Swiecicki, Your Honor.

20 THE COURT: Okay. Dr. Charlene Stokes; Lisa
21 Huffington; Diedre Davis; Deborah Robinson; Reverend Ralph
22 Lee Brown; Reverend Charles McLemore; Demetrius Roberts;
23 Destiny Roberts. I think I've already called those names.
24 I have. And James Bailey.

25 Anybody connected by blood or marriage, close personal

1 friends or social relations with any of those people?

2 THE BAILIFF: One.

3 THE COURT: Yes, ma'am.

4 JUROR NO. 87: Dyrease Jackson. I worked Dr.
5 Charlene Stokes for a couple of years.

6 THE COURT: Okay. Can you give me your name and
7 number, please, ma'am?

8 JUROR NO. 87: Number 87, Dyrease Jackson.

9 THE COURT: Okay. And how long has it been since
10 you worked with the doctor?

11 JUROR NO. 87: About four or five years.

12 THE COURT: And the fact that the doctor may be a
13 potential witness in this case, would that effect your
14 ability to be fair and impartial?

15 JUROR NO. 87: No, it wouldn't.

16 THE COURT: Okay. Thank you.

17 What about Mildred Hanna, Michelle Council, Sharon
18 Wright and Dwayne Small?

19 Any member of the jury panel connected by blood or
20 marriage, close personal friends, a social relationship of
21 any of those? If so, please stand.

22 (No one stands)

23 THE COURT: The State is being represented by
24 Ashley Cornwell, Defense by Scott Palmer. Any member of the
25 jury panel connected by blood or marriage, close personal

1 friends, social relations or have been represented by either
2 two of these lawyers? If so, please stand?

3 (No one stands)

4 THE COURT: Any member of the jury panel formed or
5 expressed about an opinion about any of the issues that is
6 involved in this case? If so, please stand?

7 (No one stands)

8 THE COURT: Any member of the jury panel aware of
9 any vice or prejudice either toward the State of South
10 Carolina or this Defendant? If so, please stand?

11 (No one stands)

12 THE COURT: Any member of the jury panel serve on
13 the grand jury that heard this case? If so, please stand?

14 (No one stands)

15 THE COURT: Any member of the jury panel due to
16 religious or moral reasons unable to sit in judgment of your
17 fellow man? If so, please stand?

18 (No one stands)

19 THE COURT: Any member of the jury panel or a
20 member of your family ever attended or been a member of the
21 Greater Target AME Holy Church in Holly Hill? If so, please
22 stand?

23 (No one stands)

24 THE COURT: Any member of the jury panel or member
25 of your immediate family ever been a victim of a sexual

1 assault? If so, please stand?

2 Yes, ma'am.

3 JUROR NO. 194: Sonya Wilson. I -- my family
4 member --

5 THE COURT: Okay. And the fact that you may have
6 been a victim or member of your family a victim, would that
7 effect your ability to be fair and impartial?

8 JUROR NO. 194: Yes, it would.

9 THE COURT: It would?

10 JUROR NO. 194: Yes.

11 THE COURT: Okay. And you are Juror 194?

12 JUROR NO. 194: Yes, sir.

13 THE COURT: All right. I'm going to excuse you
14 from serving on this case, okay?

15 JUROR NO. 194: Yes, sir.

16 THE COURT: Thank you, ma'am. You stay with me a
17 minute, though, because I don't know about the next case.

18 JUROR NO. 194: Yes, sir.

19 THE COURT: Okay. Anyone else?

20 Any member of the jury panel or member of your
21 immediate family ever been accused or charged with any type
22 of sexual offense? If so, please stand?

23 (No one stands)

24 THE COURT: Any member of the jury panel or member
25 of your immediate family ever been the victim of a crime as

1 a child? If so, please stand?

2 (No one stands)

3 THE COURT: Any member of the jury panel or member
4 of your immediate family ever been charged or accused of a
5 crime involving a child? If so, please stand?

6 (No one stands)

7 THE COURT: Any member of the jury panel or member
8 of your immediate family ever been employed by a child
9 advocacy center? If so, please stand?

10 (No one stands)

11 THE COURT: Any member of the jury panel ever been
12 involved in the court system in any way alleging any type of
13 sexual abuse or sexual assault? If so, please stand?

14 (No one stands)

15 THE COURT: Any member of the jury panel know any
16 reason whatsoever they can't give the State of South
17 Carolina and this Defendant a fair and impartial trial? If
18 so, please stand?

19 (No one stands)

20 THE COURT: Any further questions from the State?

21 MS. CORNWELL: Your Honor, the State would just
22 ask about office staff of Mr. Palmer.

23 THE COURT: Okay. Any member of the jury panel
24 know any of the office staff that works with Mr. Palmer or
25 the Solicitor's office? If so, please stand?

1 (No one stands)

2 MS. CORNWELL: Mr. Palmer can announce his staff
3 and I'll announce my staff, just to --

4 THE COURT: Okay. Sure.

5 MR. PALMER: My office staff is a paralegal,
6 George Goodwin; office manager, Margaret Jefferson Hillard;
7 legal assistant, Penny Garner; and I have an intern
8 presently named Morgan Mintz, M-I-N-T-Z. Thank you.

9 THE COURT: Yes, ma'am.

10 JUROR NO. 160: I went to high school with George
11 Goodwin.

12 THE COURT: Okay. And what's your name and
13 number?

14 JUROR NO. 160: Juror 160. Catherine Stephens.

15 THE COURT: All right. And you were classmates in
16 high school?

17 JUROR NO. 160: Yes.

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

20 JUROR NO. 160: Not at all.

21 THE COURT: Thank you, ma'am.

22 MS. CORNWELL: Yes, Your Honor. Good morning, my
23 name is Ashley Cornwell. I'm an Assistant Solicitor in the
24 First Circuit. The elected Solicitor for the First Circuit
25 is David Pascoe. Seated with me is Phil Giese; also an

1 Assistant Solicitor in our office is Joshua Edwards and
2 Deputy Solicitor Thomas Scott. We also have an intern,
3 Debbie Howe. Our office staff includes victim's advocate
4 Tammy Craven, Jennifer Gates, Marion Edgeman, Barbara
5 Robinson, Angie Martin Edgeman, now, I believe. We also
6 have a juvenile prosecutor. Her name is Kayla Owens. She
7 just got married as well. Her office staff includes Carolyn
8 Middleton as well as Darlene Simmons and Delphine Fowler.
9 We also have a worthless check division. Donna Cuttino runs
10 that. Her assistant is Bethany Allis. Our pre-trial
11 intervention program includes Wanda Caraway, her assistant
12 Jasmine Wallace. And that's it.

13 THE COURT: Okay. Anybody --

14 JUROR NO. 180: I'm friends with Tammy Craven from
15 church years ago.

16 THE COURT: Okay. What's your name and number,
17 please, ma'am?

18 JUROR NO. 180: Linda Wactor, No. 180.

19 THE COURT: Would that effect your ability to be
20 fair and impartial?

21 JUROR NO. 180: No.

22 THE COURT: Thank you, ma'am.

23 Anyone else?

24 THE COURT: Okay. Anything further from either
25 side?

1 MS. CORNWELL: Nothing from the State, Your Honor.

2 THE COURT: All right.

3 MR. PALMER: Nothing further, Your Honor.

4 THE COURT: Five and ten?

5 MS. CORNWELL: Yes, Your Honor.

6 THE COURT: Give me a jury. Okay. I'm ready when
7 you are.

8 How many alternates you think we're going to need?

9 MS. CORNWELL: Two, Your Honor.

10 THE COURT: Okay. Ladies and gentlemen, the
11 clerk's office is scrambling your names in hyperspace and
12 we're going to print out a new list and order. We used to
13 have blind person draw the names out of a box. Now we've
14 got a blind computer. And sometime the computer doesn't
15 work near as good as the blind person did, but we'll see.

16 (Court at ease)

17 THE CLERK: As I call your name will you please
18 gather all your belongings, come up front. Come around and
19 face the front, okay?

20 Juror No. 197, Markina Woodberry.

21 What says the State?

22 MS. CORNWELL: Please seat Ms. Woodberry.

23 THE CLERK: What says the Defendant?

24 MR. PALMER: Please excuse the juror.

25 THE CLERK: You may return to your seat.

1 Juror No. 107, Samuel Kitchen.

2 What says the State?

3 MS. CORNWELL: Please seat Mr. Kitchen.

4 THE CLERK: What says the Defense?

5 MR. PALMER: Please seat Mr. Kitchen.

6 THE CLERK: Please have a seat, Mr. Kitchen.

7 Juror No. 141, Terry Robinson.

8 What says the State?

9 MS. CORNWELL: Please seat Ms. Robinson.

10 THE CLERK: What says the Defense?

11 MR. PALMER: Please seat Ms. Robinson.

12 THE CLERK: Juror No. 130, Rosebud Pendarvis.

13 What says the State?

14 MS. CORNWELL: Please seat Ms. Pendarvis.

15 THE CLERK: What says the Defense?

16 MR. PALMER: Please seat Ms. Pendarvis.

17 THE CLERK: Juror No. 83, Abraham Houser.

18 What says the State?

19 MS. CORNWELL: Please seat Mr. Houser.

20 THE CLERK: What says the Defense?

21 MR. PALMER: Please seat Mr. Houser.

22 THE CLERK: Juror No. 137, Ebony Ritter.

23 What says the State?

24 MS. CORNWELL: Please seat Ms. Ritter.

25 THE CLERK: What says the Defense?

1 MR. PALMER: Please seat Ms. Ritter.

2 THE CLERK: Juror No. 162, Max Sillinger.

3 What says the State?

4 MS. CORNWELL: Please seat Mr. Sillinger.

5 THE CLERK: What says the Defense?

6 MR. PALMER: Please seat Mr. Sillinger.

7 THE CLERK: Juror No. 54, Valerie Bunches.

8 What says the State?

9 MS. CORNWELL: Please seat Ms. Bunches.

10 THE CLERK: What says the Defense?

11 MR. PALMER: Please excuse Ms. Bunches.

12 THE CLERK: You may return to your seat.

13 Juror No. 8, Sable Banks.

14 What says the State?

15 MS. CORNWELL: Please seat Ms. Banks.

16 THE CLERK: What says the Defense?

17 MR. PALMER: Please seat Ms. Banks.

18 THE CLERK: Juror No. 26, Ozelle Carter.

19 What says the State?

20 MS. CORNWELL: Please seat Ms. Carter.

21 THE CLERK: What says the Defendant?

22 MR. PALMER: Please seat Ms. Carter.

23 THE CLERK: Juror No. 61, Jeffery Gleaton.

24 What says the State?

25 MS. CORNWELL: Please seat Mr. Gleaton.

1 THE CLERK: What says the Defense?
2 MR. PALMER: Please excuse Mr. Gleaton.
3 THE CLERK: You may return to your seat.
4 Juror No. 146, Timothy Shriver.
5 What says the State?
6 MS. CORNWELL: Please seat Mr. Shriver.
7 THE CLERK: What says the Defense?
8 MR. PALMER: Please seat Mr. Shriver.
9 THE CLERK: Juror NO. 89, Megan Jackson.
10 What says the State?
11 MS. CORNWELL: Please seat Ms. Jackson.
12 THE CLERK: What says the Defense?
13 MR. PALMER: Please seat Ms. Jackson.
14 THE CLERK: Juror No. 104, Charles Kilgore.
15 What says the State?
16 MS. CORNWELL: Please seat Mr. Kilgore.
17 THE CLERK: What says the Defense?
18 MR. PALMER: Please excuse Mr. Kilgore.
19 THE CLERK: Juror No. 53, Susan Fulmer.
20 What says the State?
21 MS. CORNWELL: Please seat Ms. Fulmer.
22 THE CLERK: What says the Defense?
23 MR. PALMER: Please seat Ms. Fulmer.
24 THE CLERK: Juror No. 50, Stephen Fogle.
25 MS. CORNWELL: Your Honor, may we approach?

1 THE COURT: Yeah.

2 (Off the record bench conference with counsel and the
3 Court.)

4 THE COURT: Madam Clerk, the Court's going to
5 excuse Mr. Fogle because he has to be out of town Thursday
6 and Friday and I'm not sure that this case may run into
7 that, so I'm going to sit you down.

8 JUROR NO. 50: Okay.

9 THE COURT: Okay.

10 THE CLERK: Juror No. 67, Dwayne Gressett.

11 What says the State?

12 MS. CORNWELL: Please seat Mr. Gressett.

13 THE CLERK: What says the Defense?

14 MR. PALMER: Please seat Mr. Gressett.

15 THE CLERK: Juror No. 166, Savannah Hager.

16 What says the State?

17 MS. CORNWELL: Please seat Ms. Hager.

18 THE CLERK: What says the Defense?

19 MR. PALMER: Please excuse Ms. Hager.

20 THE CLERK: Juror No. 97, Shirley Johnson.

21 What says the State?

22 MS. CORNWELL: Please seat Ms. Johnson.

23 THE CLERK: What says the Defense?

24 MR. PALMER: Please seat Ms. Johnson.

25 THE CLERK: Juror No. 93, Lorinda Jarvis.

1 What says the State?

2 MS. CORNWELL: Please seat Ms. Jarvis.

3 THE CLERK: What says the Defense?

4 MR. PALMER: Please seat Ms. Jarvis.

5 THE COURT: Okay. Are there any matters of law
6 pertaining to the selection of the jury on behalf of the
7 State?

8 MS. CORNWELL: No, Your Honor.

9 THE COURT: All right.

10 MR. PALMER: None from the Defense, Your Honor.

11 THE COURT: Madam Solicitor, what do you want me
12 to do with the panel?

13 MS. CORNWELL: Your Honor, the State's prepared to
14 go forward with opening statements.

15 THE COURT: I'm talking about the panel now?

16 MS. CORNWELL: Oh, I'm sorry. I thought you meant
17 this --

18 THE COURT: No, I'm sorry. What --

19 MS. CORNWELL: We don't have any more trials for
20 this week so I believe we can release the jury at this time
21 or the panel at this time.

22 THE COURT: Okay. Ladies and gentlemen who were
23 not selected to serve on this jury, the Solicitor tells Me
24 this is going to be the only trial this week so y'all are
25 free to go. You don't have to do this again for three

1 years. The clerk's office is going to send you a huge
2 check. I mean, you won't be able to get to Santee with it
3 but if we could pay you for what it's worth, you couldn't
4 afford the taxes. If you need a work excuse, I'm sure
5 they'll provide you one. Thank you so much.

6 (Remaining jury panel out at 11:22
7 a.m.)

8 THE COURT: Both sides ready to start?

9 MR. PALMER: Yes, sir.

10 THE COURT: Okay.

11 MS. CORNWELL: Could we just five minutes so I can
12 make sure that my first witness is available?

13 THE COURT: Sure.

14 MS. CORNWELL: Thank you...

15 THE COURT: You want us to just sit tight while
16 you go do that or do you want me to send.

17 MS. CORNWELL: I'll leave that to Your Honor if
18 you want to have the jury -- or explain in the back or --

19 THE COURT: How about go check real quick and
20 we'll just sit tight for a second. If it's going to be
21 longer than that, I'll send them to the jury room.

22 MS. CORNWELL: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 (Court at ease)

25 MS. CORNWELL: Your Honor, at this time the State

1 is prepared to go forward.

2 THE COURT: Okay.

3 You can swear the jury.

4 (Whereupon, the jury was sworn.)

5 THE COURT: Ladies and gentlemen, we're about to
6 get into the trial of the State versus Oscar James Small,
7 Jr. And what I intend to tell you right now is just
8 introductory remarks. I will charge you on the law that
9 you're to apply at the end of this case.

10 Mr. Small has been indicted by the State and to that
11 indictment he's entered a plea of not guilty. And,
12 therefore, the State has to prove to you each element of the
13 indictment beyond a reasonable doubt. That indictment is
14 not evidence in this case. It's simply a document that gets
15 us into court. And the State has the burden of proving that
16 to you. Your job is to determine what the facts are in this
17 case.

18 I am not allowed to have an opinion about the facts, so
19 if I say anything or do anything throughout this trial that
20 you think I have an opinion about the facts, you are to
21 disregard that because you and only you are to determine
22 what the facts are in this case. My job is to rule upon the
23 admissibility of the evidence; under our rules what evidence
24 you're entitled to hear and what evidence you're not
25 entitled to hear. And at the end of the trial, I will

1 charge you on the law that you are to apply in this case.
2 And just as I can't make a determination about the facts,
3 you've got accept the law as I give ti to you and apply it
4 to the facts that you determine in this case and reach a
5 verdict that speaks the truth and that will be your
6 responsibility.

7 Now, in making that determination, you have to make
8 that determination based on the evidence of this case. And
9 the evidence in this case will come to you in basically
10 three forms. First of all, through sworn testimony.
11 Witnesses will come before you under oath and testify as to
12 the things they saw or observed. And as well, you may
13 receive certain documents of photographs into evidence.
14 That's the other way the evidence will come to you. And a
15 third is through stipulations of the attorneys. The
16 attorneys questions are not evidence.

17 The attorneys are going to get up in a few minutes and
18 make an opening statement to you and that opening statement
19 is not evidence. It's simply the attorneys are going to get
20 up and tell you where they think the evidence is going to
21 take you in this case and what this case is about. At the
22 end of the trial, the attorneys are going to get a chance to
23 you as to what the evidence says or does not say in this
24 case, then I will charge you on the law and send you back to
25 deliberate and reach a verdict in this case. It's

1 important, both the State and this Defendant need for you to
2 be fair and open-minded. So just listen to the evidence and
3 reach a proper verdict in this case.

4 So having said that everything you know about this case
5 you need to learn in this courtroom. So when we take breaks
6 or go home in the evening, I'm going to tell you you can't
7 discuss this case with anyone. You can't read anything
8 about this case. You can't do any research. You can't
9 Google anybody. Everything you know about this case, you
10 need to learn in this room. And even when you go back into
11 the jury room, you know, after we -- I will try to take a
12 break every hour or hour and a half, but after you've heard
13 from one witness or two witnesses or whatever, you can't go
14 back and discuss what that witness said. And I know you'll
15 say well, why can't we at least talk about it among
16 ourselves, and this is the reason I don't want you to.
17 Because if you go back after the first witness and have a
18 discussion about what you think that witness says or doesn't
19 say, at the end of the case, you're going to want to defend
20 that opinion you had at the beginning of the case to your
21 fellow juror. And I don't want you to start forming
22 opinions until you've heard all the case, until you have all
23 the evidence in this case, as well as the law, and then and
24 only then would it be proper for you to discuss the case
25 with each other to determine what the facts are in this

1 case. So that's why I tell you that.

2 Now, I'm going to try to take a break every hour or so.
3 And I try not to take a break in the middle of a witness's
4 testimony, but sometimes we have to because it's too long.
5 Having said that, if any time during this trial you need a
6 break, just simply raise your hand because I need all of you
7 to pay close attention. And for some reason you're
8 uncomfortable, you can't pay attention. So if you need a
9 break, just raise your hand. We'll stop the trial, go back
10 and take a break and come back and continue with the trial
11 in this case.

12 So I need you to pay close attention to the evidence in
13 this case. If for some reason you can't hear, if you'll
14 raise your hand and let us know. But the attorneys are
15 going to get up and make an opening statement to you in a
16 few minutes. The State has the burden of proof. The
17 Defense doesn't have to prove anything. And most of the
18 time the Defense lawyer makes an opening statement, but they
19 don't have to. But if you'll listen to their opening
20 statements, then we'll start with the testimony in this
21 case. Thank you.

22 Madam Solicitor.

23 MS. CORNWELL: Thank you, Your Honor, may it
24 please the Court.

25 STATE - OPENING STATEMENT

000038

1 BY MS. CORNWELL:

2 Why do adults hurt children like this? That is the one
3 and only question seven-year-old [REDACTED] asked me after we
4 had met for the very time and I had questioned her for
5 almost two hours as to everything she could possibly talk
6 about. I questioned her about her favorite foods, her
7 favorite colors, her school, her favorite subjects. We
8 talked about her family and where everybody lived. We
9 talked about some of the fun things that she did and some of
10 the good things in her life. And then we talked about some
11 of the bad things that happened. And I had to talk to her
12 for about two hours because I had to make sure that what she
13 was saying, she could say here in front of you. And at the
14 end of my two-hours questioning. I told her, I said, now's
15 your opportunity and you can ask me whatever question you
16 want. You can ask me about my favorite foods and my
17 favorite colors. You can ask me about my school, my job, my
18 family, any other question that you want to ask me. And the
19 one question she asked was why do adults hurt children like
20 this? It was probably the most hurtful question I have ever
21 been asked before. To see this precious seven-year-old
22 little girl looking at me with tears in her eyes asking me
23 why do adults hurt children. And I had to hold back my own
24 tears as I tried to figure out an answer that I could give
25 that would give that would be appropriate for a seven-year-

1 old girl. Why do adults hurt children? Why is that even a
2 question that a seven-year-old should have to ask. At this
3 time in her life when she's met a stranger and that stranger
4 says you can ask me any question you want, she should be
5 asking me what my favorite Disney princess is. Who my
6 favorite super hero is or whether or not I have children,
7 but she didn't ask me those questions. She asked me one
8 question, why do adults hurt children like this? She
9 shouldn't have to ask that question. And how does she even
10 know that that's a question that she should ask?

11 Adults aren't supposed to hurt children. Adults are
12 supposed to love children. They're supposed to protect
13 children and they're supposed to support children. They're
14 not supposed to hurt children. But, unfortunately for
15 Keamanni Drayton, that hasn't always been the case in her
16 life. Because unfortunately for [REDACTED], she
17 experienced one of the most horrific things that a human
18 being can experience at the hands of an adult. Because as
19 you're going to hear throughout the course of this trial,
20 Keamanni Drayton was raped multiple times when she was five
21 years old. She was raped multiple times when she was five
22 years old by her godfather, Oscar Small. And if raping your
23 five-year-old goddaughter wasn't horrible enough, he raped
24 his five-year-old goddaughter multiple times knowing that he
25 was infected with the HIV virus.

1 Now, as you've heard the Defendant is charged with
2 criminal sexual conduct with a minor in the first degree and
3 exposing another to HIV. And as the Judge just told you,
4 the State has the burden of proving each and every element
5 of each and every charge beyond a reasonable doubt. And
6 we'll do just that. But as you may or may not know, there
7 is rarely ever evidence found in rape cases unless a victim
8 reports to the hospital immediately. For adults, you're
9 going to hear that it's about seventy-two hours, but you're
10 going to hear from experts that for children, they have to
11 report within twenty-four hours. And if a child doesn't
12 report within twenty-four hours to a hospital, it's unlikely
13 that there's going to be any physical evidence. You're
14 going to hear a bunch of difficult testimony from the
15 witness stand. When it comes to rape cases, you don't often
16 have a dagger in the heart, that conclusive evidence like
17 DNA, the forensic stuff that we see on TV. The
18 fingerprints, the DNA, the videos, the injuries, those
19 things don't normally happen in the real world. And as you
20 may have seen on some TV shows like Law and Order SVU and
21 shows like, a lot of times these cases when there is no
22 physical evidence come down to the victim's word versus the
23 defendant's word. And because of that, there are many
24 people that do not want to testify in trial and many rape
25 cases go un-prosecuted because the victim is too afraid.

1 They don't want to take the stand and be subjected to cross-
2 examination and called a liar. And even in the cases when
3 the victim does testify, oftentimes it's hard for a jury
4 because you're so ingrained now into looking for DNA and
5 fingerprints, that they have a hard time knowing who to
6 believe. And based on that, a lot of these cases are found
7 not guilty.

8 Now, by the grace of God, [REDACTED] does not
9 have HIV, despite the fact that her godfather raped her
10 multiple times. And you're going to have an expert explain
11 how that can be. And I am so thankful for that little girl
12 that she does not have a disease that would affect her for
13 the rest of her life. Seven. The problem is, even though
14 she does not have the virus, I don't have that DNA. I don't
15 have that molecular biology to show you that disease in her
16 proves that the Defendant did this. I don't have any
17 physical evidence.

18 So how am I going to prove to you beyond a reasonable
19 doubt that this Defendant did the horrific things that he
20 did without DNA or without physical evidence? I've got a
21 lot of things that are going to help me to do that. The
22 first thing I have is you fourteen people, because you have
23 your common experience, your life experience and your common
24 sense. You know when somebody is being truthful with you
25 and when somebody is not. You know when somebody has a bias

1 or a motive and when they don't. And you know, thirty years
2 ago, DNA was not that common and it wasn't that popular, yet
3 many people got convicted for the crimes that they committed
4 without it. And that was because the juries had the courage
5 of their conviction to find them guilty. And if you do just
6 what the judge told you to do, and with you not knowing
7 anything about this case prior to hearing any testimony,
8 after you hear from all the witnesses in this and you go
9 back in your jury room, and you've got that gut feeling,
10 that disgust, that this Defendant did these crimes, then you
11 must have your courage of your conviction to find him guilty
12 because that is beyond a reasonable doubt. You didn't know
13 anything about the case beforehand. He's not guilty right
14 now. As of this moment, you haven't found him guilty so you
15 have to look at him under a cloak of innocence. But I tell
16 you at the end of this trial, you'd better believe I'm going
17 to rip that cloak off and I'm going to prove to you -- and
18 when you go back to that jury room, you're going to know
19 he's guilty and you're going to feel it. And I'm going to
20 ask you to have the courage of that conviction to find him
21 guilty.

22 In addition to you, what do I have to prove this.
23 Well, I have [REDACTED] aunt and she's going to get
24 up and testify and she's going to tell you about [REDACTED]
25 and her family upbringing and her education. She's also

1 going to tell you about some of the behaviors that she had
2 at home and at school that raised some suspicions. She's
3 going to tell you about what happened when she and her
4 mother asked ██████████ about those suspicions. You're going
5 to hear from law enforcement officers and they're going to
6 tell you how they became involved in this case. And how
7 they started an investigation against that Defendant.
8 You're going to get to hear from expert witnesses. You're
9 also going to get to see a forensic interview, a video of
10 five-year-old ██████████ and you're going to see with
11 your own two eyes exactly what this five-year-old little
12 girl tells what happened to her at the hands of that man.
13 It's heartbreaking and no one should have to be subjected to
14 that and no one should have to go through it. But you're
15 going to have to watch that and you're going to judge her
16 credibility and whether or not you think what she is saying
17 is truthful. After you've watched the video, you're going
18 to have an opportunity to hear from expert witnesses. And
19 you're going to hear from an expert medical witness. She's
20 going to explain to you all the possible findings as to how
21 medical examiners diagnose child sexual assault,
22 particularly when there's no DNA found and there's no
23 physical injuries or physical findings. And the expert's
24 going to explain all of that to you. She's going to explain
25 how somebody with HIV can have sex with a child and the

1 child not get it. And you'll get to hear all of that.
2 You're also going to get to hear from an expert in child
3 sexual assaults and child abuse dynamics. And they're going
4 to explain to you how different children react to sexual
5 assaults, how different children tell about sexual assaults
6 and what, as experts, they look for to determine whether or
7 not a child has suffered a sexual abuse. And they're going
8 to give you their opinions.

9 And all of that evidence is incredibly important. It
10 is crucial in this case because that is evidence that you're
11 going to have to use to determine whether or not you have
12 that gut feeling, whether or not you know that that
13 Defendant committed these crimes. But the most important
14 piece of evidence and the most important testimony that
15 you're going to hear is from a very brave seven-year-old
16 girl. She is going to do for you what most twenty and
17 thirty-year-old women cannot do. And she is going to come
18 into this courtroom and she is going to sit on that stand
19 and face her rapist. And without any evidence knowing she's
20 going to be called a liar, she's going to be able to tell
21 you in her own words exactly what that Defendant did to her.
22 It's not going to be easy to listen to. And you're going to
23 have the ability to judge her credibility and her
24 truthfulness. You're going to hear a seven-year-old tell
25 you things that a seven-year-old should know about at her

1 age, much less a five-year-old in a forensic interview. And
2 when you're listening to this seven-year-old's testimony and
3 after you've watched the five-year-old's interview, I want
4 you to ask yourself this, how did that five year old and how
5 does that seven-year-old know how to talk about those sexual
6 assaults, these sexual things that happened to her if they
7 didn't actually happen. How many seven-year-olds and five-
8 year-olds know how to talk about the things that you're
9 going to hear if it didn't happen to them.

10 When this trial is over and you've heard all of the
11 testimony in this case and you've watched the video that
12 we're going to put into evidence, I am confident that you
13 are going to make sure that that Defendant never hurts that
14 little girl ever again. And not only are you going to do
15 that, you're going to make sure that he doesn't hurt any
16 other child ever again. Because at the conclusion of this
17 trial, when the judge has instructed you on the law and
18 sends you back in your jury room to deliberate for the first
19 time, I have no doubt in my mind that after hearing the
20 testimony and judging the credibility of Keamanni Drayton,
21 you are going to absolutely be able to find beyond -- not
22 just a reasonable doubt, but beyond all doubt -- without
23 DNA, without physical evidence, you're going to know, based
24 on your experience, based on your common sense, and based on
25 your ability to judge a seven-year-old little girl and based

1 on that, I am confident that you will find that Defendant
2 guilty of criminal sexual conduct in the first degree. And
3 you're going to find him guilty of exposing another to HIV.

4 DEFENSE - OPENING STATEMENT

5 BY MR. PALMER:

6 This case isn't about drama. It's not about stirring
7 your heartstrings or scaring you or applauding the bravery
8 of a witness, it's about facts. And the reason you just
9 heard what you heard -- and by the way the Solicitor did
10 something that I consider improper. She basically offered
11 herself as a witness about what this child told her in a
12 private setting. The Solicitor can't testify and what she
13 just said is not evidence. Nothing she said is evidence.
14 Nothing I'm telling you is evidence, but I'm not trying
15 going to convince you that my client said this or that in an
16 argument in an opening statement. It's not proper. Why did
17 I let it happen? Because I want you to see how desperate
18 they are for a conviction. This case isn't about putting a
19 conviction on the scoreboard to further someone's career or
20 get someone reelected. It's about doing justice. And the
21 way you do justice in a court of law like this, is not to
22 decide the case with your heart, because the witness happens
23 to be a young child. You decide it with your head. You
24 look for the facts, the facts that they must present for
25 you. You know, there's a reason this table is closer to you

1 than mine is. There's a reason that when we were out there
2 qualifying the jury panel and the Solicitor stood up and
3 called her case, well, it's her case to call. They brought
4 this case to court and it's her case to prove.

5 My client doesn't have to prove a thing. He doesn't
6 have to testify. He doesn't have to offer any witnesses.
7 He doesn't have to do anything. He can sit there just like
8 he's doing right now with his shirt on and if the State
9 doesn't prove their case, as they're required to by law,
10 then he's not guilty, as he is now. Now, what's the source
11 of that? Simple. The U.S. Constitution Article V. He has
12 to be proven guilty beyond a reasonable doubt in a jury
13 trial of his peers. You are considered his peers. Now,
14 what does that mean? Simple. Responsible, sensible,
15 intelligent citizens. That's all that's required.

16 So I'm not going to make a big dramatic plea for you to
17 decide the case because this particular case involves an
18 alleged complaining witness who happens to be young. I'm
19 going to ask you to look at the facts. And when you do look
20 at the facts, you're going to find a lot of problems with
21 the State's case. And one thing you'll hear about in this
22 case is stipulations. And Judge Cothran already mentioned
23 that there's three ways you'll get evidence, through
24 testimony, exhibits or stipulations. Stipulations are when
25 the attorneys for both sides agree for something to be a fact

1 of the case. Basically, we have three stipulations in this
2 case so far. There may be more, maybe not. The first
3 stipulation is, is that a forensic interview video will be
4 admitted and shown to you during the trial and you will be
5 able to take it back to the jury room with you. Now, this
6 is a video of the complaining witness down at the Edisto
7 Children's Center. The second stipulation is that this
8 interview took place in December of 2015, several months
9 after this is alleged to have happened. And the third
10 stipulation is that Mr. Small, Oscar, was at the time and
11 continues to be HIV positive.

12 Now, the State has required that he be tested and we
13 agreed to it because he's been HIV positive for years. He
14 was receiving treatment at the VA at the time. He's a
15 disabled veteran. And he's been incarcerated since 2015 and
16 is continuing to seek treatment. When he was arrested for
17 this charge he freely admitted. It's the one and only thing
18 he told the police. You need to know I'm HIV positive. So
19 that's what it is. Now so far and what you've heard, you
20 may be wondering well, if the little girl did go through
21 this and he's HIV positive, why are we here. Because Mr.
22 Small has pled not guilty. And that's why he doesn't have
23 to testify. I mean, he can if he wants and he may, but he's
24 already told you, I didn't do this. He's already told the
25 Court I didn't do this and he's told the Solicitor, I didn't

1 do this. That's what a not guilty plea means. And he's
2 sitting right here today saying I didn't do this. And so
3 the State has brought the case to trial and it's the State's
4 case to prove. And if the State doesn't give you the facts
5 and allow you to decide the case beyond a reasonable doubt,
6 it's your sworn duty with the oath you just took, to find
7 him not guilty.

8 Now, why would I agree for a jury panel to view this
9 video? Because it is dramatic. And the first time you see
10 it, you might go wow, that's pretty heavy. But I want you
11 to watch it a lot. I want you to stop it at different
12 points and I'll suggest some points in closing argument and
13 go, wait a minute. That doesn't add up. And when you
14 really get into the weeds, to use an expression, and look at
15 this case, you're going to find a lot of problems with the
16 State's case. Another indication that the State's case has
17 problems, factual problems -- and the Solicitor has
18 basically given you a heads-up if not an apology for that --
19 there's no physical evidence. The child was examined by a
20 pediatric -- a forensic pediatrician. And by the way, when
21 you hear the term forensic during this trial, which you will
22 a lot, forensic means for the court. It's from the Latin
23 root of -- it's a combination of two words which means
24 public forum. So whenever you see stuff on TV like Forensic
25 Files, like my wife watches and forensic this and that means

1 what we do is to prepare a case for court. So both the
2 experts that the State has do this for a living. They are
3 advocates for abused children, and that's a great thing.
4 But they do it in a context of getting a case ready for
5 trial to convict. So I don't consider that an impartial
6 witness. But when the State -- you can also consider the
7 fact that they have these experts as an indication that they
8 had a problem with their facts. Because one of the experts
9 is going to be what's called a blind expert, which really
10 isn't going to talk about the particular facts of the case,
11 just tell you in general it's consistent with this and
12 consistent with that. Now, the medical doctor, the
13 pediatrician that's going to testify actually did the
14 physical examination. And what are you going to hear from
15 this witness? I don't know exactly what she's going to say
16 but I read her report and I can predict. She's going to say
17 there's absolutely no finding for physical abuse. There's
18 no indication that this child has contracted any type of
19 infection, including but not limited to HIV from this case
20 from this Defendant or anyone else. So there's no physical
21 finding. And then she's going to go on to say that that
22 doesn't mean anything. My opinion, you know, in so and so
23 percentage of cases, and that's probably true, do not
24 involve a finding of physical abuse but you have to consider
25 that she's not around to give her opinion on whether or not

1 Mr. Small did anything. All she's able to tell you is
2 there's no physical evidence but it still could have
3 happened. That's basically going to be the text of her
4 testimony. She'll give you a lot more detail than that,
5 though.

6 And the other witness I predict is from down in
7 Charleston at the D. Norton -- and now they call them child
8 advocacy centers. And you'll hear that there's a whole
9 network of these places that exist through public and
10 private funding as advocates for alleged and actual abused
11 children. And that's a great thing. I support them as
12 well. Nobody here in this courtroom is an advocate for
13 abusing children. We're not here to pit us against them.
14 We're not here to call a little girl a liar. We're not here
15 to say that this should have happened if it did happen. All
16 Oscar Small is here to tell you today is whatever happened
17 to this girl, if anything, was not done by him. And I think
18 or hope -- and I hope if I do my job well enough, especially
19 in cross-examining these experts, you will hear that yes,
20 it's possible that if this little girl did go through this,
21 it was at the hands beside Oscar Small.

22 Now, a little bit about Oscar. He is a disabled vet.
23 He's had a fairly rough life, that is until he met his wife
24 Dedra, who you'll meet later in the trial. They live
25 together in Holly Hill. He hasn't lived there for a while,

1 because he's had other accommodations. And you'll hear that
2 this complaining witness, who's named [REDACTED], came to live
3 with Oscar and Dedra when she was ten days old. Her mother
4 took her there. And there's another lady that you'll meet
5 is Dedra's sister, Deborah, who also lives in Holly Hill who
6 has actually helped raise this child as well. And gotten
7 this child heavily involved in the Target AME Church of
8 Holly Hill. And actually, you'll see testimony -- actually,
9 you won't see testimony, you'll hear it. You'll see
10 photographs and exhibits to show that this child was a
11 little star in the church only because of Oscar, Dedra and
12 Deborah. And that one day they dropped her off with her
13 aunt and never saw her again. Weeks later, Oscar finds out
14 he's under indictment for two of the most reprehensible
15 crimes that anyone can be accused of.

16 Now, let's talk about that for a second. This is not a
17 good pleasant case. I wish I could give you a nice murder
18 case or something exciting like a TV show like the Solicitor
19 mentioned, but we don't have that. We have a case that's
20 going to require some courage on your part, not only to
21 listen to some very difficult evidence and watch this -- and
22 she is a cute little girl. No question about it. The video
23 is, you know, you'll actually like her. But you're also
24 going to have to have the courage to look past the fact that
25 the only complaining witness in this case that really knows

1 anything of substance at the time was a five-year-old child
2 and now is a couple of years old. You're going to have to
3 look past the fact that we've got a little child on the
4 stand and weigh the evidence with your minds, your logic and
5 your rationale instead of your sympathy and your empathy and
6 your compassion for children, because that's not what this
7 case is about. You know, we're here in this room, this
8 artificial laboratory of justice. You'll notice there's no
9 windows. You can't see any trees. There's nothing natural
10 about this. This is because we live in a society that has
11 laws, which aren't part of nature. This is what man has
12 devised for us. And we have the best system of justice
13 that's ever existed. And that system requires and gives my
14 client the right -- he doesn't have an advocacy center or a
15 network of experts to protect him. What he has is the
16 United States Constitution, says he cannot be convicted and
17 should not be convicted until the case is proven against him
18 beyond a reasonable doubt. Not all doubt but beyond a
19 reasonable doubt. And what that means is and what Judge
20 Cothran is going to tell you is that if you decide the
21 facts, which is your function here today or this week, you
22 decide the facts and you all agree on what the facts of the
23 case are, and you find within those facts a reason to doubt
24 that what the State is saying happened, then it's your sworn
25 duty to find a verdict of not guilty. It's simple but it's

1 complex. It's easy but it's difficult. That's the best I
2 can give you right now. Now, the way this is going to work
3 is the State puts up their case first, as they're required
4 to. And I get to cross-examine their witnesses. You're not
5 going to hear me call the little girl a liar. There's
6 nothing that dramatic about anything I'm going to do.
7 You're not going to hear anything that happens on a TV show.
8 The fantasy of TV land stops at that door. This is reality.
9 And speaking of TV shows, everybody's seen the show oh, the
10 lawyer's trying to get him off on a technicality. You know,
11 that's an expression I've heard since the '70s, when I used
12 to watch shows like Kojack and Adam 12 and some of you
13 aren't old enough to remember those. But it's a common
14 expression. Sadly, I still hear them today. That is not a
15 legal term. That is an expression that was written by some
16 TV writer for a Dirty Harry movie. And when Kojack says,
17 oh, we're not going to let him get off on a technicality,
18 what that really means is we're going to -- we're not going
19 to let him exercise his constitutional rights. That's
20 exactly what they're referring to there. So there's no such
21 thing as a technicality. If the State doesn't prove the
22 case, the Constitution of the United State and the
23 Constitution of South Carolina says that Mr. Small, Oscar,
24 remains not guilty as he is now. I look forward to speaking
25 with you at the end of the trial. Thank you.

1 THE COURT: Can I talk to y'all real quick.

2 (Off the record bench conference with counsel and the
3 Court.)

4 THE COURT: All right. You may call your first
5 witness.

6 MS. CORNWELL: Thank you, Your Honor. The State
7 would call Destiny Roberts.

8 (WHEREUPON, Destiny Roberts, was
9 sworn to tell the truth.)

10 DESTINY ROBERTS - DIRECT EXAMINATION

11 BY MS. CORNWELL:

12 Q Good afternoon, Ms. Roberts. How you doing?

13 A Fine.

14 Q Will you tell the jury a little bit about yourself?
15 Where you're from; where you went to school; who you live
16 with?

17 A I went to O.W. I'm from Philadelphia. I live in
18 Orangeburg now and I live with me and my two kids and my
19 sister and my nephew and my niece.

20 Q And your two kids, how old are they?

21 A Eight and ten.

22 Q Where do they go to school?

23 A Brookdale.

24 Q And your niece who you live with, what is her name?

25 A [REDACTED]

- 1 Q And I believe you also said you live with her mother?
- 2 A Yes, ma'am.
- 3 Q And what is her name?
- 4 A Demetria Roberts.
- 5 Q And you said you went to O.W. High school?
- 6 A Yes, ma'am.
- 7 Q Okay. All right. And you said you were originally
- 8 from Philadelphia, but where did you grow up?
- 9 A I grew up in Bowman.
- 10 Q In Bowman. And tell the jury how you're related to the
- 11 victim in this case?
- 12 A That's my niece.
- 13 Q And when was [REDACTED] born?
- 14 A [REDACTED] October the 27th, 2003.
- 15 Q And after she was born, who did she live with?
- 16 A With me.
- 17 Q And when she lived with you, where were you living at
- 18 the time?
- 19 A With my mother.
- 20 Q Who else lived in the house with y'all?
- 21 A Me and my mama, my son, my brother.
- 22 Q And then [REDACTED] came in to live with y'all?
- 23 A That is right.
- 24 Q And does she still live with you today?
- 25 A Yes, ma'am.

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1 Q At any time did she ever live in Holly Hill with
2 Deborah or Dedra?

3 A She would go for -- stay on weekends and split
4 holidays.

5 Q Okay. But they -- she never lived with them. They
6 never had custody; is that correct?

7 A No, ma'am.

8 Q Okay. All right. And tell me a little bit about your
9 relationship with [REDACTED]'s mother, Demetria?

10 A We're cordial.

11 Q You're cordial? Have y'all always had the best
12 relationship in the past?

13 A No, ma'am.

14 Q And does your sister have any drug or mental health
15 issues?

16 A She does not have drug issues but she have mental
17 health issues.

18 Q Okay. Has she ever been diagnosed with any type of
19 mental health issue?

20 A Yes, ma'am.

21 Q And what has she been diagnosed with?

22 A ADHD, bipolar and schizophrenic.

23 Q Okay. And when was she diagnosed?

24 A After [REDACTED] was born.

25 Q Does she get treatment for those illnesses?

1 A Yes, ma'am.

2 Q And has your sister ever had to be committed or
3 institutionalized as a result of her mental health issues?

4 A Yes, ma'am.

5 Q Approximately how many times?

6 A About three.

7 Q And before Demetria was diagnosed, did she have
8 behavioral problems as a child?

9 A Yes, ma'am.

10 Q Did those problems cause her to go live in Holly Hill
11 with her grandmother sometimes?

12 A Yes, ma'am.

13 Q And when she would stay in Holly Hill, were there other
14 people around to help raise her?

15 A Yes, ma'am.

16 Q Who were they?

17 A It was Dedra, Deborah.

18 Q Okay. And as a result of being out in Holly Hill with
19 Dedra and Deborah, did she grow very close with them?

20 A Yes.

21 Q As a child, were you ever jealous of her relationship
22 with Deborah and Dedra?

23 A No.

24 Q And given how close Deborah and Dedra were with
25 Demetria, did they become involved in [REDACTED]'s life when

- 1 she was born?
- 2 A Yes.
- 3 Q How did they become involved in her life?
- 4 A They asked to be her godmama.
- 5 Q And did Demetria agree?
- 6 A Yes.
- 7 Q And were you jealous or upset with the fact that
- 8 Dimetria made them [REDACTED]s godmother and not you?
- 9 A No.
- 10 Q Was that because she was living with you?
- 11 A Yes.
- 12 Q And when they were named her godmothers, was there a
- 13 ceremony for that?
- 14 A Yes, ma'am.
- 15 Q And where was that ceremony?
- 16 A Greater Target AME Church in Holly Hill.
- 17 Q Okay. And I know that this can be a nerve racking
- 18 experience for you, but if you don't mind just try to speak
- 19 as loudly and as clearly as you can?
- 20 A Okay.
- 21 Q All right. Who is Dedra's husband?
- 22 A Oscar.
- 23 Q And is that Oscar here at the table over there?
- 24 A Yes, ma'am.
- 25 Q And what does [REDACTED] call her godmothers?

1 A Te-Te and Me-Me.

2 Q Okay. And what did she used to call Oscar?

3 A Daddy or dada.

4 Q And where do Dedra and Deborah and Oscar live?

5 A Holly Hill.

6 Q And I believe you said earlier that when [REDACTED] was
7 young she would get to go and stay with her godparents
8 pretty often?

9 A Yes, ma'am.

10 Q She'd stay there the night and on weekends?

11 A Yes, ma'am.

12 Q Okay. So when [REDACTED] would get to go stay with them,
13 that was special for her, right?

14 A Yes.

15 Q She got to be the only child at that time?

16 A Yes, ma'am.

17 Q And when she would go to Holly Hill, would you normally
18 have to drive her to Holly Hill or would they come pick her
19 up?

20 A No, ma'am. They come pick her up.

21 Q So that's a bonus for you as well. You've got one less
22 child --

23 A Yeah.

24 Q -- and you don't even have to take the effort of taking
25 that child anywhere or paying for childcare, correct?

- 1 A Yes, ma'am.
- 2 Q And to your knowledge, how did Deborah and Dedra and
- 3 Oscar treat [REDACTED] when she got to go to Holly Hill?
- 4 A Like a princess.
- 5 Q Kind of spoiled her?
- 6 A Yes.
- 7 Q All right. Did they buy her toys and presents and
- 8 clothes?
- 9 A Whatever she wanted.
- 10 Q Did they also get to take her on trips with them,
- 11 vacations?
- 12 A Yes, ma'am.
- 13 Q And did [REDACTED] always like getting to go to Holly
- 14 Hill and staying with them?
- 15 A Yes, ma'am.
- 16 Q Was there ever a time when [REDACTED] stopped wanting to
- 17 go to Holly Hill?
- 18 A Yes, ma'am.
- 19 Q When was that?
- 20 A Like August or so.
- 21 Q Was that before or after she started school?
- 22 A Maybe between -- after she started school.
- 23 Q Okay. And did it strike you as odd that she didn't
- 24 want to go over there anymore?
- 25 A Yes.

1 Q All right. Where is Demetria during all this time?

2 A I don't know.

3 Q And I know we've talked about Demetria and health
4 issues and things that maybe kept her away sometimes. But
5 when Demetria was away, would she still call in and check on
6 [REDACTED] and talk to her?

7 A Yes, ma'am.

8 Q And how often would she call and check on Keamanni?

9 A Every day.

10 Q So she, despite her problems, loves he daughter; is
11 that correct?

12 A Yes, ma'am.

13 Q And her calling in and checking on [REDACTED] was that
14 the case in August of 2015?

15 A Yes, ma'am.

16 Q And tell me what happened towards the end of August of
17 2015, right before [REDACTED] started kindergarten. Did she
18 start doing something that alarmed you or acting out in a
19 way that you thought was weird?

20 A Yes, ma'am.

21 Q What was she doing?

22 A Doing inappropriate things with my daughter.

23 Q Okay. And when you say inappropriate things, what kind
24 of things were those?

25 A Telling her to lay down for her to get on top of her

1 and etcetera.

2 Q And to you knowledge at five years old, had [REDACTED]
3 ever been exposed or seen any type of sexual behavior like
4 that, that would cause her to want to play like that?

5 A No, ma'am.

6 Q Has she ever seen anyone else in your house doing
7 things like that?

8 A No, ma'am.

9 Q Has she ever watched any movies or TV shows where she
10 would have seen something like that?

11 A No, ma'am.

12 Q And when you heard her telling your daughter to get on
13 top of her and things like that, what did you do?

14 A I immediately separated them.

15 Q Okay. And that night did Demetria call to check in on
16 Keamanni?

17 A Yes, ma'am.

18 Q Okay. And when Demetria called that night, did you
19 tell her what [REDACTED] was doing?

20 A Yes, ma'am.

21 Q Okay. Did y'all talk to [REDACTED] about it that night?

22 A Well, we asked her -- well, she asked her what was
23 going on.

24 Q Okay. And that was over a phone conversation, correct?

25 A Yes, ma'am.

1 Q Were you able to hear the conversation that Demetria
2 had with [REDACTED]?

3 A Yes, ma'am.

4 Q And how were you able to hear that conversation on the
5 phone?

6 A On speaker.

7 Q Okay. And during that conversation when y'all were
8 asking about her behavior, did [REDACTED] disclose any type of
9 sexual assault.

10 A She --

11 Q Don't tell me what she said. I just need to answer yes
12 or no?

13 A Yes.

14 Q And did she say where this sexual assault happened?

15 A In Holly Hill.

16 Q Did she say at whose house?

17 A Yes.

18 Q Whose house did she say?

19 A Deborah -- at Dedra house.

20 Q At Dedra's house? Okay. And does Dedra live with
21 Oscar?

22 A Yes.

23 Q And did she say when or how many times it happened?

24 A No.

25 Q Okay. How did she act when she told y'all what

1 happened to her?

2 A She was scared and crying and think she was going to be
3 in trouble.

4 Q Okay. Did she want to tell?

5 A No, not really.

6 Q And after y'all got off the phone, what did you do?

7 A I went in the room with my mother and let her know.

8 Q Okay. And other than your mother, did you call or talk
9 to anyone else about what happened?

10 A Not at that moment, no.

11 Q At any point in that evening did Demetria's best friend
12 come over?

13 A Yes.

14 Q And what is her name?

15 A Mecca.

16 Q So why did she come over?

17 A To check on her.

18 Q And was that because Demetria had called her?

19 A Yes.

20 Q And did you call the police that night?

21 A No.

22 Q Why not?

23 A Well, Demetria wasn't here --

24 Q Okay. Did you have legal custody of [REDACTED] at that
25 time?

1 A No, not at that time.

2 Q Okay. And did Demetria want you to call the police?

3 A Yes.

4 Q But because she wasn't there and you didn't have legal
5 custody, you didn't -- you were afraid?

6 A Yes.

7 MR. PALMER: Objection, leading.

8 THE COURT: Let her --

9 BY MS. CORNWELL:

10 Q After that night, did you ever allow [REDACTED] to go
11 back to Holly Hill?

12 A No, ma'am.

13 Q Did you allow her to talk to Me-Me or Te-Te or Oscar
14 ever again?

15 A No, ma'am.

16 Q About two weeks later when [REDACTED] started
17 kindergarten, was there an incident at school?

18 A Yes.

19 Q And what was that incident?

20 A She done inappropriate things with little boys.

21 Q All right. And did you have to go up to the school
22 because of that?

23 A Yes.

24 Q And when you went up to the school, did you tell them
25 what [REDACTED] had disclosed to you?

- 1 A Yes, ma'am.
- 2 Q And how did you feel when you told the school about
- 3 what happened?
- 4 A Scared, nervous, etcetera.
- 5 Q Were you upset?
- 6 A Yes.
- 7 Q Were you crying?
- 8 A No.
- 9 Q Did you know what to do?
- 10 A No.
- 11 Q And once you told the school what happened, did the
- 12 school call the police?
- 13 A Yes.
- 14 Q And when the school called the police, did you fully
- 15 cooperate with the police?
- 16 A Yes.
- 17 Q Did the police come up to the school and talk to you?
- 18 A Yes.
- 19 Q And to your knowledge did anybody from the police
- 20 department talk to [REDACTED] at school that day?
- 21 A Yes.
- 22 Q And eventually after you talked to police, were you
- 23 worried about whether [REDACTED] was able to go home with you?
- 24 A Yes.
- 25 Q Did police eventually allow [REDACTED] to go home with

1 you?

2 A And when they allowed her to go home with you, did they
3 give you any instructions as to whether or not she was
4 allowed to go to Holly Hill?

5 A No.

6 Q After you talked to police that day, what happened
7 next?

8 A And then we end up getting an appoint to go to CASA.

9 Q And was that so that [REDACTED] could be interviewed by a
10 professional?

11 A Yes.

12 Q And that initial appointment, was that around September
13 24th; does that sound about right?

14 A I'm not sure.

15 Q All right. When you took her to CASA to be
16 interviewed, was it shortly after you talked to the police
17 or was it a long time after the police came?

18 A It was like -- it was about a couple weeks.

19 Q Okay. All right. And the first time you took her up
20 there to be interviewed, were they able to interview her
21 that day?

22 A No.

23 Q Why not?

24 A Because something about the equipment.

25 Q And were they supposed to --

1 MR. PALMER: What did you say? I didn't hear you.

2 THE COURT: Something --

3 A Something about the equipment. They couldn't interview
4 her at the time.

5 MR. PALMER: Okay.

6 BY MS. CORNWELL:

7 Q And were they going to call you to reschedule once the
8 equipment was fixed?

9 A Yes.

10 Q Did they ever call you?

11 A No.

12 Q At some point, did you and Demetria go back up to CASA
13 on your own?

14 A Yes.

15 Q And why was that?

16 A To find out why they never called us.

17 Q Did you still have any concerns about [REDACTED]?

18 A Yes.

19 Q And what were those concerns?

20 A She was doing the same behavior that she was doing
21 before.

22 Q Okay. All right. And when you went back to CASA to
23 talk to them, did you find out why they hadn't called you?

24 A Yes.

25 Q Why hadn't they called you?

1 A They end up putting the wrong number.

2 Q Okay. And so after you went up on your own, did they
3 schedule another appointment?

4 A Yes.

5 Q And you said that part of the reason you went up there
6 was because she was behaving inappropriate then?

7 A Yes.

8 Q Can you tell me what all things she was doing that you
9 consider inappropriate?

10 A Touching on herself, touching others, what a five-year-
11 old shouldn't be doing.

12 Q Was she having any trouble with bathroom issues that
13 weren't related to her potty training?

14 A Yes.

15 Q And what were those?

16 A Wetting the bed, wetting herself.

17 Q Okay. Was she also doing anything, other than touching
18 herself that concerned you?

19 A I don't think so.

20 Q When she gets nervous or upset, does she do anything?

21 A Pull out her hair.

22 Q She pulls out her hair?

23 A Yes.

24 Q And when y'all scheduled that other -- and you told the
25 interviewer or the CASA center all of this?

- 1 A Yes.
- 2 Q Okay. And when you scheduled her for the next
- 3 interview --
- 4 A Uh-huh. (Affirmative response.)
- 5 Q -- was that around December 10th of 2015?
- 6 A Yes, ma'am.
- 7 Q Okay. And that interview was recorded, correct?
- 8 A Yes, ma'am.
- 9 Q Okay. Have you ever seen that video?
- 10 A No, ma'am.
- 11 Q And after the forensic interview in December, what
- 12 happened next?
- 13 A Then they schedule an appointment for her to go to the
- 14 hospital in Columbia.
- 15 Q Okay. And why Columbia? Why not to TRMC?
- 16 A I don't know.
- 17 Q All right. When you went to Columbia, did you have to
- 18 drive her to Columbia or did CASA and law enforcement drive
- 19 her to Columbia?
- 20 A I drove her to Columbia.
- 21 Q Okay. And was she able to see the doctor that day?
- 22 A Yes, ma'am.
- 23 Q And did she have to give blood that day?
- 24 A Yes, ma'am.
- 25 Q After the medical exam in Columbia, did [REDACTED] have

1 to do anything else with this case, other than meet with me?

2 A No, ma'am.

3 Q Okay. When was the first time that you and Demetria
4 first brought Keamanni to my office?

5 A It was a couple months ago.

6 Q All right. About April of this year. Would that sound
7 right?

8 A Yes, ma'am.

9 Q And when you and Demetria brought Keamanni to meet with
10 me the first time in April, were you allowed to sit in on
11 the meeting when I talked to her?

12 A I can't remember.

13 Q All right. In total, how many times have y'all brought
14 Keamanni to meet with me?

15 A Three or four times.

16 Q Okay. And ever since -- let me ask you this. After
17 Keamanni first disclosed to y'all when she was having to go
18 through the forensic interview and the medical interview,
19 and then when she came back to meet with me in my office and
20 all of that, did you or Demetria ever try to talk to her
21 about what she said happened?

22 A No, ma'am.

23 Q Okay. If you did try to talk to her was she willing to
24 talk to you about it?

25 A I didn't talk to her.

1 Q All right. And ever since [REDACTED] first told you what
2 happened, has she ever recanted her statement or said she
3 was lying or taking it back?

4 A No, ma'am.

5 Q Has she been able to go back to Holly Hill with Me-Me
6 or Te-Te?

7 A No, ma'am.

8 Q Has she been able to go on vacations with them?

9 A No, ma'am.

10 Q Has she been able to get any presents?

11 A No, ma'am.

12 Q Has she been able to go back to church --

13 A No, ma'am.

14 Q -- with them?

15 A No, ma'am.

16 Q So despite all of this, she's still never said she made
17 it up or recanted?

18 A No, ma'am.

19 Q Thank you, Ms. Roberts. That's all the questions I
20 have for you. Please answer any questions Defense counsel
21 may have.

22 DESTINY ROBERTS - CROSS-EXAMINATION

23 BY MR. PALMER:

24 Q Who's the first law enforcement officer that you talked
25 to about this?

- 1 A I can't remember.
- 2 Q Do you know an agency he or she was with?
- 3 A The police officer?
- 4 Q The police. The first police you told about this?
- 5 A Public safety.
- 6 Q Orangeburg Public Safety?
- 7 A I can't really remember.
- 8 Q Do you remember a name?
- 9 A A name, no.
- 10 Q Could it have been Devrinn Washington with the
- 11 Orangeburg County Sheriff's Office?
- 12 A I can't remember.
- 13 Q Okay. Do you remember anything about what you told
- 14 whatever police officer it was?
- 15 A No.
- 16 Q You don't remember anything about that?
- 17 A (No response)
- 18 Q Do you remember telling -- giving the police officer
- 19 any dates when you think this might have happened?
- 20 A No.
- 21 Q No, you don't remember that?
- 22 A (No response)
- 23 Q Do you remember the date that you talked with the
- 24 police officer?
- 25 A I know it was in August.

1 Q It was in August? Okay. What part of August?

2 A Seem like toward the end of August.

3 Q Okay. But you don't remember the identity of the
4 police officer or the agency that police officer might have
5 been with?

6 A No, I do not.

7 Q Do you remember anything else about the conversation
8 other than what you've testified to?

9 A No, sir.

10 Q Okay. Do you have any understanding or belief as to
11 when this incident or incidents that you're describing may
12 have happened in Holly Hill?

13 A No, sir.

14 Q Okay. If it turned out that a police report had some
15 dates on it from August 2015 as the alleged incident date,
16 would you disagree with that?

17 A Could you repeat now?

18 Q Okay. If I told you that there's a police report and
19 it says that this alleged incident or incidents between
20 [REDACTED] and allegedly Oscar --

21 A Uh-huh. (Affirmative response.)

22 Q -- if I told you that the police report says it
23 happened some time in August 2015, would you have any reason
24 to doubt that?

25 A No.

1 Q Do you have any independent belief or understanding as
2 to when this could have happened?

3 A No.

4 Q Okay. And other than telling the police, if you did
5 tell the police anything, did you provide any detail, other
6 than date, time and place?

7 A Huh-uh. (Negative response.)

8 Q Do you remember not being able to give the police an
9 address of where it happened?

10 A I don't know the address.

11 Q Okay. Do you remember telling the police that the date
12 you talked with the police officer, that the incident
13 occurred approximately quote two weeks ago unquote. Do you
14 remember that?

15 A Yes.

16 Q Two weeks ago from the time you were speaking with the
17 officer?

18 A No.

19 Q Okay?

20 A What happened at school. So when they found out what
21 happened at school.

22 Q And what's your belief and understanding of the date of
23 the school incident, let's call it that?

24 A (No response)

25 Q You just said what happened at school?

1 A Yeah, what happened at school and then the police got
2 called.

3 Q And your understanding of what happened at school was
4 that [REDACTED] was acting out with some of her classmates?

5 A Some of them.

6 Q You didn't see that, did you?

7 A No.

8 Q How did you find out about it?

9 A My sister got a call.

10 Q Okay. And your sister called you about it instead of
11 calling the police?

12 A No. She called me for me to go to the schoolhouse.

13 Q Okay. Was that something that usually happened? Did
14 you take care of her affairs for her?

15 A When I have [REDACTED], yes.

16 Q Okay. And when you got to the school was Keamanni
17 there?

18 A Yes.

19 Q And what was the situation?

20 A That the little (inaudible) in the classroom and not
21 supposed to.

22 Q And do you remember what date that was?

23 A No.

24 Q Who is Javion?

25 A My son.

1 Q And have you ever seen he and [REDACTED] acting out in
2 the same way?

3 A No.

4 Q You've never punished Javion for having that type of
5 conduct with [REDACTED]?

6 A No.

7 Q No problem with that?

8 A No.

9 Q Well, where does -- who did you say that Demetria's
10 friend is that came over?

11 A Mecca.

12 Q Yeah. Where does Mecca live?

13 A In Orangeburg.

14 Q What's the address?

15 A I don't know.

16 Q You don't know even the street number?

17 A No.

18 Q And you don't know Mecca then?

19 A I know Mecca, yes.

20 Q But you don't know anything about where she lives?

21 A She live off of 33.

22 Q Okay. And at the time, where was your sister living
23 when all of this started happening?

24 A Um --

25 Q She was living in Sumter, wasn't she?

- 1 A No, she wasn't in Sumter.
- 2 Q Has she ever lived in Sumter to your knowledge?
- 3 A No, she stayed in Florence.
- 4 Q Florence, okay. Florence. When did she stay in
5 Florence?
- 6 A After she went there, I have no idea.
- 7 Q Okay. And who was she staying with in Florence?
- 8 A I have no idea.
- 9 Q Well, do you know a guy named Johnny Clay Singleton?
- 10 A Yes.
- 11 Q Have you ever met him?
- 12 A Yes.
- 13 Q Where does he live?
- 14 A Florence.
- 15 Q Okay. So was your sister staying with Johnny Clay
16 Singleton in Florence?
- 17 A Don't know.
- 18 Q Do you know Johnny's married with kids?
- 19 A I know he was married but I don't know about no kids.
- 20 Q Has Demetria ever taken [REDACTED] up to Florence when
21 she was living with him?
- 22 A Not to my knowledge. Not while she was living there.
- 23 Q Okay. How close are you with Dedra and Deborah?
- 24 A We're not close.
- 25 Q Did you have some type of relationship when you would

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1 exchange [REDACTED], Like when maybe you would take her over
2 there to Holly Hill or they'd bring her back to you? Would
3 there be any exchange of greeting or anything?

4 A Hey. That's it.

5 Q Have you ever been inside Dedra's house?

6 A No.

7 Q And was that to the drop off or pick up [REDACTED].

8 A Yeah or go over there where [REDACTED] was at.

9 Q Okay. And did you ever spend time there or just show
10 up and pick up and dropping her off?

11 A I mean my sister go over there I go over there.

12 Q Do you know Oscar Small at all?

13 A I know of him but I don't know him.

14 Q Have you ever spent any time with him in a social
15 setting?

16 A No.

17 Q Would you have if there had been an opportunity?

18 A No.

19 Q I mean, you don't know him that well, right?

20 A Right.

21 Q You know Dedra and Deborah better?

22 A Yes.

23 Q How often would they get [REDACTED] for church and that
24 sort of thing?

25 A All the time.

1 Q And you said it was mostly on the weekends?

2 A They would get her on the weekends and some week days
3 like when she's out of school.

4 Q Okay. And what was their most common activity when
5 they -- say, on Sunday, would they take [REDACTED] to church?

6 A Yes.

7 Q Would you agree that [REDACTED] was very involved in that
8 Target AME Church?

9 A Yes.

10 Q Did you ever attend the church when [REDACTED] was there?

11 A No. I went to the christening.

12 Q Only for christening, okay. And who took her there for
13 christening?

14 A Me and my sister and my mama.

15 Q And Dedra and Deborah were there?

16 A Yes.

17 Q The times when [REDACTED] would be in church at Target,
18 you think she went about every Sunday?

19 A I don't know.

20 Q Don't know. Is it your understanding that the times
21 they did go she would go with Dedra and Deborah?

22 A Yes.

23 Q I mean would there be any times when she -- when Dedra
24 and Deborah would go to church and [REDACTED] wouldn't?

25 A I don't know about that.

1 Q You don't know about that. Okay. Fair enough. Are
2 you aware of whether or not either Dedra and/or Deborah ever
3 took [REDACTED] to a medical facility for a physical?

4 A Not to my knowledge.

5 Q Okay. And what's your understanding of when Keamanni
6 started school in the late summer of 2015, August?

7 A Um -- when --

8 Q When did she start school in August of 2015?

9 A When she went back -- whenever school went back.

10 Q About the middle of August?

11 A Give or take.

12 Q Do you have any recollection or even knowledge of Dedra
13 and Deborah taking her for a physical before she started
14 school?

15 A No, I don't.

16 Q You don't know anything that?

17 A That's between her and my sister. I don't know
18 anything about what they do with [REDACTED] really besides
19 church and -- anything else, I don't know.

20 Q Okay. Well, wasn't she living with you?

21 A She was living with me.

22 Q So if Dedra and Deborah took her for a physical you
23 wouldn't know about; is that what you're saying?

24 A No. I mean, they take her to the doctor and stuff but
25 she know about that, not me.

1 Q Okay. But you do know that they -- on occasion, they
2 would take her to the doctor if it was necessary?

3 A Right.

4 Q Okay. So they were just -- they were more than just
5 taking her to church on the weekends? They were more
6 involved than that; would you agree that that's a fair
7 statement?

8 A Uh-huh. (Affirmative response.)

9 Q Okay. And y'all never had a falling out did you?

10 A No.

11 Q You got along. It doesn't sound like you were best of
12 friends but you were cordial?

13 A Cordial for my niece.

14 Q Yeah. Cordial for you niece, and your niece enjoyed
15 going to Holly Hill, correct?

16 A Yes.

17 Q And she actually liked being in that household, didn't
18 she?

19 A Yes.

20 Q Okay.

21 MR. PALMER: No further questions.

22 THE COURT: Anything further.

23 MS. CORNWELL: Just briefly, Your Honor.

24 DESTINY ROBERTS - REDIRECT EXAMINATION

25 BY MS. CORNWELL:

1 Q Ms. Roberts, you were asked a lot about when the police
2 came to the school and the incident date and when the
3 incident date may have been. Do you know -- I think you've
4 already said this, but did [REDACTED] tell you the exact date
5 or dates of when this abuse would occur?

6 A No, ma'am.

7 Q So the incident date that you're talking about, the
8 approximately two weeks before going to the school, is that
9 the date that she told you what was happening?

10 A Yes.

11 Q Okay. That's not the date or is that the date where
12 the assault actually happened?

13 A No.

14 Q Okay. And you were also asked about some -- Johnny
15 Clay Singleton and all that. Let me ask you this. When
16 [REDACTED] was five and younger staying with you, what men was
17 she around at that time?

18 A Nobody but my brother and my step-brother and my other
19 brother.

20 Q Okay. And then possibly --

21 A And -- Teddy.

22 Q Okay. And Teddy, who is Teddy?

23 A That's Deborah husband.

24 Q Okay. All right.

25 A Her husband.

1 Q And to your knowledge were they estranged at this time?

2 A No.

3 Q So the only men that she had been around up until then
4 where, I believe you said your brother?

5 A My brothers.

6 Q Two brothers? Okay. All right.

7 A My --

8 Q Your step-father and the Defendant and Teddy?

9 A Right.

10 Q So has she ever indicated or made any allegations that
11 either of your brothers ever played with her like this?

12 A No, ma'am.

13 Q What about your step-father?

14 A No, ma'am.

15 Q And when she disclosed the abuse to you, where did she
16 say it happened?

17 A In Holly Hill.

18 Q And who is the only person that she's allowed to see in
19 Holly Hill? Who are the only people

20 A You talking about now?

21 Q No, back then. Who were the only people she was
22 allowed to see in Holly Hill back then?

23 A That would be Deborah, Dedra, Oscar and Teddy.

24 Q Thank you.

25 DESTINY ROBERTS - RECROSS EXAMINATION

1 BY MR. PALMER:

2 Q I thought you said you didn't know what happened when
3 she was with them?

4 A What do you mean I didn't know what happened?

5 Q Well, you just said that the only people -- to your
6 knowledge, the only people that she was allowed to be with
7 were Deborah and Dedra and Oscar.

8 A Right.

9 Q Well, but you also said when I was talking to you that
10 when she was in Holly Hill, you didn't really know much
11 about what went on? That they'd go on trips?

12 A Yeah. They go on trips.

13 Q Okay. So you don't really know who she was with?

14 A Well, that's who she be with when she -- things, taking
15 pictures was with those people.

16 Q That's whose care she'd be in.

17 A Right.

18 Q But you don't really know who she associated with,
19 other than Deborah, Dedra -- and she, at times, was in a
20 whole church full of people, right?

21 A Right.

22 Q And there were other activities outside the church
23 where she would interact with other folks? I mean, you
24 think that's true, don't you?

25 A I guess.

1 Q So it's not true that when she was in Holly Hill the
2 only people she was allowed to be with was Deborah, Dedra
3 and Oscar. That's not true, is it?

4 A Well, that's who she's supposed to be with.

5 Q Right. She's supposed to be in their care. But you
6 didn't ever restrict her from being with anyone else besides
7 those three people, did you?

8 A Well, that's not in my saying, that's her mother saying
9 who she can be with and who she can't be with.

10 Q Okay. So that's a no?

11 A I don't know.

12 Q Okay. Thank you.

13 A You welcome.

14 THE COURT: You may step down.

15 Is there any reason we shouldn't go to lunch.

16 MS. CORNWELL: Now would be a great time to break.

17 THE COURT: Okay. Ladies and gentlemen, we're
18 going to take a lunch break. I need you to be back in the
19 jury room by 2:15. Now, if you have an emergency, you need
20 to call the clerk's office and let them know that
21 something's happened over lunch and it's an emergency. If
22 not, I expect you back. I can't started until all of you
23 show you show back up. So if you don't call or you don't
24 show up, I'm going to send the sheriff looking for you. And
25 the reason I tell you that, I was in another county one time

1 and I didn't have a juror come back. And we waited until
2 4:00 before I could get the sheriff to go and bring her
3 back. And she said -- I asked her why she didn't come back
4 she said because my stories were on and I'm not missing my
5 stories. Stories are not an emergency. I expect to see you
6 at 2:15. Thank you.

7 (Jury out at 12:42 p.m.)

8 THE COURT: Okay. We'll be in recess. I'll
9 probably be back at 2:00 or just a few minutes after. And I
10 understand we've got a plea before we start back.

11 MS. CORNWELL: Thank you, Your Honor.

12 THE COURT: Anything else I need to be aware of?

13 MS. CORNWELL: Huh-uh. (Negative response)

14 THE COURT: Okay.

15 (Court in recess for lunch at 12:42
16 p.m.)

17 (Court in session after lunch at
18 2:20 p.m.)

19 MS. CORNWELL: Your Honor, if it please the court.
20 The next witness we would call is going to be the victim in
21 this case. Based on our prior motion, we'd just ask that
22 the court remove all non-essential personnel.

23 THE COURT: Okay. So everybody non-essential, I
24 need you to leave just during this testimony.

25 (Non-essential personnel cleared

1 the courtroom.)

2 THE COURT: Are you ready to go?

3 MS. CORNWELL: Yes, Your Honor.

4 THE COURT: All right. Do you want me to bring
5 the jury in first before you bring her in.

6 MR. PALMER: We have one little issue.

7 THE COURT: Okay.

8 MR. PALMER: I'm not sure who the victim's
9 advocate is going to be, but if we could instruct whoever
10 that person is about the -- or caution that person about the
11 impropriety of engaging in any kind of conduct that would
12 constitute coaching or influencing the witness.

13 THE COURT: Okay.

14 MR. PALMER: Body language, nodding, blinking,
15 anything like that.

16 THE COURT: Okay.

17 MR. PALMER: Thank you, Your Honor.

18 MS. CORNWELL: Your Honor, The State doesn't have
19 a problem. The only reason she's in here right now is to be
20 bring the child down and then she is actually going to leave
21 the courtroom.

22 THE COURT: All right.

23 MR. PALMER: Okay. I didn't --

24 MS. CORNWELL: That's okay.

25 THE COURT: Okay. Bring my jury.

(Jury in at 2:21 p.m.)

THE COURT: Y'all all made it back. Thank you. I appreciate y'all not staying home and watching the soap operas.

You may call your next witness.

MS. CORNWELL: Thank you, Your Honor. At this time the State would call [REDACTED]

THE COURT: Okay.

(This witness was not sworn.)

[REDACTED] - DIRECT EXAMINATION

BY MS. CORNWELL:

Q Hey [REDACTED]

A Hey.

Q How are you doing?

A Good.

Q You doing good. Can you do me a favor and can you tell me --

COURT REPORTER: You forgot to swear her.

MS. CORNWELL: I'll get to that with my questions of her.

BY MS. CORNWELL:

Q -- can you tell the jury what your name is, your full name?

A (Nods in the affirmative)

Q What is your full name?

A [REDACTED]

1 Q Good job. And [REDACTED] can you spell your name?

2 A (Nods in the affirmative)

3 Q Will you spell it for me?

4 A [REDACTED]

5 Q All right. How old are you?

6 A Eight.

7 Q Eight. Well, let me tell you something fun. You see
8 this microphone here, it projects your voice of all the
9 courtroom. So if you just sit right there and talk --

10 A Uh-huh. (Affirmative response.)

11 Q -- it'll still project. You don't have to put your
12 hands on it like this. Because you know on the playground
13 sometimes you have to put your hand around your mouth to
14 yell real loud?

15 A Uh-huh. (Affirmative response.)

16 Q You don't have to do that for that because that
17 microphone is going to make it real loud all the way around,
18 okay?

19 A (Nods in the affirmative)

20 Q And you remember that in the very beginning told you I
21 was going to give you a grade and it wasn't based on what
22 you said because as long as you tell the truth?

23 A Uh-huh. (Affirmative response.)

24 Q And I meant base your grade on if you speak using your
25 words --

1 A Uh-huh. (Affirmative response)

2 Q If you can speak loudly. And if you can sit still,
3 okay? So we're going to try to do all three of things, all
4 right?

5 A (Nods in the affirmative)

6 Q So did you just tell me how old you are?

7 A (Nods in the affirmative)

8 Q How old are again? I forgot already.

9 A Eight.

10 Q Eight.

11 A When is your birthday?

12 A [REDACTED]

13 Q And what year were you born?

14 A [REDACTED]

15 Q All right. Where do you live right now?

16 A On Kennedy Road.

17 Q On Kennedy Road. Who lives there with you?

18 A My cousin, my auntie and my mom, and my brother.

19 Q All right. And how old is your little brother?

20 A Three months.

21 Q Okay. Where do you go to school?

22 A Brookdale Elementary School.

23 Q And what grade were you in last year

24 A First.

25 Q Who was your teacher?

- 1 A Ms. McRae.
- 2 Q What grade are you going to be in this year?
- 3 A Second.
- 4 Q And are you ready to go back to school in a few weeks
- 5 or do you want it to stay summer?
- 6 A I'm ready to go to school soon.
- 7 Q You're ready to go back to school soon?
- 8 A (Nods in the affirmative)
- 9 Q You must really like school if you're ready to give up
- 10 summer?
- 11 A Uh-huh. (Affirmative response)
- 12 Q What's your favorite subject in school?
- 13 A Science, social studies and math.
- 14 Q All right. Those are great subjects to get to know.
- 15 And you always get really good grades in school don't you?
- 16 A Yes.
- 17 Q Yes. In fact, you made the A/B Honor Roll for the
- 18 year, didn't you?
- 19 A Yes, ma'am.
- 20 Q Good job. And because you're so smart, I'm going to
- 21 get you to help me with a few things. Is that okay with
- 22 you?
- 23 A (Nods in the affirmative)
- 24 Q I have a picture of a little boy and a picture of a
- 25 little girl.

1 A Okay. I've seen that picture before?

2 Q You have?

3 A Uh-huh. (Affirmative response)

4 Q And I'm going to see if you can name their body parts.
5 You think you're going to be able to do that?

6 A Uh-huh. (Affirmative response)

7 Q All right. Well, let's see if you're as smart as I
8 think you are.

9 A (No response)

10 Q All right. Now, is this a little girl or a little boy.

11 A It look like a little girl.

12 Q Looks like a little girl? Okay. Now, we're going to
13 see if we can name this little girl's body parts, okay?

14 A (Nods in the affirmative)

15 Q So let me ask you this. What do you call -- can you
16 see?

17 A (Shakes head in the negative)

18 Q You can down.

19 MS. CORNWELL: Is that okay, Your Honor?

20 THE COURT: Yeah.

21 A (Witness steps down)

22 Q All right. You just have to talk real loud now, okay?

23 A Okay.

24 Q What is that?

25 A The eyes.

- 1 Q That's the eyes. All right. What is this?
- 2 A The nose.
- 3 Q Those nose? How about this?
- 4 A Mouth.
- 5 Q All right. What is that?
- 6 A Breasts.
- 7 Q Breasts, okay. And what are these?
- 8 A Arms.
- 9 Q Arms. What is that?
- 10 A Stomach.
- 11 Q Stomach. And what is this?
- 12 A Coochie.
- 13 Q Coochie. And what are these?
- 14 A Legs.
- 15 Q What are these?
- 16 A Feet.
- 17 Q All right. And then looking -- what is this?
- 18 A Back.
- 19 Q Back. What is that?
- 20 A Butt.
- 21 Q All right. And what are these?
- 22 A Hands.
- 23 Q All right. I think you nailed the girl pretty good.
- 24 Now, let's see if you can do the same with the boy. All
- 25 right. So on boys are these the same?

- 1 A Yep.
- 2 Q What are those?
- 3 A Eyes.
- 4 Q Okay. And is this the same?
- 5 A Yes.
- 6 Q What is that?
- 7 A Nose.
- 8 Q And what about these?
- 9 A Mouth.
- 10 Q That's right. And what are these on boys?
- 11 A (Witness pauses)
- 12 Q Is it the same thing as a girl?
- 13 A Yep.
- 14 Q And what are those called?
- 15 A I just call them titties.
- 16 Q You just call them titties, okay. Well, that's what
- 17 we'll call them too then. And what is that?
- 18 A Belly.
- 19 Q Belly. And what are these?
- 20 A Arms.
- 21 Q All right. What is this?
- 22 A Pee pee.
- 23 Q Pee pee. And what are these?
- 24 A Legs.
- 25 Q Okay. And what about this?

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- 1 A Feet.
- 2 Q What is this?
- 3 A Neck, back.
- 4 Q And what is this?
- 5 A Butt.
- 6 Q Okay. And what are these?
- 7 A Legs.
- 8 Q All right. Well, I think you did pretty good on that.
- 9 I think those are all the parts pretty well. Good job. I
- 10 knew you could do that.
- 11 A (Witness takes stand)
- 12 Q All right. And Keamanni, do you know the difference
- 13 between a truth and a lie?
- 14 A Yeah.
- 15 Q You do? What does it mean when you tell the truth?
- 16 A You done good.
- 17 Q And what happens if you tell a lie?
- 18 A You don't be good.
- 19 Q You don't be good. And if you tell a lie, do you get
- 20 in trouble?
- 21 A Yes.
- 22 Q And if you tell a lie in here, what happens?
- 23 A You go to jail.
- 24 Q All right. So you don't want to tell a lie do you?
- 25 A Nope.

1 Q Okay. And when you talk to people, should you tell
2 them the truth or should you tell them a lie?

3 A Truth.

4 Q All right. And I'm going to ask you a couple of
5 things. Actually, I'm going to tell you a couple of things.
6 And I want you to tell me if you think those things are the
7 truth or if you think they're a lie, okay?

8 A (Nods in the affirmative)

9 Q So if I told you that your teacher last year was Ms.
10 McRae, is that the truth or a lie?

11 A True.

12 Q And if I told you you have a baby brother, is that the
13 truth or a lie?

14 A True.

15 Q If I said you're going to be in the tenth grade this
16 year, is that the truth or a lie?

17 A Lie.

18 Q All right. And what would you say to make it true?
19 What is the truth of that?

20 A I'm not going to be in the tenth grade. I will be in
21 the second.

22 Q Good job. And do you promise that you will only tell
23 the truth today?

24 A Yes.

25 Q And do you promise that if I say something that's a

1 lie, you'll say it's a lie?

2 A Yes.

3 Q All right. And do you promise that if I ask you a
4 question you don't understand or that you don't remember,
5 you'll tell me you don't understand or remember?

6 A Yeah.

7 Q All right.

8 MS. CORNWELL: Your Honor, at this time I would
9 like to have the witness found as competent and sworn in to
10 testify.

11 THE COURT: Do you have any questions?

12 MR. PALMER: No objection.

13 THE COURT: All right. The Court so finds.

14 Q All right. [REDACTED] --

15 A Huh?

16 Q -- I want to talk to you about some of your family,
17 okay?

18 A (Nods in the affirmative)

19 Q Can you tell me who your mom is?

20 A Yes.

21 Q Who is your mom?

22 A Demetria.

23 Q And can you tell me who your aunt is? What's her name?

24 A Destiny.

25 Q All right. And where do your mom and your aunt live?

- 1 A On Kennedy Road.
- 2 Q On Kennedy Road. Okay. And who is Me-Me. Do you know
- 3 her name?
- 4 A Yeah.
- 5 Q What is her name?
- 6 A Dedra.
- 7 Q Me-Me is Dedra?
- 8 A No, Me-Me is Deborah.
- 9 Q All right. So Me-Me is Deborah.
- 10 A Uh-huh. (Affirmative response)
- 11 Q Do you know what Ti-Ti's name is?
- 12 A Dedra.
- 13 Q And do you know who Oscar is?
- 14 A Yes. The one that's sitting behind you.
- 15 Q The one that sits behind me?
- 16 A (Nods in the affirmative)
- 17 Q All right. And what did you used to call Oscar when
- 18 you were little?
- 19 A DaDa.
- 20 Q All right. Before you started going to school when you
- 21 were younger, would you -- I'm sorry. Where do Me-Me and
- 22 Ti-Ti and Oscar live?
- 23 A Live close to where our high school at.
- 24 Q They do.
- 25 A Uh-huh. (Affirmative response)

- 1 Q Do you know the name of the town?
- 2 A No.
- 3 Q Okay. All right. And do you know -- if I said that
- 4 they lived in Holly Hill, does that sound right?
- 5 A Yes.
- 6 Q And before you started going to school when you were
- 7 younger, would you sometimes go to Holly Hill and stay with
- 8 Me-Me and Ti-Ti and Oscar?
- 9 A When my -- on the weekends.
- 10 Q On the weekends?
- 11 A Uh-huh. (Affirmative response)
- 12 Q Okay. And what would you do when you were in Holly
- 13 Hill?
- 14 A Play.
- 15 Q Play. Did you have your own bike?
- 16 A Yes.
- 17 Q All right. And were there dogs to play with?
- 18 A Yes.
- 19 Q Did you like playing with the dogs?
- 20 A Yes.
- 21 Q All right. Did you have your own bedroom there?
- 22 A Yes.
- 23 Q Tell me about your bedroom?
- 24 A It had lots of toys.
- 25 Q Yeah. And did you have a TV in your bedroom?

- 1 A Yes.
- 2 Q You did?
- 3 A Uh-huh. (Affirmative response)
- 4 Q Wow. Did you have lots of pretty clothes?
- 5 A Yes.
- 6 Q All right. And did Me-Me and Ti-Ti buy you toys and
7 presents when you would see them?
- 8 A Yeah.
- 9 Q All right. Did you ever go on trips or vacations with
10 Me-Me and Ti-Ti and dada?
- 11 A Yes.
- 12 Q Were those fun?
- 13 A Yes.
- 14 Q Can you tell me about a time you went on vacation with
15 them?
- 16 A (Nods head affirmatively)
- 17 Q Tell me one time?
- 18 A When I went to go see Oscar grandma.
- 19 Q When you visited Oscar's grandma?
- 20 A Uh-huh. (Affirmative response)
- 21 Q That was fun. Do you remember where she lives?
- 22 A She was in the hospital.
- 23 Q Oh, she's in the hospital?
- 24 A Uh-huh. (Affirmative response)
- 25 Q Did you ever go somewhere fun on vacation?

- 1 A Uh-huh. (Affirmative response)
- 2 Q Where was someplace fun that you went?
- 3 A Where they got slides before they took me home.
- 4 Q Where they had slides?
- 5 A Uh-huh. (Affirmative response)
- 6 Q Well, that sounds like fun too. So you really liked
- 7 going to Holly Hill when you were little, huh?
- 8 A Yes.
- 9 Q And you really loved your Me-Me and Ti-Ti and dada,
- 10 didn't you?
- 11 A Yes.
- 12 Q Is there a time when you didn't want to go to Holly
- 13 Hill any more?
- 14 A Yes.
- 15 Q Why didn't you want to go to Holly Hill any more?
- 16 A What Oscar did to me.
- 17 Q What Oscar did to you?
- 18 A Uh-huh. (Affirmative response)
- 19 Q Can you tell me what Oscar did to you that made you not
- 20 want to go there anymore?
- 21 A I can.
- 22 Q I know it's kind of embarrassing, but if you don't
- 23 mind, if you could just use your words and tell me what he
- 24 did that made you not want to go there any more. Can you do
- 25 that for me?

1 A Uh-huh. (Affirmative response)

2 Q Okay. So what did he do that made you not want to go
3 there anymore?

4 A He lied on top of me.

5 Q He got on top of you?

6 A Uh-huh. (Affirmative response)

7 Q Okay. And did that happen once or did that happen more
8 than once?

9 A More than once.

10 Q And let's talk about one time. What were you doing
11 before it happened?

12 A I was in the bedroom.

13 Q Okay.

14 A That was in the bedroom.

15 Q In his bedroom?

16 A (Nods head affirmatively)

17 Q Okay. Before you went into his bedroom, what were you
18 doing?

19 A Watching TV.

20 Q Watching TV? And when you were watching TV, did he say
21 anything to you?

22 A Nope.

23 Q Okay. How did you get to the bedroom.

24 A He carry me.

25 Q He carried you? Did you want to go to the bedroom with

1 him?

2 A No. Huh-uh. (Negative response)

3 Q Why didn't you want to go back there?

4 A Because I knew what happened.

5 Q You knew what was going to happen?

6 A (Nods head affirmatively)

7 Q Okay. And what happened when he would take you back to
8 the bedroom?

9 A Took his clothes off.

10 Q He did? Whose bedroom was it that he took you to? Did
11 he take you to your bedroom?

12 A Huh-uh. (Negative response)

13 Q Whose bedroom did he take you to?

14 A His room and his wife room.

15 Q His room and wife's -- who was his wife?

16 A Dedra.

17 Q Dedra. And is that who you call Ti-Ti?

18 A Uh-huh. (Affirmative response)

19 Q So when he took you back to the bedroom and put you on
20 the bed, you said he took his clothes off?

21 A (Nods head affirmatively)

22 Q And were your clothes on or off then?

23 A Then my clothes were on. Then he took my clothes off.

24 Q He took your clothes off? Okay. And what did he do
25 once he took your clothes off?

1 A Got on top of me.

2 Q He got on top of you? And we talked about all the
3 different body parts, right?

4 A Uh-huh. (Affirmative response)

5 Q So when he took his clothes off, what all did you see?

6 A His front part.

7 Q His front part? And what did you tell me that was
8 called?

9 A Wee wee.

10 Q His wee wee? Okay. And what color was his wee wee?

11 A Yellow and got black spots on it.

12 Q Okay. And when he took you back to his bedroom and
13 took his clothes off and took your clothes off, were Me-me
14 and Ti-Ti home when that happened?

15 A (Shakes head negatively)

16 Q Where were they?

17 A At church.

18 Q And when he got on top of you, did he put his wee wee
19 anywhere?

20 A Yes.

21 Q Where did he put his wee wee?

22 A In my private part.

23 Q In your private part. And what did you tell me that
24 was called?

25 A Coochie.

1 Q All right. And when he put his wee wee on your
2 coochie, did he put it on top of your coochie or did he put
3 it inside of it?
4 A Inside of it.
5 Q Okay. And did he say anything to you when he put it
6 inside?
7 A No.
8 Q How did it feel?
9 A Bad. Bad.
10 Q Bad. Okay. Did you want him to do that?
11 A No.
12 Q No. And when he finished putting his wee wee in your
13 coochie, did you see anything come out of his wee wee?
14 A Nope.
15 Q Nope. Okay. Did he ever tell you not to tell anyone?
16 A Yep.
17 Q And I really appreciate you telling me about that one
18 time. I know that that was hard.
19 A Uh-huh. (Affirmative response)
20 Q But now you said this happened more than once, right?
21 A That one time.
22 Q Okay. You just talk about once?
23 A (Nods head affirmatively)
24 Q Okay. Well, do you mind if we talk about maybe some of
25 the other times and some of the other stuff that he would

1 do?

2 A Huh-uh. (Negative response)

3 Q So let's talk about some of the other times. Would he
4 ever touch your coochie or get on top of you when your
5 clothes were on?

6 A Nope, just rub it.

7 Q He would just rub on you?

8 A Uh-huh. (Affirmative response)

9 Q And that was when your clothes were off or on?

10 A On.

11 Q On? Okay. And when your clothes were off would he
12 ever touch your coochie with his hand?

13 A No.

14 Q Would he ever put his hand anywhere on your body with
15 your clothes off?

16 A (Shakes head negatively)

17 Q And did he ever put his tongue on your body?

18 A (Shakes head negatively)

19 Q No. Not any other time. I'm not just talking about
20 the time we just talked about. Anytime?

21 A Nope.

22 Q Okay. And did he ever put his wee wee anywhere else on
23 your body?

24 A No.

25 Q No. Did he ever do anything to your butt?

- 1 A (Shakes head negatively)
- 2 Q No?
- 3 A Not to my selection.
- 4 Q All right. Other than inside your coochie, do you
- 5 remember anywhere else that he ever put his wee wee?
- 6 A Nope.
- 7 Q Did he ever make you lick or put your tongue anywhere
- 8 on his body?
- 9 A Nope.
- 10 Q And did he ever make you take your hand and touch his
- 11 wee wee?
- 12 A (Shakes head negatively)
- 13 Q No. Okay. Did he ever make you use your hand and
- 14 touch his butt?
- 15 A (Shakes head negatively)
- 16 Q Okay. And all the things that he did to you, have you
- 17 ever seen him do those things to anyone else?
- 18 A Not in my selection.
- 19 Q Okay. And have you ever seen anyone else do the things
- 20 that Oscar did you to?
- 21 A Not to my selection.
- 22 Q Okay. What do you mean when you say not to my
- 23 selection?
- 24 A That means I don't know.
- 25 Q That means you don't know?

1 A Uh-huh. (Affirmative response)

2 Q And did you learn to say that in school?

3 A No.

4 Q How did you learn to say not to my selection?

5 A Got it from my friends.

6 Q You got it from your friends?

7 A (Nods head affirmatively)

8 Q Okay. That makes sense. Well, let me ask you this.

9 Has anyone else ever touch you or got on top of you like
10 Oscar did?

11 A Not to my selection.

12 Q Well, you just told me that not to your selection means
13 that you don't remember, right?

14 A Right.

15 Q But would you know if somebody else had ever got on top
16 of you like Oscar did?

17 A Not to my selection.

18 Q Okay. So if I asked you, if I told you you had to tell
19 me yes or no --

20 A No.

21 Q So yes or no, has anybody else ever got on top of you
22 or did the things to you that Oscar did to you?

23 A (Shakes head negatively)

24 Q Can you use your words for me?

25 A Nope.

1 Q No. Okay. And at some point did you eventually tell
2 your mommy and your aunt what Oscar did to you?

3 A Uh-huh. (Affirmative response)

4 Q Is that a yes?

5 A Yes.

6 Q Okay. And after you told them what happened to you,
7 did you have to tell another lady about what happened?

8 A Yes.

9 Q And tell us this, before you ever told your mommy and
10 your aunt or the other lady, did you ever tell Me-Me or Ti-
11 Ti?

12 A Uh-huh. (Affirmative response)

13 Q You did?

14 A (Nods head affirmatively)

15 Q And when you told them, did they ever make -- what did
16 they do? Did they make Oscar do anything?

17 A Yep.

18 Q What did they make him do?

19 A Apologize.

20 Q They made him apologize? Okay. Did they call the
21 police or tell anybody?

22 A Yep.

23 Q They did?

24 A Well, my auntie called the police.

25 Q Your auntie called the police. Okay. All right. And

1 then after you told your mommy and your auntie what happened

2 --

3 A I told my mommy first.

4 Q And that was when she was on the phone?

5 A That's when she was staying in Florence.

6 Q And after you told them, you said you had to tell
7 another lady about what happened. Do you remember when you
8 talked to that lady?

9 A Yes. In the yellow house.

10 Q In the yellow house. Okay. And after talking to that
11 lady -- well let me ask you this. When you talked to that
12 lady, did you have to answer a lot of questions?

13 A Not that much.

14 Q Not that much. And did you tell her what Oscar was
15 doing to you?

16 A Yes.

17 Q And did you tell her the truth?

18 A Yes.

19 Q And after talking to daddy -- I'm sorry -- after
20 talking to that lady, did you have to go somewhere else to
21 see a doctor?

22 A Yes.

23 Q Do you remember where you had to go to see that doctor?

24 A (Nods head affirmatively)

25 Q Where did you have to go?

- 1 A In Columbia.
- 2 Q In Columbia? Okay. And did that lady look at your
- 3 body?
- 4 A Huh-uh. (Negative response)
- 5 Q Did the doctor look at your body?
- 6 A Yeah, the doctor look at my body.
- 7 Q The doctor looked at your body?
- 8 A (Nods head affirmatively)
- 9 Q And that was my fault. I got confused on that. The
- 10 lady didn't look at your body --
- 11 A But the doctor did.
- 12 Q -- but the doctor looked at your body. Thank you for
- 13 correcting me on that. And when the doctor looked at your
- 14 body --
- 15 A I went to Family Health Center and they checked my --
- 16 they checked my body too.
- 17 Q And Family Health Center checked your body too?
- 18 A Uh-huh. (Affirmative response)
- 19 Q And did you have to get a shot or give blood?
- 20 A No.
- 21 Q No?
- 22 A Well, when I went to Columbia --
- 23 Q That was when you went to Columbia?
- 24 A Yep.
- 25 Q And when you went to Columbia is when you had to give

1 blood?

2 A Yeah, when they took some blood from my arm.

3 Q They took it out of your arm?

4 A (Nods head affirmatively)

5 Q Okay. Did it hurt?

6 A Huh-uh. (Negative response)

7 Q It didn't? Did you cry?

8 A (Shakes head negatively)

9 Q You are braver than me. I will tell you, I cry when I
10 have to get shots. And it's not pretty.

11 A I'm just young and I'm eight years old.

12 Q You're just young and you're eight years old?

13 A Yeah. I think I'm only seven. I'm almost eight.

14 Q You're almost eight?

15 A Uh-huh? (Affirmative response)

16 Q You'll be eight in October?

17 A Right.

18 Q So you really still are seven?

19 A Yep. Got you.

20 Q Okay. You just want to be eight. You got me. All
21 right. And after you saw that doctor in Columbia, do you
22 remember coming to see me?

23 A Yes.

24 Q And the first time we met was just a couple months ago,
25 right?

1 A Yes.

2 Q That was right before you got out of school for the
3 summer?

4 A Yes.

5 Q And I asked you a whole lot of questions that day,
6 didn't I?

7 A Yes.

8 Q And when I asked you all those questions, was anybody
9 else in the room with us or was it just me and you?

10 A The last day you talked to me was my mama, me, you, Ms.
11 Tammy and the other lady.

12 Q That was the last time?

13 A Uh-huh. (Affirmative response)

14 Q The very first time --

15 A It was just me, you, and Ms. Tammy, and that other
16 lady.

17 Q Okay. And that other lady, she was another lawyer from
18 our office, right?

19 A Yes.

20 Q Yeah. And do you remember when I told you the one rule
21 was about answering questions for me and telling me what
22 happened, and what that rule was going to be every time we
23 talked?

24 A Talk loud.

25 Q Uh-huh. (Affirmative response)

1 A Make sure my hands are out of my face.

2 Q Okay.

3 A And my mouth.

4 Q Okay.

5 A Don't be shy.

6 Q Don't be shy. And what else?

7 A And you said somebody else going to be talking to me.

8 Q Okay. And did I tell you that anytime you talked with
9 me, did I say you had to tell me the truth or did I say you
10 could lie?

11 A Truth.

12 Q Truth. Okay. And do you remember after I finished
13 asking you all those questions --

14 A Yes.

15 Q I let you asked me any question you wanted to know the
16 answer to?

17 A Yes.

18 Q Do you happen to remember what question I [sic] asked
19 you?

20 A Yes.

21 Q What question did I [sic] ask you? I'm sorry. What
22 question did you ask me. Do you remember what question you
23 asked me?

24 A (Nods head affirmatively)

25 Q What question was that?

1 A Why do people do that to kids.

2 Q Why do people do that to kids?

3 A Uh-huh. (Affirmative response)

4 Q Okay. I wasn't able to give you a very good answer,
5 was I?

6 A I don't know.

7 Q You don't know?

8 A From my selection.

9 Q All right. Well, after that meeting when you asked me
10 that question, do you remember meeting with me about three
11 more times?

12 A Yes, ma'am.

13 Q And when you talked to me those other times, did you
14 tell me the same thing every time or did you tell me
15 different things?

16 A Different things.

17 Q You told me different things. And we talked about a
18 lot of different things, didn't we?

19 A Yes.

20 Q Yeah. And then when I talked to you on those other
21 times about what happened to you and what dada did --

22 A Yes.

23 Q -- did you tell me the same things that he did every
24 time or did we talk about different things?

25 A The same thing.

1 Q The same things. And why did you always tell me the
2 same things?

3 A So you won't forget.

4 Q So I won't forget?

5 A Uh-huh. (Affirmative response)

6 Q And was it because you were also always telling the
7 truth?

8 A Yes.

9 Q And every time you talked to somebody about what
10 happened, when you talked to your aunt and your mommy --

11 A Uh-huh. (Affirmative response)

12 Q -- and you talked to the lady at the yellow house --

13 A And my grandma.

14 Q -- and your grandma, and then when you talked to me,
15 were you telling what actually happened to you --

16 A Uh-huh. (Affirmative response)

17 Q -- or were you telling what someone else told you to
18 say happened?

19 A What actually happened to me.

20 Q And what actually happened to you, who did those things
21 that actually happened to you?

22 A Dada.

23 Q And is Dada the person that's Oscar?

24 A Yep.

25 Q And --

1 A Right there behind you.

2 Q I'm not doing a very good job of talking to you, am I?
3 And every time you've talked about what Oscar did to you --

4 A Yes.

5 Q -- were you telling the truth?

6 A Yes.

7 Q And are you telling the truth now?

8 A Yes.

9 Q Okay. Now, let me ask you this. Since you told what
10 happened to you in Holly Hill, have you been able to go back
11 to Holly Hill?

12 A Nope.

13 Q No?

14 A No.

15 Q No. And so have you been able to go back to church?

16 A In Holly Hill? Nope, not to my selection.

17 Q And have you been able to go and ride your bike or play
18 with the dogs anymore?

19 A Not to my selection.

20 Q Okay. Have you gotten to go on vacations with Me-Me
21 and Ti-Ti any more?

22 A Not to my selection. Well, for vacation I went to a
23 Frankie's Fun Park.

24 Q Frankie's Fun Park. Who did you go to Frankie's Fun
25 Park with?

1 A My mama, my auntie, her boyfriend, which she's not
2 married to him.

3 Q She's not married to him?

4 A (Shakes head negatively)

5 Q Okay. And was that recently?

6 A And my grandma, my cousin and his son and his sister,
7 and him and his sister.

8 Q Okay. But not with Me-Me or Ti-Ti?

9 A No, huh-uh. (Negative response)

10 Q You haven't been on any more vacations with them?

11 A (Shakes head negatively)

12 Q Okay.

13 A I been to Chuck E Cheese too.

14 Q That's fun too. Well, let me ask you this. All those
15 fun things that you used to do in Holly Hill, do you miss
16 doing those things?

17 A Not to my selection.

18 Q You don't miss doing any of that stuff with them?

19 A Yes.

20 Q Yes, you do?

21 A With Dedra and Deborah but not Oscar.

22 Q You miss doing it with Dedra and Deborah but not Oscar?

23 A Uh-huh. (Affirmative response)

24 Q And if Oscar didn't live there anymore, would you want
25 to go back and play with Me-Me and Ti-Ti?

1 A Yes.

2 Q Do you miss Me-Me and Ti-Ti?

3 A Uh-huh. (Affirmative response)

4 Q Do you love them?

5 A Yeah.

6 Q All right. Well, [REDACTED] I think you did a great
7 answering the questions I had for you. I'm going to talk to
8 Mr. Phil for just a second. So would you mind waiting on me
9 for just a moment?

10 A Okay.

11 (Off record discussion with Ms.
12 Cornwell and Mr. Giese)

13 BY MS. CORNWELL:

14 Q All right. Keamanni, I think that that's all the
15 questions I'm going to ask you right now. But I'm going to
16 ask you to still stay in your seat, okay? And Mr. Palmer is
17 going to ask you some questions. And Mr. Palmer, you just
18 met him a few minutes ago, you remember?

19 A Yes.

20 Q Okay. And he's a really nice guy and all he wants you
21 to do is the same thing I wanted you to do.

22 A Okay..

23 MR. PALMER: I got to object to this. She's
24 coaching the witness.

25 MS. CORNWELL: She's a seven-year-old child, Your

1 Honor.

2 THE COURT: I understand.

3 MR. PALMER: I don't care how old she is. She's
4 coaching this witness.

5 MS. CORNWELL: I simply asked her to tell the
6 truth.

7 THE COURT: I understand. She -- I'll let you
8 question -- she just asked her to tell the truth.

9 BY MS. CORNWELL:

10 Q [REDACTED], you must answer the questions from Mr. Palmer
11 now, okay?

12 A Yes.

13 [REDACTED] - CROSS-EXAMINATION

14 BY MR. PALMER:

15 Q Hey?

16 A Hey.

17 Q We just met today, didn't we?

18 A Yes.

19 Q And you gave me a hug, didn't you?

20 A Yes.

21 Q That was sweet. Thank you. And when you were giving
22 me a hug -- do you call her Ms. Ashley?

23 A (Nods head affirmatively)

24 Q Is that a yes?

25 A (Nods head affirmatively)

1 Q And was Ms. Ashley telling you what to say when you get
2 on the stand?

3 A No.

4 Q What did she tell you?

5 A She said talk loud, don't be scared, make sure my
6 fingers are out my mouth and that's it.

7 Q Okay. Are you scared?

8 A Nope.

9 Q Good. You shouldn't be scared. Everybody here's nice
10 and everybody likes you, right?

11 A Uh-huh. (Affirmative response)

12 Q I just have a couple of questions. Do you remember you
13 dog Efrom?

14 A Who?

15 Q The dog that lives at Me-Me and Ti-Ti's house, Efrom?

16 A Uh-huh. (Affirmative response)

17 Q Remember him?

18 A Uh-huh. (Affirmative response)

19 Q Do you miss him?

20 A Uh-huh. (Affirmative response) He had to die.

21 Q Huh?

22 A He had died.

23 Q He died? Oh.

24 A (Nods head affirmatively)

25 Q Okay. How many times have you been in this room

1 before?

2 A Maybe one.

3 Q Do you know how long ago that was?

4 A When I first met her.

5 Q When you first met who?

6 A Ms. Ashley.

7 Q Ms. Ashley?

8 A Uh-huh. (Affirmative response)

9 Q And were you sitting in that chair?

10 A Uh-huh. (Affirmative response)

11 Q And what happened when you were sitting in the chair?

12 A Well, we talked. She told me to tell the truth and not
13 tell a lie.

14 Q Okay. And then did she ask you questions?

15 A Yes.

16 Q Did she ask you questions kind of like she asked you
17 today?

18 A Yes.

19 Q And was anybody else in this room?

20 A Yes.

21 Q Who was here?

22 A My mom and my auntie.

23 Q Okay. Did they bring you here that day?

24 A Yes.

25 Q And do you remember how long you were here?

- 1 A No.
- 2 Q Okay. And besides your mom and your auntie and Ms.
- 3 Ashley, was anybody else here?
- 4 A I guess Ms. Tammy and that other lady in there.
- 5 Q Oh, okay. Ms. Tammy, she's nice, isn't she?
- 6 A (Nods head affirmatively)
- 7 Q Did anybody else besides Ms. Ashley ask you questions?
- 8 A A lady at the yellow house.
- 9 Q Oh. Oh, was that Ms. Pam?
- 10 A Yes.
- 11 Q Do you remember Ms. Pam?
- 12 A Yes.
- 13 Q Do you like her or is she nice?
- 14 A Yes.
- 15 Q And so she was here with Ms. Ashley and Mr. Phil?
- 16 A Uh-huh. (Affirmative response)
- 17 Q And Ms. Tammy?
- 18 A (Nods head affirmatively)
- 19 Q And Ms. Pam was at the yellow house, that's the lady
- 20 who asked you a bunch of questions in the yellow room,
- 21 right?
- 22 A (Nods head affirmatively)
- 23 Q And do you remember her asking you what color the wall
- 24 was?
- 25 A (Nods head affirmatively)

1 Q And what did you tell her?

2 A I forgot.

3 Q Well --

4 A I don't really know.

5 Q Do you remember asking her -- her asking you about
6 colors?

7 A Yes.

8 Q And y'all were sitting chairs, right?

9 A Yes, sir.

10 Q Do you remember what color the chairs were?

11 A Yes, sir.

12 Q What color were they?

13 A Brown.

14 Q Okay. And do you remember that day what you were
15 wearing?

16 A Yeah, my little outfit.

17 Q Okay. Your little outfit?

18 A Uh-huh. (Affirmative response)

19 Q What color was it?

20 A I don't know.

21 Q And why do you call that place the yellow house?

22 A Because the house -- because the house was all yellow.

23 Q Okay. Does that mean the room that you were in was
24 yellow?

25 A Yes.

- 1 Q Okay. The walls were yellow?
- 2 A Yes.
- 3 Q What color are these walls?
- 4 A White, white, white, white, brown, brown, white.
- 5 Q Okay. So you're talking about the big part of the wall
- 6 is white?
- 7 A And the door.
- 8 Q Oh, the part around the doors is white?
- 9 A And the door is.
- 10 Q Do you see these nice people sitting here?
- 11 A (Nods head affirmatively)
- 12 Q How about that wall behind them, what color is that?
- 13 A White.
- 14 Q Okay. And then the other part that looks like wood,
- 15 that's what you're calling brown?
- 16 A (Nods head affirmatively)
- 17 Q Okay. And how about that door over there, what color
- 18 is that?
- 19 A Brown.
- 20 Q Okay. How about that TV, what -- if you look around
- 21 the edge of that TV --
- 22 A White, black, gray.
- 23 Q Okay. So this part is white?
- 24 A Yep.
- 25 Q And this is?

1 A Black.

2 Q And you said this was white?

3 A Yes, and that right there is black and that's gray.

4 Q Is this part a different white than this part?

5 A (Nods head affirmatively)

6 Q But they're both white?

7 A Yes, sir.

8 Q Okay. And this part is brown?

9 A (Nods head affirmatively)

10 Q Is that a yes?

11 A Yes.

12 Q And what color is this one?

13 A Brown.

14 Q Okay. What color is the carpet?

15 A Yellow, blue brown and white.

16 Q Okay. Is that part of it yellow? Let me go out here.

17 Can you see my finger?

18 A Uh-huh. (Affirmative response)

19 Q Is that part what?

20 A Yellow.

21 Q Okay. And then the other little spots are brown and
22 blue?

23 A (Nods head affirmatively)

24 Q Thank you. Okay. I'm not going to ask you a whole lot
25 more questions. I think you're doing a great job too. But

- 1 I want to ask you about church.
- 2 A Yes.
- 3 Q When you went to church in Holly Hill what was it
- 4 called?
- 5 A Greater Target.
- 6 Q Greater Target. And you know what kind of church that
- 7 is?
- 8 A A big one.
- 9 Q A big one?
- 10 A Yep.
- 11 Q Okay. And you like church, going out there?
- 12 A Yes. I was singing in the choir.
- 13 Q You sang in the choir?
- 14 A (Nods head affirmatively)
- 15 Q Did you dress up to go to church?
- 16 A (Nods head affirmatively)
- 17 Q And who would you go with?
- 18 A Me-Me, Ti-Ti, and the one that's there in behind you.
- 19 Q You talking about Oscar?
- 20 A Uh-huh. (Affirmative response)
- 21 Q Did Oscar go every time?
- 22 A Uh-huh. (Affirmative response)
- 23 Q Okay. And did you go every time?
- 24 A Uh-huh. (Affirmative response)
- 25 Q What else did you do in the church besides sing in the

1 choir?

2 A Sometimes I would sing, dance, talking.

3 Q Now, that sounds like fun.

4 A And sit down and we would listen to the preacher,
5 dressed like the judge but he's called preacher.

6 Q Okay. All right. Good. Good. And you haven't been
7 back to that church?

8 A Huh-uh. (Negative response)

9 Q Since you told your mom and your aunt about what
10 happened?

11 A Yes.

12 Q And do you remember telling Ms. Ashley a minute ago
13 that you told Ti-Ti and Me-Me what happened?

14 A Yes.

15 Q Was that before or after Oscar told you not to tell
16 anybody?

17 A After.

18 Q That was after?

19 A Uh-huh. (Affirmative response)

20 Q Okay. Do you remember -- just a couple more things.
21 Do you remember going to the Family Health Center?

22 A Yes.

23 Q And did you go with Ti-Ti and Me-Me?

24 A No, my mama and my auntie.

25 Q Okay. Do you remember going to the doctor with Ti-Ti

1 and Me-Me?

2 A Yes.

3 Q When was that? Do you remember at all?

4 A That was when I was sick and I had headaches and stuff.

5 Q So they would take you to the doctor, too?

6 A Yeah. In Columbia the kids doctor.

7 Q The what doctor?

8 A Kids.

9 Q Oh, the kids doctor?

10 A Yeah. With the goldfish and stuff.

11 Q The goldfish?

12 A (Nods head affirmatively)

13 Q That sounds like a nice doctor. Do you remember them
14 taking you to a doctor before you went back to school?

15 A I remember, but that was my mama.

16 Q That was your mama?

17 A (Nods head affirmatively)

18 Q Okay. All right. Give me just a minute and I think
19 I'm done. You talked about being in this room before, but
20 were there other times when you met with Ms. Ashley and the
21 folks here?

22 A Yes.

23 Q Do you remember how many times that was?

24 A I was about to say twice, but three.

25 Q Okay. And when you met with them, did you know you

1 were coming to court?

2 A Yes.

3 Q You know what court is, right?

4 A Yes. It's a place where judges, people -- people that
5 this do stuff or get tickets and they come to jail -- to
6 court, that's what I know because Ms. Ashley told me that
7 I'm coming to court.

8 Q Okay. All right. And Ms. Ashley a lawyer?

9 A Yes, sir.

10 Q And what am I?

11 A The same as Ms. Ashley.

12 Q I'm a lawyer too?

13 A Yes, sir.

14 Q You're doing very well. I've got one more color for
15 you?

16 A Yes, sir.

17 Q See this flag back here, do you know what flag that is?

18 A The American flag.

19 Q Oh, I don't think that's the American flag. Look at it
20 again, please?

21 A Hold it up. That look like a judge flag.

22 Q Okay. Good enough. You see these tassels in this
23 fringe. Do you see that?

24 A (Nods head affirmatively)

25 Q What color is that?

1 A Yellow.

2 Q And what color is this?

3 A Blue.

4 Q And the tree?

5 A White.

6 Q Okay.

7 A That's the American Flag over there.

8 Q It sure was nice meeting you. I don't have any more
9 questions.

10 A Oh, well, thank you.

11 THE COURT: Have you got any more questions?

12 MS. CORNWELL: Your Honor, I don't have any more
13 questions for [REDACTED].

14 THE COURT: Okay.

15 MS. CORNWELL: [REDACTED], you did a great job.

16 If I could have just a moment.

17 THE COURT: Okay. Sure.

18 MS. CORNWELL: You want to come down with me and
19 be all done?

20 Ms. Tammy's right there. She's going to help you out,
21 okay? Good job. You want to go with her.

22 Your Honor, at this time I can the next witness.

23 THE COURT: Do y'all need a break or you can hear
24 another witness? Everybody okay?

25 JURY: (Unanimous affirmative response)

1 THE COURT: Okay.

2 MS. CORNWELL: Let me make sure that he's stuck
3 around.

4 Your Honor, at this time the State would call Chief
5 Joshua Detter.

6 THE COURT: All right. If you'll come around,
7 please, sir, and place your left hand on the Bible and raise
8 your right.

9 (WHEREUPON, Joshua Detter, was
10 sworn to tell the truth.)

11 JOSHUA DETTER - DIRECT EXAMINATION

12 BY MS. CORNWELL:

13 Q Chief Detter, tell the jury a little bit about your law
14 enforcement experience?

15 A I've been a police officer since 1997. I started in
16 Ohio as a reserve officer at a sheriff's office. And over
17 fifteen years there, I moved up the ranks and was a
18 detective, then a sergeant, lieutenant, and then I was chief
19 of a small town there for four years before I decided to
20 move South.

21 Q Okay. And when you moved south, was that 2012?

22 A Yes.

23 Q Did you eventually take over for the retiring chief in
24 Holly Hill?

25 A Yes, I did.

1 Q And were you working as chief of Holly Hill in December
2 2015?

3 A Yes, I was.

4 Q In that capacity, did you become involved in this case?

5 A Yes, I did.

6 Q Can you tell the jury how you became involved in this
7 case.

8 A I received a call from Deputy Washington from the
9 sheriff's office and he was at the elementary school here in
10 Orangeburg and had relayed that a young girl there had made
11 an allegation that she had been raped. And they were trying
12 to figure out where exactly it happened because all they
13 knew was Holly Hill. They said it's described as down the
14 street from the Shuler Marshall Funeral Home. And it might
15 be a one-way street. And I said well, it sounds like
16 Hessman Avenue. That's the thing about Holly Hill and any
17 small town is you kind of know everything and everyone. And
18 I believe the deputy then told me the name of the suspect,
19 Mr. Small, and he does indeed live on Hessman, so --

20 Q And since you were able to confirm that Mr. Small did
21 live in Holly Hill, did you agree to take over that
22 investigation?

23 A Yes, I did. I asked the deputy to -- I think he said
24 he was going to do an agency assist, kind of report, and I
25 asked him to send it to me and we would take it from there.

1 Q Okay. And once you were able to confirm the
2 jurisdiction that you would handle the investigation, what
3 did you do next?

4 A I got the phone number for Destiny, the aunt. I told
5 Deputy Washington that -- to let her know that I would call
6 her in about a half hour or so. And he'd asked me if it was
7 okay for the child to go back to Orangeburg with the aunt,
8 where the aunt lives and I said absolutely, you know. No
9 contact whatsoever with the Smalls, no phone calls. Don't
10 talk to anybody about anything or even [REDACTED] about
11 anything.

12 Q Okay. And once you spoke with the victim's aunt -- did
13 you also speak with the victim's mother?

14 A Shortly after that, I did receive a call from the
15 mother as well.

16 Q Okay. And without saying what they said to you, did
17 they discuss the allegation and disclosure with you?

18 A Yes.

19 Q And were both the aunt and the mother both cooperative
20 with you?

21 A Very much so.

22 Q Did they ever give you any problems not wanting to do
23 anything that you told them to do?

24 A No, no.

25 Q And did you speak with the victim in this case,

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[REDACTED]

A No. I generally don't speak to younger children, especially a situation like this where there's an allegation of an older man doing inappropriate things. I don't want to re-traumatize the child and we have a good relationship with CASA and that's what those folks are specially trained to do.

Q So did you contact CASA regarding this case?

A I did. I did.

Q And did you request a forensic interview?

A I did.

Q And when we talk about CASA, where is that? Is that right here on 301?

A Yes. Yes.

Q It's right here, right on 301, correct?

A Yes.

Q Do you know what color the house is?

A Hum. No, but I know that it's very close to the House of Pizza.

Q Good enough. And that first forensic interview that you scheduled -- well, first of all, let me ask you this. When did you get the call about this incident?

A It was September 4th.

Q And when you were called about the incident, I think you said a Deputy Washington. Where was he calling you

1 from?

2 A The elementary school.

3 Q Okay. And is that where the report was first made?

4 A With the sheriff's office, yes.

5 Q Okay. And then you attended your scheduled forensic
6 interview shortly thereafter, correct?

7 A Yeah. About three weeks later, I believe.

8 Q On September 24th. Does that sound about right?

9 A That sounds right. And when you went up to CASA, was
10 there any type confusion regarding which agency between the
11 sheriff's office and Holly Hill were investigating this case
12 at that time?

13 A Yeah. I guess there ended up being -- I had told, like
14 I said before, Deputy Washington that we would take it. I
15 believe her name is Investigator Gillyard. She handles the
16 special kind of things like that and she was there as well.

17 Q Okay. And I know that Investigator Gillyard doesn't --
18 would Investigator Garrison maybe have also been? Would you
19 be getting those names confused by chance?

20 A It's possible.

21 Q But you knew that a female investigator from the
22 sheriff's office came?

23 A Yes.

24 Q And did you discuss -- how did she know to come to the
25 forensic interview if you were investigating?

1 A I'm not sure. I'm guessing that when the deputy did
2 his report that it somehow filtered its way to him because
3 it was a sex crime.

4 Q Okay. Do you know -- and if you don't, you don't. But
5 do you know if the victim's aunt called her and let her know
6 as well?

7 A I'm not sure.

8 Q Okay. But once you were able to speak with her, did
9 y'all both agree who was going to handle this case?

10 A Yes. Yes.

11 Q And who decided who was going to handle the case?

12 A And we decided that we would handle -- Holly Hill would
13 handle the case.

14 Q Okay. And on that day was [REDACTED] able to be
15 interviewed that day?

16 A No. No, she was not.

17 Q And why was she unable to be interviewed that day?

18 A They were having -- CASA had some issues with their
19 audio/video. I don't know if the wiring got chewed up or
20 what, but it wouldn't work.

21 Q Okay. And with forensic interviews, do those have to
22 be audio and video recorded?

23 A Yes.

24 Q All right. Was the interview rescheduled that day?

25 A No, the folks at CASA, I believe, told the aunt that

1 they would call her.

2 Q Okay. And to your knowledge, did they call her?

3 A They must have tried. At some point, a couple weeks
4 later, I got a phone call saying that they've been trying to
5 get in touch with her and haven't been able to.

6 MR. PALMER: Objection. Hearsay.

7 MS. CORNWELL: It's going to the truth of the
8 matter asserted.

9 THE COURT: Okay. I'll allow it.

10 BY MS. CORNWELL:

11 Q Eventually, did you receive a phone call that they had
12 come back in and they were going to reschedule the
13 interview?

14 A Yes.

15 Q Okay. And did that interview take place around
16 December 10th of 2015?

17 A That sounds right.

18 Q And did you also attend that interview?

19 A Yes, I did.

20 Q And during that interview, are you in the room with the
21 interviewer when she speaks to the victim?

22 A No.

23 Q Is anybody allowed in that room with the victim when
24 she speaks?

25 A No. No, it's just the interviewer and the victim.

1 Q Were you able to watch the interview while it was being
2 conducted?

3 A Yes.

4 Q And where were you able to watch that interview?

5 A I believe it's an adjoining room. An adjoining room
6 with -- and they have a TV and we can watch them as they --

7 Q And that TV monitor is streaming live?

8 A Yes.

9 Q Was anybody allowed to watch that interview with you?

10 A No. I think there was a victim's advocate in there,
11 but I don't recall which one.

12 Q Okay. Was the victim's aunt or mother allowed to watch
13 the interview with you?

14 A No. They keep them in a separate room.

15 Q So is the victim's aunt or mother able to hear anything
16 about what's being discussed in that interview room?

17 A No.

18 Q And once the interview is over, did you or anyone else
19 that you know of discuss the interview with the aunt or the
20 mother?

21 A No.

22 Q Have you ever discussed the interview with [REDACTED] as
23 part of your investigation?

24 A No. Again, I don't want to re-traumatize.

25 Q After the forensic interview, what happened?

1 A Based on what was said during the interview, I obtained
2 a warrant for criminal sexual conduct.

3 Q And do you know if there was also a medical examination
4 scheduled?

5 A Yes, there was.

6 Q And where was that exam?

7 A I believe it was done in Columbia.

8 Q Why Columbia? Why not here at TRMC?

9 A I don't think the nurses at Orangeburg have the same
10 kind of training for that particular type of examination.

11 Q Okay. And did you transport the victim to Columbia or
12 is the care giver responsible for making the trip with
13 Keamanni?

14 A No, it would be the care giver or CASA, victim's
15 advocate, somebody.

16 Q Tell the jury about when the Defendant was arrested.
17 Were there any issues that arose from his arrest?

18 A No issues. I sent one of my officers there and told
19 him to take another unit with him, just being that it's a
20 high degree felony and that's for an officer safety
21 purposes. So he took -- he went, he being Officer Doroski
22 and Deputy McCormick from the sheriff's office went to the
23 house to arrest Mr. Small. There was no issue. Mr. Small
24 didn't resist or anything like that. And as Officer Doroski
25 was putting Mr. Small into the car, he asked him if he had

1 any medical issues that they needed to be aware of and Mr.
2 Small said that he was HIV positive.

3 Q Were you present to hear this during the arrest?

4 A No.

5 Q So when were you advised of this statement?

6 A I don't recall. I either got a -- it was a phone call
7 or a text message from Officer Doroski. It was very shortly
8 thereafter.

9 Q And upon hearing of this admission, what did you do?

10 A I immediately sought out another warrant for exposing
11 another for HIV.

12 Q Did you inform anybody else?

13 A Yes. I called CASA and asked them if that's a
14 notification that they could make or maybe the victim's
15 advocate that we work with through the sheriff's office.

16 Q Did you ever speak to the victim or her aunt or her
17 mother regarding the disclosure of HIV?

18 A No.

19 Q And did you attend the medical exam of Keamanni?

20 A I did not.

21 Q Did you receive a copy of the doctor's report diagnosis
22 and recommendations as part of your investigation?

23 A Yes.

24 Q And are you part of a multi-disciplinary panel that
25 discusses these types of cases after medical exams?

1 A No.

2 Q So other than court hearings, have you had any further
3 involvement in this case?

4 A No.

5 Q Thank you, Chief Detter. Please answer any questions
6 Defense counsel may have.

7 A Sure.

8 JOSHUA DETTER - CROSS-EXAMINATION

9 BY MR. PALMER:

10 Q Good afternoon, chief?

11 A How are you counselor?

12 Q I'm doing fine. Thank you. And I just have a few
13 questions for you. You've made several references to not
14 re-traumatizing the complaining witness?

15 A Yes.

16 Q Were you -- how did you determine that this person had
17 been traumatized or did you?

18 A Well, I determined it through the aunt and the mother,
19 based on what she had told them. And then once the forensic
20 interview was over.

21 Q So is it fair to say that the report itself is
22 reasonable grounds to assume that the child was traumatized?
23 And so -- I mean, do you -- are you thinking physical
24 trauma, emotional trauma? I mean, what are we talking here?

25 A I would imagine all of the above.

1 Q Okay.

2 A I couldn't say for sure. I've never been a victim of
3 rape.

4 Q Okay. So your hesitancy to question the child -- and I
5 understand that -- to avoid re-traumatizing was basically
6 just a safeguard for the child's benefit; is that right?

7 A In essence. I also didn't want to ask any questions,
8 any leading questions or assume anything or put anything
9 into her head.

10 Q That could adversely affect your investigation; is that
11 the reason?

12 A Sure.

13 Q Okay. All right. And so your determination that this
14 child may have been traumatized -- is that a fair way to put
15 it -- was based on the report you received. You didn't do
16 anything else independently to determine whether this child
17 had been traumatized?

18 A No. No. We usually wait for the forensic interview.

19 Q Understood. And is that standard procedure, protocol?

20 A It is.

21 Q Refer them to CASA for a forensic. And then does CASA
22 send them to the physical exam or did you have any
23 involvement in that?

24 A I believe that was done by CASA.

25 Q Okay. All right.

1 MR. PALMER: No further questions.

2 Q Thank you.

3 THE COURT: Anything further?

4 MS. CORNWELL: Nothing further.

5 THE COURT: Thank you, sir. You can step down.

6 CHIEF DETTER: Thank you, Your Honor.

7 THE COURT: Everybody okay? You need a break?

8 Anybody need a break? Okay.

9 MS. CORNWELL: The State would call Deputy
10 Doroski.

11 Your Honor, may we approach?

12 (Off the record bench conference with counsel and the
13 Court.)

14 MS. CORNWELL: Deputy Doroski please take the
15 stand.

16 THE COURT: If you'd place your left hand on the
17 Bible, please, sir, and raise your right.

18 (WHEREUPON, Clifford Doroski was
19 sworn to tell the truth.)

20 CLIFFORD DOROSKI - DIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q Deputy Doroski, can you please tell the jury about your
23 law enforcement experience?

24 A I started nearly nine years ago with Summerville PD. I
25 moved down from New York and I went to Holly Hill. I've

1 been there for just about two years and transferred over to
2 the sheriff's office almost a year ago.

3 Q And were you working for the Holly Hill Police
4 Department in December of 2015?

5 A Yes, ma'am.

6 Q And did you have any involvement in this case?

7 A Other than I went over to -- I was contacted by Chief
8 Detter to go over to the residence of Mr. Small, over at
9 (inaudible) Street and attempt to locate Mr. Small. And I
10 contacted Deputy McCormick and had him meet me over in the
11 area and advised him who we were looking for and of the
12 warrant. And made contact with Mr. Small. I went to the
13 front door and Deputy McCormick went to the rear of the
14 residence and I made contact with Mr. Small at the front of
15 the residence, advised we had an outstanding warrant. He
16 asked if he could get dressed. I allowed him to do so. And
17 he didn't give me any issues and then I asked him -- because
18 I always do because I do some front-end work for the jail.
19 I was just going to ask him if he had any medical issues and
20 his response was I'm HIV positive. I read him his Miranda
21 warning and transported him to the Orangeburg County
22 Detention Center.

23 Q Okay. And other than him making the admission
24 regarding his medical status, did you ask anymore questions
25 or get any more statements from him?

1 A No, ma'am.

2 Q Once you were advised of his status, did you let Chief
3 Detter know?

4 A Yes, I did.

5 Q And you read off a piece of paper. Is that your report
6 that you just read from?

7 A This is my supplement. Yes, ma'am.

8 Q May I just show Defense counsel so that --

9 (Solicitor shows Defense counsel
10 document)

11 Q That's all the questions I have. Please answer any
12 questions Mr. Palmer may have.

13 MR. PALMER: No questions.

14 THE COURT: Thank you, sir. You can step down.

15 MS. CORNWELL: Your Honor, at this time the State
16 would simply request that the stipulation be presented to
17 the jury.

18 THE COURT: Okay. Did you copy this stipulation?
19 If I can find it.

20 MS. CORNWELL: Your Honor, if I can approach, I
21 have a copy of it.

22 THE COURT: Okay. I don't know what I did with
23 mine.

24 (Off the record bench conference with counsel and the
25 Court.)

1 THE COURT: You have any problem with me
2 publishing this to the jury?

3 MR. PALMER: No, Your Honor.

4 THE COURT: Okay. All right.

5 Ladies and gentlemen, I told you earlier about evidence
6 that you'll receive and the counsel in this case have
7 entered a stipulation and I'm going to simply read it to
8 you. At this time it is my duty to inform you that the
9 parties in this case have stipulated to the fact that the
10 Defendant in this case is HIV positive and he knew of his
11 status at the time the alleged allegations occurred.

12 And as I told you, a stipulation is an agreement or is
13 an admission or confession made in a judicial proceedings.
14 Basically, both sides have stipulated that he, in fact, is
15 HIV positive and at the time of the alleged occurrence he
16 knew that he was HIV positive, okay.

17 MS. CORNWELL: Thank you, Your Honor.

18 Your Honor, at this time, -- additional stipulation
19 -- play this video.

20 THE COURT: Can you tell me how long it last?

21 MS. CORNWELL: It is a forty-five minute video.

22 THE COURT: Okay. Ladies and gentlemen, the next
23 evidence you will see is a copy of the video of the forensic
24 interview of this child. It's about forty-five minutes
25 long. Do any of y'all need a break before you watch it?

1 It's going to be forty five minutes.

2 (Jury indicates they need a break.)

3 THE COURT: All right. We'll take a ten-minute
4 break. I remind you please don't discuss this case and I'll
5 get you back out.

6 (Jury out for ten minute break)

7 THE COURT: All right. We'll take a break and
8 give you a chance to upload it.

9 MS. CORNWELL: Thank you, Your Honor.

10 (Court in recess for a short break

11 at

12 (Court in session after short break

13 at

14 THE COURT: All right. Well, if everybody's ready
15 and if the jury's ready.

16 THE BAILIFF: They're ready.

17 THE COURT: All right. Bring them in and we'll
18 get started.

19 THE BAILIFF: Yes, Your Honor.

20 (Jury in after ten minute break)

21 THE COURT: Okay. Madam Solicitor, you may start
22 the video.

23 MS. CORNWELL: Thank you, Your Honor.

24 THE COURT: Can everybody see that TV screen?

25 MS. CORNWELL: I'm going to pull it a little bit

1 closer. I just want to make sure they could walk by.

2 THE COURT: Okay.

3 (The video of the forensic
4 interview of [REDACTED] as published for the jury)

5 (The video of the forensic
6 interview of [REDACTED] concluded.)

7 THE COURT: Okay. It's my understand you have one
8 more witness you need to call today?

9 MS. CORNWELL: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, do
11 y'all need a break? We've got one more witness we need to
12 try to finish to day on the stand. Everybody okay?

13 All right. You may call your next witness.

14 MS. CORNWELL: Thank you, Your Honor. The State
15 would call Dr. Carol Swiecicki.

16 THE COURT: Okay.

17 (Whereupon, Carole Swiecicki was
18 sworn to tell the truth.

19 CAROLE SWIECICKI - DIRECT EXAMINATION

20 BY MS. CORNWELL:

21 Q Dr. Swiecicki can you please tell the jury a little bit
22 about your educational background?

23 A Uh-huh. I got my bachelor's in psychology from the
24 University of Florida and went on to receive my master's
25 degree and Ph.D. in clinical psychology from St. Louis

1 University.

2 Q And after you got your masters in psychology, did you
3 do any sort of post-doctoral fellowships or post-graduate
4 education?

5 A So the final year to receive your Ph.D. or doctorate in
6 clinical psychology is a clinical internship. I completed
7 that at Medical University of South Carolina in their
8 psychology or psychiatry department. I then did my post-
9 doctoral fellowship at St. John's University in Queens, New
10 York at a program that specializes in child abuse and
11 neglect.

12 Q And tell the jury a little bit about your employment
13 history including where you're currently employed?

14 A Uh-huh. After my post-doctoral fellowship, I worked as
15 a psychologist and a mental health director at a hospital-
16 based child advocacy center, which is a national model for
17 responding when there's a concern for child abuse, all the
18 way up to treatment, if that's needed. I did that for six
19 and a half years in Norfolk, VA at the Children's Hospital
20 there. And then for the last three and a half years, have
21 been the executive director at the Dee Norton Low Country
22 Children's Center, which is here in Charleston, South
23 Carolina.

24 Q And do you hold any professional licenses?

25 A Yes. I'm a licensed psychologist in South Carolina.

1 Q And are you a member of any professional organizations?

2 A Yes. I am part of the American Professional -- I'm
3 sorry -- The American Psychological Association and the
4 Association for Behavioral and Cognitive Therapy. And then
5 I'm on the Board of Directors of the National Children's
6 Alliance, which is the national organization that accredits
7 child advocacy centers like the one that I work at. And I'm
8 on the Board of the Directors of the State Network of Child
9 Advocacy Centers as well.

10 Q Okay. Great. And have you ever authored any journals
11 or publications in these fields?

12 A Yes.

13 Q Can you tell the jury just a couple of them? You don't
14 have to name the whole gambit of them?

15 A Yeah. Generally, my line of research is around
16 children's responses to potential traumatic events, things
17 like sexual abuse, physical abuse, the traumatic death of a
18 loved one. So how they respond initially, preventing either
19 the exposure to those things or the development of distress
20 because all children who have been exposed to those types of
21 things develop symptoms. And then treating children who
22 have experienced those symptoms. So I have peer review
23 publications and also presentations at conferences in those
24 areas.

25 Q Have you ever been qualified as an expert in a court of

1 law?

2 A Yes.

3 Q And what areas have you been qualified as an expert in?

4 A In child psychology, in general psychology and then in
5 child abuse dynamics.

6 Q Approximately how many times have you been qualified as
7 an expert?

8 A Sixteen.

9 Q And are those all in South Carolina?

10 A No. About half are in South Carolina in Charleston,
11 most in Charleston. One in Berkeley criminal court. And
12 the others in Virginia where I practiced before coming here.

13 Q Okay. And have you ever met this or examined the
14 victim in this case?

15 A No.

16 Q Have you reviewed the victim's file or law
17 enforcement's file or my file or any other file pertaining
18 to this case?

19 A No.

20 Q Okay. And being hired by my office, have I ever spoken
21 to you about the facts of this case or given you any details
22 regarding this case?

23 A Not regarding the facts or details of the case, no.

24 Q Do you know the age of the victim in this case?

25 A No.

1 Q Do you know the sex of the victim in this case?

2 A No.

3 Q Do you know the race?

4 A There's someone sitting in the room so -- not by actual
5 knowledge but I think there was someone sitting in the room,
6 but I don't actually know if it was the victim or not --

7 Q Okay.

8 A -- but if they're any relation then I would potentially
9 the race.

10 Q Okay. And do you know the allegations regarding the
11 type of sexual assault involved in this case?

12 A Again, not a fact but the line of questions that you
13 asked me to prepare in terms of general topics are typically
14 around sexual abuse and physical abuse.

15 Q Okay. So your purpose in testifying today would simply
16 be to speak in general terms and about hypothetical
17 situations in child abuse; is that correct?

18 A That and the literature, the science behind those
19 things.

20 Q Okay.

21 MS. CORNWELL: Your Honor, at this time the State
22 would move to have this witness qualified as a blind expert
23 in the field of child abuse dynamics.

24 MR. PALMER: No objection.

25 THE COURT: Okay. The Court so finds.

1 MS. CORNWELL: Thank you, Your Honor.

2 Q Dr. Swiecicki in your experience statistically
3 speaking, what is the percentage of sexual assault cases in
4 children where there is DNA evidence collected or there is
5 an abnormal physical examination that indicates a sexual
6 assault?

7 A Uh-huh. So at centers like children's advocacy
8 centers, one of the first steps is typically a forensic
9 interview, which is around the facts of what might have
10 happened, just talking to the child. And a forensic medical
11 exam around any medical findings like you're talking about.
12 Finding actual evidence is very rare. Studies that have
13 been done looking at that. One, that a lot of times the
14 medical provider's sight is among pregnant adolescents, so
15 there's definitely been some sort of penetrating sexual
16 contact. Only six percent of those children actually had
17 medical findings of penetrating sexual contact. So the body
18 has a natural way to heal that makes it uncommon for there
19 to be medical findings.

20 Q So if there's no DNA collected and no physical injury
21 on a child at the time of the medical exam, does that mean
22 that the child did not suffer from sexual abuse?

23 A No, the literature is pretty consistent that a normal
24 exam doesn't necessarily mean that nothing happened.

25 Q Okay. Other than DNA or physical evidence, what do you

1 look for to determine whether or not a child has been
2 sexually abused?

3 A For us in our practice it's, you know, that combination
4 of the interview with the child, a history, and then
5 sometimes -- sometimes there's a confession by the alleged
6 offender; sometimes there's somebody that witnessed it. So
7 it's a combination of the factors of the case and then the
8 interview with the child.

9 Q Okay. And when you talk about factors of the case, are
10 you looking at any behavioral characteristics that you would
11 red flag as potentially --

12 A Typically, those are things that lead people to have a
13 concern, which makes them refer them to us.

14 Q And what are -- let me ask you this. Can you explain
15 what those signs were or are that people may look for in the
16 different ages of children, saying start with young children
17 and then progressing up?

18 A Uh-huh. So typically it centers around changes. So
19 for young children if they have already started -- you know,
20 they're potty trained, they've been dry through the night.
21 If there's a change in that, suddenly they're not potty
22 trained, suddenly they're wetting the bed, that's a change
23 that for a younger child would be kind of concerning. If
24 they've had no problem separating from their parents and
25 suddenly they're afraid to leave their parent or they're

1 suddenly afraid to sleep in the dark and they've had no
2 problem with that, that would be kind of a red flag, like
3 what's going on if this is different. Similarly emotional
4 reactions. If they, you know, have been a relatively stable
5 child and suddenly they're crying a lot or they're having a
6 lot of temper tantrums in the floor that wasn't happening,
7 those types of changes in behavior patterns are something
8 that are concerning. And that applies for older kids too.
9 So maybe older kids might suddenly be clingy with their
10 parent when they weren't like that before. They also may
11 show signs of withdrawal, sadness, but the change from what
12 -- how they were before. So those kinds of changes in
13 patters is really one of the flags that we, you know, talk
14 to people about.

15 Q And in cases where there's an allegation of sexual
16 abuse, depending on the child's age, is any type of
17 sexualized behavior or inappropriate touching or playing,
18 does that ever cause a red flag?

19 A Yes. So typically the biggest red flag with sexualized
20 behaviors is children will insert objects or things into
21 their vagina or anus. That's very unusual for a younger
22 child to do if they haven't experienced sexual abuse.
23 Although, it's still unusual even among children who have
24 been sexually abused. Not by any means a hundred percent of
25 children do that, even if there was sexual abuse. A lot of

1 the sexualized behaviors after age nine to eleven,
2 sexualized behaviors are more common among children who've
3 been sexually abused. But those children -- it's also more
4 common among children who've witnessed domestic violence or
5 witnessed inappropriate sexual contact, like on TV or the
6 internet. So as children get older, those behaviors tend to
7 be less related directly to sexual abuse.

8 Q Okay. Now, let's talk about specifically children
9 under the age of seven?

10 A Okay.

11 Q What type of sexualized behavior would be a red flag in
12 those or if there is any type of sexual behavior that would
13 be a red flag?

14 A Well, I mentioned inserting objects into their vagina
15 or anus. If they're acting out sexually on another child,
16 particularly if they're doing it after they've been told
17 it's against the rules, that's a concerning red flag. If
18 they're doing it against the other child -- you know,
19 sometimes children of similar ages will show each other
20 their private parts. That's really normal behavior for kids
21 who are like seven, five to seven. But if they're doing
22 that when one of the children doesn't want that, that's a
23 concern for something like sexual abuse.

24 Q And if you have a young child who is familiar with
25 certain people and certain places who's always enjoyed going

1 to that place with those people and all of a sudden no
2 longer wants to go there, is that what you would consider a
3 red flag?

4 A Yeah. That I would classify as a change in behavior.
5 You know, something was happening that was normal and then
6 suddenly there's a change and they're not wanting to do this
7 or -- it would cause a concern that something's going on.

8 Q So let's say hypothetically if a five year old
9 displayed several of these characteristics around the same
10 time. Let's say that they didn't want to go to a relatives
11 house that they normally love going to, that they were
12 beginning to have bathroom issues that were not related to
13 potty training, wetting themselves, wetting the bed, that
14 there was some sexualized behavior as far as touching
15 themselves in the private area, playing with other children
16 telling them to get on top them. And if they did this both
17 at home, and after at home they then turn around and started
18 doing it at school as well, would those behaviors be
19 consistent with a child who has been sexually abused?

20 A They would all be red flags. Oftentimes when, you know
21 -- we oftentimes get consultations where we would suggest
22 that there be, you know, an investigation to have them
23 interviewed by the proper authorities because of being
24 concerned.

25 Q Okay. And in sexual assault cases, what is a

1 disclosure?

2 A A disclosure is the telling about some act.

3 Q And is the disclosure of sexual assault, do y'all
4 consider that an event or is it a process?

5 A In the literature it's very consistently described as a
6 process, something that happens over time as opposed to a
7 one-time event that everything is told at once.

8 Q Okay. And oftentimes, are disclosure accidental or in
9 response to direct questioning or are they purposeful
10 disclosures?

11 A Studies have been done at this point, talking with
12 children about kind of what it's been like, and they happen
13 in both of those ways. There's no real consistency in the
14 literature about whether it's more often purposeful or more
15 often accidental. A lot of times children, especially
16 teenagers, will tell a friend on purpose, but they didn't
17 mean for parents to find out. So it's both purposeful and
18 accidental because they told somebody on purpose but didn't
19 want other people to find out. Other accidental things are
20 if when somebody walks in, so the child didn't really tell
21 anybody but somebody found out. And then kids talk about
22 purposeful disclosures in that there's a discussion in the
23 literature, the peer review studies about when the children
24 weigh the consequences of what might happen if they tell
25 somebody. So they tell bits and pieces of it and see what

1 happens.

2 Q And in very young children, do those disclosures
3 generally happen spontaneously? Are they generally at the
4 direct question of something?

5 A Uh-huh. (Affirmative response)

6 Q How do very young children generally disclose?

7 A The only real literature on young children versus older
8 children in terms of disclosure is the disclosure recipient.
9 So young children are more likely to have the first person
10 they tell be a mother, whereas older children and teens are
11 more likely to tell a peer. There haven't been a lot of
12 studies really on age in terms of sort of what you're
13 asking.

14 Q Okay. And during the initial disclosure, are those
15 typically detail given or very broadly given as far as the
16 specifics of the event?

17 A Uh-huh. It depends a lot on how the questions are
18 asked. So what we do know is that typically not all of the
19 details are told right up front, that it's very clearly a
20 process where -- and, again, unless you have very detailed
21 questions that are opened-ended that elicit open-ended
22 details, even with those interviews oftentimes, they don't
23 ask all of the questions and the information comes out over
24 time in terms of more details, which is really the natural
25 way that everybody tells things. When somebody asks about

1 someone's, you know, morning, people tend to gauge who's
2 asking them and pick the relevant details, as opposed to
3 telling every single thing that's happened that morning.

4 Q Okay. And so in disclosures, in particular in
5 disclosures of very young children, are they more likely to
6 reveal more details during the process of a disclosure?

7 A Really, based on -- regardless of age, more details are
8 likely going to come out over time.

9 Q Okay. What is delayed disclosure?

10 A So delayed disclosure is a disclosure more than one
11 month since the incident happened. And the studies show,
12 you know, within twenty-fours up to a month it's considered
13 immediate disclosure. Anything after that is considered
14 delayed.

15 Q And if there have been multiple sexual assaults, does
16 that delayed disclosure happen from the last assault or from
17 the first assault?

18 A Typically, from the first assault, because people in
19 the literature kind of define that it's been going three
20 years, they're still have been a delay of more than a month.

21 Q Okay. What are the various reasons why a victim would
22 disclosing an incident of sexual abuse?

23 A Uh-huh. Well, first of all, it's very common. So out
24 of every four children who've been abused only one to two
25 actually disclose within that first month. Then another one

1 discloses at some other point during childhood and very
2 consistently one out of four don't tell anybody until
3 they're being asked about it. A lot of times that's not
4 until they're adults. And then the reasons why they
5 disclose, one of -- there are kind of two camps. One is
6 factors about the case and then the other is there are sort
7 of feared consequences as they've thought about whether or
8 not to tell. So case related factors when the child is
9 younger, when the abuse starts, they're more likely to delay
10 telling. And the cut-off in one of those studies was about
11 eight to nine and a half. So if the abuse started before
12 they were nine and a half, they were more likely to delay
13 disclosing. And then if it's somebody that's within the
14 family that was engaging in the abuse, they're more likely
15 to delay disclosure as well. And then boys are actually
16 less likely in some of the studies to delay disclosure as
17 well -- or more -- they're more likely to delay disclosure.
18 And then the other kind of things is the anticipated
19 consequences. Kids think a lot about what will happen if
20 they're going to tell somebody. And they anticipate things
21 like it's going to be upsetting for me. It might be
22 upsetting for the parent. It might be upsetting for the
23 offender who oftentimes is somebody that they know and they
24 have a relationship with that person and might not want
25 negative things to happen to that person. They fear that

1 they might actually be physically hurt or injured, which is
2 particularly common if they've actually been threatened,
3 that that might happen. So they anticipate a lot of
4 negative things that might happen and that's another --
5 reason for not telling as quickly.

6 Q Okay. And would that include instruction by the
7 perpetrator of don't tell anybody?

8 A Uh-huh. Yeah. That would be -- they kind of classify
9 that a lot of times under threats.

10 Q What is grooming or normalizing abuse? What does that
11 mean?

12 A So groom's a term that's used in the field and in the
13 literature to mean behaviors that can lead up to sexually
14 abusive behaviors but don't necessarily constitute abuse
15 itself. Things like hugging for too long or having
16 inappropriate touches that aren't necessarily abusive. And
17 a lot of times -- when you said normalizing -- when children
18 have those touches happen, they sometimes get used to those
19 borderline inappropriate touches, that then make them a
20 little less likely to tell as the touches become more and
21 more inappropriate.

22 Q And so as far as delayed disclosure goes, if the
23 perpetrator was, say, the child's godfather, would that have
24 an effect on whether or not the child immediately disclosed?

25 A So that would be something that would be considered

1 within the family, known to them. And when it's somebody
2 that's known to them, particularly within the family,
3 children are more likely to delay disclosing.

4 Q And does the victim's age and sexual experience at the
5 time of disclosure factor in to have that disclosure
6 process?

7 A Could you repeat the question, please?

8 Q The victim's age and sexual experience. I know we
9 talked about sexual exposure and things like that. Does
10 that factor into the disclosure process --

11 A Uh-huh. (Affirmative response)

12 Q -- as to the language they're able to give through the
13 disclosure?

14 A Uh-huh. So essentially, you know, as children get
15 older and become adolescents particularly, they have more of
16 a language for sexual activities and they know more about
17 sex. So when younger children are using words that they
18 just wouldn't know because they haven't learned about sex,
19 at school or by parents, that's more unusual. In terms of
20 age at the time of disclosure, it's less of a predictor
21 about delay as the age of onset when the abuse starts.

22 Q All right. So with particularly young victims that
23 don't have any prior knowledge or exposure to sexual
24 behavior, do they oftentimes have difficulty articulating
25 the specific use and sometimes need anatomical diagrams of

1 dolls or something to kind of help them explain a
2 disclosure?

3 A It depends a lot on what their vocabulary is for body
4 parts. Younger children sometimes haven't learned what
5 their body parts are, so in forensic interviewing
6 oftentimes, if that's the case, they might use an anatomical
7 drawing to make sure that they have the same language for
8 what the body parts are because it's really pretty common
9 for people to use nicknames for body parts, and we don't
10 want to get confused about what they're talking about. So
11 that could just help everybody to be on the same page.

12 Q And do victims who are very young, do they often think
13 chronologically or do they have trouble establishing time
14 frames for different types of abuse?

15 A Younger children, particularly you said under age
16 seven, under age seven would be actually a good cutoff that
17 -- not even related to abuse. In general, it's harder for
18 them to get time frame around what happened. You know,
19 sequencing things is just not something they're good at yet
20 because they're not -- you know, they're still getting used
21 to speech and language and all those things, vocabulary.

22 Q So would they perhaps have trouble distinguishing
23 separate incidents and sometimes maybe just continue it and
24 say everything is one long day?

25 A Yes.

1 Q And when a child does disclose, you said particularly
2 in younger children, you said that that disclosure is
3 typically made to a mother or to perhaps a non-offending
4 care giver?

5 A The literature is actually very specific mothers,
6 mothers. Uh-huh.

7 Q Okay. Well, let me ask you this. What is meant by the
8 term non-offending care giver? Who is a non-offending care
9 giver?

10 A So a non-offending care giver would be somebody who's
11 in a care giving role to that child but didn't engage in the
12 abuse. So it might be mother or father or grandparent that
13 has, you know, takes care of the child.

14 Q And if the child doesn't live with the mother at all
15 times, is there any research to show that young children
16 would disclose to maybe the care giver that is primarily in
17 the child's life?

18 A They do tell other care givers just not to the same
19 degree that they tend to tell mothers in the study that's
20 been done about that.

21 Q Okay. Can you tell me, are there different reactions
22 that different non-offending care givers have when an abuse
23 is disclosed to them?

24 A Very wide-ranging reactions, yes.

25 Q Okay. Well, if we had to narrow it down to three --

1 let's say the ones that immediately believe and no fear of
2 negative consequences call; the ones who believe but have
3 fear; and, the ones that don't believe. Can we go through
4 those characteristics?

5 A Uh-huh. Sure.

6 Q So if -- let's talk about the ones that immediately
7 call law enforcement.

8 A Uh-huh. (Affirmative response)

9 Q What is generally the characteristics of them?

10 A Well, I wouldn't even say as much the characteristics
11 of them, but the characteristics of the abuse. For care
12 givers that believe immediately and are very supportive in
13 terms of actions, like protecting the child from the alleged
14 defender, calling law enforcement, it's more likely to
15 happen when the child is alleging something by a stranger.
16 You know, among those cases it's like seventy-five percent
17 of care givers that are supportive in terms of doing those
18 actions. That's the minority of cases, stranger cases. It
19 just is very uncommon.

20 Q So when a care giver believes the child, but the
21 offender is known, let's say is a family member or a close
22 relative, how does that affect the way they react?

23 A So that actually is also pretty rare. When it was a
24 known person only eleven percent of parents were really
25 supportive right away. I think for even the most supportive

1 parent, you know, somebody like a child disclosing sexual
2 abuse by somebody that you know is surprising. So the
3 reactions almost more commonly include shock or fear or
4 surprise at first, even when they're going to ultimately
5 wind up doing supportive behaviors like you're talking
6 about. So for those that do call law enforcement and are
7 believing, initially there's usually some form of shock and
8 disbelief.

9 Q And you also talk about some fear, fear of negative
10 consequences.

11 A Uh-huh. (Affirmative response)

12 Q What type of negative consequences would they be afraid
13 of if they reported?

14 A So sometimes is that they or the child might be hurt.
15 Sometimes the person that's the alleged offender is a
16 breadwinner for the family, so they might be afraid that
17 they're going to lose their house. They're going to lose --
18 they're not going to have food. They aren't going to know
19 how to provide for their family. They fear that they might
20 lose their children because of that. So lots of fears even
21 if sometimes they're not realistic can run through their
22 heads.

23 Q And would that also include if they were afraid of law
24 enforcement or afraid of DSS or had --

25 A Well, it would be like afraid of losing their kids

1 because DSS got involved because they didn't have financial
2 resources or something.

3 Q And would another reason perhaps be a lack of
4 understanding or knowledge of just resources and what to do?

5 A Uh-huh. Yeah. Most people don't really know what to
6 do in a situation like that.

7 Q Okay. And then let's talk about some of the reasons
8 why care givers don't believe a victim.

9 A Uh-huh. (Affirmative response)

10 Q What are some of those reasons?

11 A So typically, you know, over ninety percent of the time
12 when sexual abuse is alleged, it's by somebody that the
13 child and family knows, whether it's a coach or family
14 member or somebody else, a teacher. And usually when
15 there's somebody that you know, you don't expect bad things
16 of them, so it's pretty common that parents don't think
17 something bad like that would happen to their child. And I
18 think that's oftentimes the reason that they initially don't
19 believe.

20 Q Are there other studies that discuss the guilt that
21 goes along with non-offending care giver that they do admit
22 that this is true, the guilt that they would feel for
23 allowing it to happen under their watch?

24 A Not as many studies. There aren't say, that I'm aware
25 of that have looked at that related to their belief of their

1 child, but guilt among care givers is widely know in the
2 literature to be something that they feel, you know, when
3 sexual abuse has happened to their child.

4 Q Okay. So if a child discloses a sexual abuse to a care
5 giver, I think what you're saying is it normal for some care
6 givers not to immediately call the police?

7 A Yes.

8 Q And once a child does disclose and law enforcement
9 becomes involved, is it typical for law enforcement to
10 request a forensic interview before making any charges?

11 A Yes.

12 Q Can you tell the jury what a forensic interview is?

13 A Yes. So forensic interview is a neutral interview one-
14 on-one with a licensed provider and a child, typically done
15 -- as they're defined in South Carolina Code, as something
16 that children's advocacy centers like the one in Charleston,
17 but there are seventeen across the state. The child
18 advocacy center either provides onsite or through
19 coordination with community partners. And it's a neutral
20 non-leading interview to try and found out what, if
21 anything, has happened with this child.

22 Q So they're basically fact-finding interviews?

23 A Yes.

24 Q Are disclosures always made in a forensic interview?

25 A No.

1 Q What are the signs that an interviewer typically looks
2 for to determine the credibility of a disclosure? For
3 instance, whether or not it's a credible, truthful
4 disclosure or whether or not it's something that's been
5 coached or told to the child?

6 A Uh-huh. If there are concerns about coaching, about
7 somebody telling the child to say something, interviewers
8 might do something called source monitoring, which is asking
9 the child questions to try and find out the source of their
10 knowledge. So questions like, you know, how do you know
11 that that happened? And usually, a child might say because
12 I was there or because it happened to me. Concerning things
13 might be because my mom told me it happened. And source
14 monitoring questions like that can be helpful when there's a
15 concern for coaching. The other thing is whether or not the
16 details that the child is giving are consistent with their
17 age. You know, something that they could have been told if
18 they're just repeating the same thing over and over again,
19 but can't give any extra details about their sensory
20 experience, like it felt like on their body. That's
21 something that, you know, if something's happened to you
22 personally, you have some sort of knowledge about what that
23 felt like. So they look for information like that.

24 Q So you talked about the victim's age and the experience
25 with particularly young victims, say under the age of seven.

1 In your experience their sensory expressions, do they do
2 that in terms of describing emotion such as sad or angry.
3 It made me feel sad. It made me feel angry. Or did they --
4 were they able to describe a different feeling when they're
5 describing how it felt?

6 A It really, regardless of age, depends on how that child
7 talks in general. So part of a forensic interview, what the
8 interviewer tries to do is to start out with narrative
9 practice, talking about a neutral event that has nothing to
10 do with the abuse. So a birth date, your last birth day is
11 a common one the interviewers will talk about. If a child
12 is talking, you know, under seven or over seven, if they're
13 using emotion language to describe that neutral event,
14 they'll probably use emotion language to talk about an abuse
15 allegation. If they're using all kind of, you know, details
16 about what it felt in their body, they'll probably talk
17 about an abuse related incident the same way. So it's more
18 than about age. It's about how they talk about things in
19 general.

20 Q And when you're determining the credibility of
21 disclosure, are you watching to make sure that the video,
22 that it's a voluntary disclosure, that it was a result of
23 non-leading questions or non-suggestive questions?

24 A Yeah. I go with the interview -- the interviewer's not
25 asking leading questions. It should be open-ended prompts.

1 Q Okay. All right. And are you also looking to see if
2 given a victim's age and experience their responses are
3 appropriate to the interviewer's questions?

4 A Yes.

5 Q Do the signs also depend on the child's age? For
6 instance, would you expect for a very young child under the
7 age of seven to be able to retain specific details for
8 coaching purposes?

9 A It depends on how long it's been. I mean, if the
10 coaching happened that morning and the child is interviewed
11 at 11:00 then they could retain those details.

12 Q Okay. And when a child's been abused multiple times --
13 I know we said that they would get them confused, sometimes
14 talking in long days -- would you expect a child to be able
15 to get details confused as far as confusing some of the
16 things that happened during once incident with some of the
17 things that happened during another incident --

18 A Uh-huh.

19 Q -- particularly in the very young children?

20 A That happens -- I mean, when there's chronic abuse
21 that's happened multiple times, especially if it's happened
22 in the same location, it's very common for victims to kind
23 of mix up the incidents and talk about them interchangeably
24 or think about them in kind of routine sort of way. The
25 best parallel is like driving to work. Like on our first

1 day of work we remember a lot of details about that. But
2 after you've been driving to work for a month and you've
3 done it, you know, dozens of times, you don't remember every
4 detail about that unless it stands out. And the same thing
5 happens with chronic incidence of sexual abuse or physical
6 abuse. You tend to remember overall, you know, what happens
7 unless it's something that stands out that was different
8 about a given time.

9 Q Okay. So in some cases when the child is especially
10 young, would it be normal for the child, particularly in
11 cases of grooming, where there have been other incidents,
12 for a child to remember some of the incidents when, say
13 their clothes were on, and some of the incidents when their
14 clothes were off?

15 A Yes, that would be normal.

16 Q All right. And in trying to explain whether or not
17 their clothes were on and off, is it also oftentimes that a
18 young child, if their clothes were on before the incident
19 happened and they're explaining how they've been taken back
20 somewhere, for them to say that their clothes were on when
21 the incident happened?

22 A Yes. Young children are particularly concrete with
23 questions, meaning they answer the exact question exactly as
24 it was asked and don't necessarily interpret what next
25 question might be meant.

1 Q Okay. So in a hypothetical interview if a very young
2 child who has had no exposure to any sort of sexual
3 experience is able to tell you that a certain person got on
4 top of her, took his clothes off and did it, is that
5 considered a disclosure?

6 A No.

7 Q Is it up to the interviewer at that time to ask for
8 more specific details to get into what do you mean by on top
9 of?

10 A And what is it?

11 Q And sometimes in trying to get the child to say that --
12 I think we've talked about the anatomical diagrams and
13 sometimes needing those. Hypothetically, after using those
14 anatomical diagrams the victim, using their own terminology,
15 says an abuser put his penis in her vagina, whether it was
16 inside not the outside, moved inside. She was able to tell
17 you that she knew it moved because the abuse moved his body,
18 and that it happened more than once and made her feel sad.
19 Would those be details that would be considered a credible
20 disclosure?

21 A Just based on that information, I would say yes.

22 Q All right. In your experience when children under the
23 age of seven are asked to describe the color of a body part,
24 do they generally describe it in terms of racial colors or
25 in colors as they see them in the world?

1 A There's really no literature scientifically on that.
2 And just based on my clinical experience working with
3 children, younger than seven -- particularly younger than
4 five, they don't even really necessarily identify what race
5 they might be. So then tend to just use color words.

6 Q Okay. And in young children when describing if
7 anything comes out of an abuser's penis, what are terms that
8 they generally would use for that? Do they say that -- I
9 mean, obviously they're not going to know to say ejaculation
10 or anything like that. So how do they describe that?

11 A Older children might know to call it ejaculate.
12 Younger children a lot of times call it urine or pee pee.
13 They'll use their word for urine, pee pee or something like
14 that.

15 Q Would it be consistent if they said that the penis was
16 open and that some dripped, anything of that nature?

17 A It really depends on what happened how they describe
18 it. But, you know, that would be something -- a lot of
19 times you're asking again sensory information and they might
20 use words like it was wet or it was sticky, things to
21 describe that sensory, which depends on what happened,
22 whether ejaculation happened or not.

23 Q And statistically how often are disclosed statement
24 that are recanted in child abuse cases?

25 A The literature that's out there -- there's not a ton of

1 literature -- but shows about one out of every four children
2 recants part or all of what they said.

3 Q Okay. And what is meant by recanting a statement?

4 A So recanting means that you say it didn't happen or say
5 that parts of it didn't happen.

6 Q What are some of the common reasons for a child to
7 recant their statement?

8 A Support of a care giver is one of the most common
9 things. When care givers are not supportive, children are
10 more likely to say that something didn't happen. That's one
11 of the really most consistent predictors of recantation is
12 that support of the care giver.

13 Q Okay. Are the reasons for recanting negative
14 consequences after disclosure, losing things that they enjoy
15 doing, not being able to go certain places that they used to
16 like?

17 A Those are all things, you know, that kids have talked
18 about. Particularly, those are related to delayed
19 disclosures. With recantation, you know, when the child is
20 in a safe situation, they tend to be less likely to recant.
21 But if they have continued contact with the alleged
22 offender, even if they're in a safe situation, those kids
23 are more likely to recant.

24 Q Okay. And if a child never recants their statement,
25 does that factor into whether or not you think that the

1 statement is credible?

2 A Well, three out of our children don't recant. So the
3 majority of children don't recant. When there are factors
4 like, you know, the child is having ongoing contact with the
5 alleged offender and there's a really not supportive care
6 giver, who sometimes -- you know, sometimes care givers do
7 tell children to say it didn't happen. That doesn't happen
8 a lot, but it happens. You know, if a child is still not
9 recanting, even when those things are happening, you know,
10 those are the cases that are particularly concerning.

11 Q So hypothetically, in your expert opinion, if a young
12 child between the age of five and seven, no longer wants to
13 go to another place, such as a relatives home; is acting out
14 in a sexualized way, and that that's witnessed both at home
15 and school; they give a detailed age appropriate disclosure
16 of sexual assault; and, they never recant their statement
17 despite suffering negative consequences after the statement,
18 in your opinion, is it consistent or likely that that child
19 has suffered from sexual abuse?

20 A It would be consistent with sexual abuse.

21 Q Does the fact that there is no DNA or physical evidence
22 to support that finding change your opinion as to whether or
23 not the child had been sexually abused?

24 A Not based on the literature around normal findings.

25 Q Thank you. Please answer any questions the Defense

1 has.

2 CAROLE SWIECICKI - CROSS-EXAMINATION

3 BY MR. PALMER:

4 Q Good afternoon?

5 A Hello.

6 Q I'm Scott Palmer and you can confirm that we've never
7 met?

8 A Correct.

9 Q I have to tell you something now, I volunteer at your
10 -- the place you run now in --

11 A Oh, okay.

12 Q In fact, I painted your conference room. This was
13 before your time.

14 A Thank you. And it's still that color.

15 Q Okay. Would you call what you do an art or a science?

16 A Both.

17 Q You don't consider yourself a scientist?

18 A I do.

19 Q You do?

20 A Yes.

21 Q Okay. Have you taken any courses in logic?

22 A I've taken courses in scientific method.

23 Q Do you know what a syllogism is?

24 A Not off -- well, not off my head.

25 Q If I just gave you an example of a syllogism, and let's

1 do one that everybody can relate to. Let's say that lawyers
2 wear suits. You see me in a suit, there's a lawyer. Isn't
3 that the same method of thinking that you or persons like
4 you use? In other words, we have studies. You have lots of
5 studies. Your CV is impressive. That children behave in a
6 certain way in certain cases. And it suggested to you --
7 and in those cases there have been findings of abuse. And
8 it's suggested to you that here's a child with those
9 behavior characteristics, then you concluded it's likely
10 that child suffered abuse. And it's kind of like saying
11 were you wearing a suit, you must be a lawyer. But lots of
12 people wear suits that aren't lawyers. You agree with me.

13 A It sounds like you're talking about correlation versus
14 causation.

15 Q Yeah. You know the terms better than I do. I call it
16 a syllogism, which is a weird word that nobody knows, but --
17 do you agree that that is sort of the way of thinking about
18 this, in a hypothetical sense?

19 A I would say thinking about it in a hypothetical -- I
20 mean, lots of things can be consistent with sexual abuse.
21 There is no one sign or symptom that absolutely all victims
22 of sexual abuse convey. I think that's kind of what you're
23 getting at.

24 Q Sure.

25 A But, you know, not everybody that wears a suit is a

1 lawyer. And even not all lawyers wear suits.

2 Q Right.

3 A Just like not all victims of sexual abuse engage in
4 certain behaviors, but they are just at higher risk for
5 certain things.

6 Q And, of course, since you know nothing about the case
7 we're here for today, everything we're talking about is
8 theoretical?

9 A Correct.

10 Q Hypothetical, based on other cases and maybe even in
11 other places that you've read about or studied or even
12 participated in?

13 A Mostly based on the research literature.

14 Q Right. And that's why you're referred to as a blind
15 witness, correct?

16 A Yes.

17 Q Okay. I want to talk about the art or science of
18 forensic interviewing. Obviously, you're trained in that
19 activity?

20 A I am.

21 Q And how many would you say you've conducted in your
22 career?

23 A Forensic interviews, just one. Forensic evaluations,
24 which was sort of a longer forensic interview that was done
25 up until 2012. I've done several of those, several dozen,

1 but I don't know that exact number.

2 Q Now, you're in an executive position, right?

3 A Uh-huh.

4 Q You're the director of Dee Norton. And also you're on
5 the board of directors of the national organization that is
6 connected to what you do, right?

7 A Yes.

8 Q I forgot the name of it. It's NCA is it?

9 A NCA, National Children's Alliance.

10 Q Okay. And congratulations on that by the way. But
11 you've been the director of Dee Norton, so your job is not
12 to conduct forensic interviews. You're more of an
13 executive?

14 A Correct. I provide oversight to the program.

15 Q And before that you were in Virginia, was it?

16 A Yes.

17 Q And were you in an executive position at your last job
18 in Virginia?

19 A It was sort of a hybrid, clinical/supervision position.
20 So I was the mental health director. I provided some mental
21 health services directly and I supervised all of the
22 therapists at that site.

23 Q Okay. Have you ever been a position where you
24 supervised forensic interviews? Because I'm interested in
25 finding out the methodology and protocol that is used,

1 especially in this state to conduct those?

2 A Uh-huh. I've not supervised forensic interviewers
3 directly. I'm aware of what protocols are used in our
4 state, but I'm not trained in our state's interviewing
5 model.

6 Q Okay. So you're not trained in it. So if you were
7 shown a video of a forensic interview that took place here
8 in Orangeburg County, would you be able to tell us whether
9 that was performed in a manner that's consistent with the
10 protocol that's accepted here?

11 A Not with the Child First protocol. I could talk about
12 other protocols that exist. But since I'm not trained in
13 our state's Child First protocol, it's one in that's
14 accepted. There are other models that are accepted in the
15 state too.

16 Q Okay. And given that and I accept that, you've already
17 talked about some things that seem to be common to all
18 forensic interviewing, like leading questions. They're not
19 generally used or did I hear that wrong?

20 A No, that's correct. Leading questions are generally
21 avoided if possible.

22 Q And what, if any contact with either the alleged
23 complaining witness or the care givers should the forensic
24 interviewer have before the actual interview?

25 A That's of great debate in the literature in terms of

1 how blind the interviewer is. Not having been trained in
2 our state's Child First model, if that's what was used, I
3 wouldn't be able to speak to whether they typically get that
4 information.

5 Q Would a concern be if a forensic interviewer
6 hypothetically met with an alleged victim, spent some time
7 going over even routine stuff, like what's your favorite
8 color and that sort of thing, do you think that could effect
9 the outcome of the interview?

10 A Hypothetically, that's part of the videotaped interview
11 or prior to that.

12 Q And let me put it in a similar way. Is a pre-interview
13 appropriate?

14 A It's not uncommon. There's growing literature on
15 multiple forensic interviews by the same interviewer so that
16 it's not duplicated, so that they're not, you know, having
17 one person talking to the child about their favor color, you
18 know other information. And then they're coming back and
19 somebody else is asking the same questions. When multiple
20 interviews are done, ideally it's by the same person and
21 they don't duplicate their questions.

22 Q That's not exactly what I'm asking. I guess I'll just
23 put it in a simple way. Is it appropriate to prep a witness
24 for a forensic interview? I call it a witness because
25 that's the line of work I'm in.

1 A Uh-huh. (Affirmative response)

2 Q But an interviewee?

3 A Typically, if it's a forensic interviewer asking -- I
4 don't know what you mean by prep. But if you're talking
5 about things like asking their favorite color or general
6 question information like that, that could be considered
7 part of the rapport building that happens at the beginning
8 of an interview. But ideally, that would be video recorded
9 just like all of the interview or audio recorded at minimum.

10 Q So ideally, that should be recorded too, just --

11 A If it's done by a forensic interviewer, then yes.

12 Q And the person recording all of it, of course, is to
13 eliminate -- is for events like this. I mean, forensic
14 basically means you're preparing for court, right?

15 A Forensic, typically the way that we talk about it it's
16 been requested for some sort of court or investigation
17 process. You know, like, we still call it forensic for
18 department of social services and that's not generally
19 related to court.

20 Q Now, I notice that your organization, the one that
21 you're director of, used to be the Dee Norton Low Country
22 Children's Center. Now, it seems to be the advocacy center,
23 whatever the name is.

24 A So our legal name is still Dee Norton Low Country
25 Children's Center. Because we follow that national

1 children's advocacy center model and a lot of people think
2 Low Country Children's Center is for a daycare. So for
3 parents to try and better understand, we're doing business
4 as the Dee Norton Child Advocacy Center.

5 Q Can you explain the national advocacy center model?

6 A Uh-huh. So the National Children's Alliance is that
7 national organization that accredits centers across the
8 country who meet the standards of a children's advocacy
9 center. There are ten standards. It involves being child
10 friendly. It's a place that's, you know, not threatening to
11 children, that is -- has safety precautions in place so that
12 it feels, you know, not intimidating to a child. Law
13 enforcement has to be part of -- a partner that's involved.
14 There has to be mental health that's represented. There has
15 to be medical that's represented, so there are ten different
16 standards to be an accredited children's advocacy center.

17 Q Okay. And advocacy obviously means that you're
18 advocates for children?

19 A So one of the standards is family advocacy actually, so
20 it's around the needs of the family, including the child as
21 one of those members of the family.

22 Q But you're on the kids' side. Let's put it plainly?

23 A When abuse has happened, yes.

24 Q Now, do you consider a forensic interviewer to be
25 impartial?

1 A Yes.

2 Q Give me just a moment. Now, you've studied obviously
3 the psychological and behavioral characteristics of sexually
4 abused kids, yes?

5 A Yes.

6 Q You've seen and been taught how children generally act
7 under certain conditions, but you're not able to say with
8 any certainty that a particular child is going to act a
9 particular way?

10 A Based on a history we can essentially, to some degree
11 predict, but not in any one hundred percent kind of way by
12 any means.

13 Q Well, doesn't personality come into play?

14 A Personality is a construct that people assess and we
15 tend to talk more about coping skills. How a child is able
16 to cope with upsetting thoughts and feelings before the
17 abuse happened predicts how they're going to do, you know,
18 after abuse happens. Other context factors like whether
19 they have a supportive care giver predicts how they're going
20 to do.

21 Q Would you agree to the suggestion that children react
22 in a lot of different ways to being abused?

23 A Yes.

24 Q I mean, the reaction between, say, a dozen kids could
25 be a dozen different reactions. You agree?

1 A Typically, the literature -- I mean, if we have a dozen
2 children that have the same type of exposure, like sexual
3 assault as an example, there are some patterns that are more
4 common. Like we would expect a third of them to develop
5 post traumatic stress disorder. We would expect any between
6 sixteen and forty percent to have behavior problems. So I
7 wouldn't necessarily say twelve different reactions, but
8 there certainly would be a variety.

9 Q Or perhaps let me put it this way. Twelve different
10 children, several different categories of reaction would be
11 more what you would say?

12 A Yes.

13 Q Okay. And you've talked about reactions of certain
14 children to being the victims of abuse. Would school
15 performance be one of them?

16 A Literature does show that children who are victims of
17 abuse have poor academic outcomes all the way through
18 college.

19 Q And, of course, we're back to our syllogism, because
20 certainly a kid that's got bad grades doesn't necessarily,
21 is not a red flag that he or she has been abused.

22 A Correct.

23 Q And vice versa, a kid that has good grades could have
24 been through a traumatic thing. It just depends on the kid,
25 right?

1 A Correct.

2 Q Yeah. In fact, all of this really kind of depends on
3 the individual kid, would you agree?

4 A I mean, I would say again that there are some patterns
5 in terms of coping resources and other factors. But I would
6 agree that there a variety of responses.

7 Q I see. I'm going to ask you just a few more things.
8 Some children take abuse in stride?

9 A What do you mean by that?

10 Q Well, they don't exhibit a lot of change in behavior?

11 A In the literature we call it resilience. That, you
12 know, not all children who've experienced a potentially
13 traumatic like sexual abuse develop symptoms like post
14 traumatic stress disorder or other behavior problems. Some
15 are resilient.

16 Q Some children report right away. You've already said
17 that?

18 A Uh-huh. Between one to two out of every four report
19 within a month.

20 Q Okay. Some children never report?

21 A Tends to be one out of four, also that don't --

22 Q Okay. So fifty percent report right away, twenty-five
23 percent never report, and the that leaves the twenty-five
24 percent that report later?

25 A At some other time, uh-huh.

1 Q Do some children make up stories of abuse?

2 A It's a minority but false allegations do happen
3 sometimes.

4 Q And some children have very accurate memories of being
5 abused. In other words, if you have a child that's well
6 poised for his or her age, very intelligent, very observant,
7 able to read and write and distinguish things like colors,
8 do they tend to be more reliable in terms of reporting?

9 A There really aren't any studies looking at, like,
10 cognitive abilities and how that's related to reporting.

11 Q How important are, even in young children, say, five or
12 -- well, let's use the five-year-old. How important is it
13 for that child to get the details right for you to take
14 further action, like to recommend for a physical exam, for
15 example?

16 A So our medical providers, you know, rarely follow
17 algorithms about when there's a concern about physical
18 findings. They do the medical exam regardless typically.
19 So it's less relying on the child's disclosure, particularly
20 because there are studies of children who have sexually
21 transmitted infections and only half of them disclose abuse,
22 even though a sexually transmitted infection is something
23 that's indicative of abuse. So they tend to do the medical
24 exam regardless of the child's ability to talk about
25 details.

1 Q Okay. So the medical exam is done just as part of the
2 normal protocol?

3 A If there's allegations of sexual contact, that's -- our
4 medical folks do the exam.

5 Q And you would agree that it all boils down to the
6 report?

7 A The concern coming in.

8 Q Yeah. Are there situations where care givers bring
9 children in that haven't reported, but they have suspicion?

10 A That happens. Typically, there's been some report,
11 like either to a teacher or somebody. But it happens
12 occasionally that it's because of sexual behaviors or
13 something, but the child hasn't said anything.

14 Q Okay. Is a child that's being raised in a -- is a
15 child that -- or could a child that's being raised in a
16 household and consistently exposed to sexualized behavior
17 explain sexualized behavior as an alternative to being
18 abused?

19 A Yes. So in addition to having experienced sexual
20 behavior, particularly as children get older, but including
21 younger children if they've been exposed not just to sexual
22 content but also witnessing domestic violence, they're at
23 higher risk for sexual behaviors.

24 Q What if the care giver has been a victim of abuse?
25 Does that play into it? Is there any studies on that?

1 A There's studies that it's not uncommon. I mean, the
2 rates of sexual abuse in general are relatively high. It
3 was about twenty-five percent of women. Now it's about
4 twenty percent of women. So it's not uncommon for that to
5 happen where there's sexual abuse of a care giver and sexual
6 abuse of a child. There's nothing that's looked, to my
7 knowledge, at how that history is related to the child's
8 disclosure process.

9 Q Okay. And, again, your purpose in being here today is
10 to testify as a retained witness for the prosecution. Is
11 that a fair statement?

12 A Yes.

13 Q And does the State of South Carolina actually pay you
14 to be here?

15 A They pay my program.

16 Q I see. So in order to get you as a witness the state
17 pays something to Dee Norton Low Country Advocacy then?

18 A For my time. Correct.

19 Q Do you ever testify for the defense?

20 A I've never been asked to testify for the defense.

21 Q Okay. All right. I have a few more questions. Would
22 you agree that the purpose of a forensic interview -- well,
23 I've already asked you that one. I'm sorry. Are there
24 other reasons a child might wet a bed, other than being
25 abused?

1 A Yes.

2 Q And other than the child actually reporting this, is
3 any of your methodology designed to determine the identity
4 of the alleged perpetrator, other than what the child tells
5 you?

6 A I'm not real sure I understand your question.

7 Q Let me ask it a different way. Other than forensic
8 interviews to determine what may have happened to a
9 hypothetical child and who might have done it to the
10 hypothetical child, your agency doesn't do any independent
11 investigation or is that not a correct statement?

12 A That's correct. That's where, you know, we talked
13 about the ten, sort of, standards and that law enforcement
14 was really charged with investigating the crime that's been
15 alleged or department of social services if they're
16 investigating. You know, they're the ones that are looking
17 for corroborative information or interviewing other
18 witnesses. If it's a child witness, we would interview a
19 child witness about it. You know, ultimately and different
20 children's advocacy centers vary in terms of who does the
21 interview. Sometimes it's the child advocacy center staff.
22 Sometimes, it's actually law enforcement that comes to the
23 child advocacy center and does the interview. So it really
24 depends on whose role it is to do that investigation. But
25 that investigation in terms of going out and interviewing

1 suspects or things like that is not something that typically
2 is done by a child advocacy center staff.

3 Q I know I'm skipping around. But getting back to
4 children as they perform, both in forensic interviews and
5 actually in a court setting, the importance of details is
6 something I'm sure that your agency pays attention to.
7 Details like the child's ability to distinguish color.
8 Would that be an important factor? And let me give you an
9 example. A child -- you get a report. The care giver
10 brings the kid in. You do a forensic interview. And the
11 child is definite about the color -- and you responded to
12 color on direct and you translated it to race. But the
13 actual color of -- say, if the child said whoever did this
14 to me, it was redhead. And otherwise identified that person
15 and was dead wrong about it, would that give the forensic
16 interviewer some concern about credibility?

17 A The thing to me like with colors or other things is
18 making sure you're on the same language. So similarly we
19 talked about earlier about the anatomical drawings to make
20 sure we have the same words for body parts. You want to
21 make sure you're using the same words for colors. So
22 particularly with a young child, if they're identifying a
23 color that doesn't seem to match the color that you're
24 saying, you know, they could be color blind. So you want to
25 make sure that you have a, you know, colors and they match

1 the language that you're using so you don't get confused.

2 Q And would it be important in that situation -- because
3 I noticed on the interview video, and you haven't seen it --

4 A No.

5 Q -- but if I suggested to you that the interviewer went
6 to great lengths to make sure the child knew her colors,
7 would that eliminate that concern you've just expressed?

8 A It depends on how she does it, I guess. You know,
9 whether there are examples of the colors and if those colors
10 match. The redhead can look a lot of different colors. A
11 redhead a lot of time looks orange. So it doesn't -- I
12 don't really know without having seen it.

13 Q But in my hypothetical if the alleged perpetrator was
14 identified as a redhead, and turned out -- and it turned out
15 that the person that was a focus of the investigation had
16 black hair, that would be a red flag, wouldn't it?

17 A (No response)

18 Q I mean, if the kid just got it wrong?

19 A Yeah. I mean, so with this hypothetical, you know, the
20 identifying as a redhead suggested a stranger, which is a
21 little hard to think through that, hypothetical. I mean,
22 that certainly fits a stranger, the colors not matching the
23 hair, you know. It would be inconsistent I guess would be
24 how I would describe that. More oftentimes, it's somebody
25 that they know, so they're typically not describing them

1 just by their hair color. You know, there's other

2 characteristics that make them know who it was.

3 Q I see. Okay. I'm almost done. We talked about
4 grooming. And when does grooming take place? Does it take
5 between strangers or does it take place more often between
6 family members?

7 A It can take place between either, but typically it
8 happens over time and you don't -- over time, it becomes
9 somebody that you know. So it would be somebody that's
10 known to the child, whether it's a family member or a coach,
11 or a teacher.

12 Q Is grooming sort of a -- I don't want to use the word
13 perverse, because that's -- you're using it as a clinical
14 term. But is it sort of a romance in a way or a courting in
15 a perverse way?

16 A It can involve things like giving gifts, which sound,
17 you know, like what you're talking about.

18 Q Well, let me give you another hypothetical. If an
19 alleged sexual predator, and I'll use that term, I'm not
20 afraid to. A lot of people use that term, correct?

21 A Not in my realm, honestly. No, we usually say alleged
22 offender.

23 Q Okay. Well, let me change it then. If an alleged
24 sexual abuser is grooming a young victim and they both live
25 in the same household, then as I understand grooming, the

1 alleged abuser is going to treat the kid pretty nice, right?

2 A Uh-huh. Yes.

3 Q Because as I understand the purpose of grooming is to
4 ensure repeated access?

5 A It can serve different purposes. And I do want to be
6 clear. You know, grooming, as we typically talk about is
7 not illegal behaviors. So it's -- you know, giving gifts a
8 child, hugs are not necessarily, you know -- sometimes
9 people who are not intending to do something to harm that
10 child can do those behaviors. The thing that's challenging
11 with it is that it can desensitize a child to overly, you
12 know, touching and spending private time one on one with a
13 grown up that can give the opportunity if that person were
14 having the intention of sexually abusing the child, to have
15 the opportunity to do that.

16 Q Okay. And is that a thing that you see commonly in
17 these types of cases?

18 A In my clinical practice it happens, but there's not a
19 lot of literature on the rates of groom that's been done
20 with well studied.

21 Q And grooming -- the opposite of grooming is a more
22 violent approach to sexual assault, would you agree?

23 A It would be more like a one time sort of penetrating
24 abuse that happened, yes.

25 Q In other words, if the sexual penetrating abuse that

1 you described was accompanied by some sort of physical force
2 or confinement, would that be something more typical between
3 strangers or do you know?

4 A No. There's really no literature on that. And even
5 the physical force, I would say, it wouldn't be necessary
6 for it to not be considered that there was no grooming.
7 Just a sexual abuse incident that immediately was
8 penetrating was kind of not the type grooming that lead up
9 to it.

10 Q Okay. How common is coaching?

11 A I don't know of any studies that have looked at the
12 frequency of coaching.

13 Q Coaching does occur, though. You would agree?

14 A I've seen it in my clinical practice.

15 Q I mean, it's not impossible for you to encounter a
16 case. I don't mean you, your agency, to encounter a case
17 where a child has been completely coached into making
18 allegations for either financial or retribution or some
19 other reason, other than actual physical and sexual abuse?

20 A In the ten years that I've been doing this, it has
21 happened, you know, where parents ultimately wind up saying
22 that. It's the vast minority, you know. I'd say less than
23 ten percent.

24 Q Okay. All right. Thank you. No further questions.

25 MS. CORNWELL: Just a very brief follow-up, Your

1 Honor.

2 THE COURT: okay.

3 CAROLE SWIECICKI - REDIRECT EXAMINATION

4 BY MS. CORNWELL:

5 Q Dr. Swiecicki, Mr. Palmer asked you about forensic
6 interviewing and training. And you, yourself, are not
7 trained in forensic interviewing?

8 A I'm trained in the national institute of child health
9 and development model, their interview guidelines, which is
10 one of the models that's an accepted interviewing practice.
11 And I was trained in the national children's advocacy center
12 extended forensic evaluation model.

13 Q And do they do forensic interviewing at the Dee Horton
14 Children's Center?

15 A Yes.

16 Q So are you familiar with the laws of the state
17 regarding forensic interviewers?

18 A Yes.

19 Q Is a forensic interviewer allowed to testify as to the
20 details of their forensic interview in court?

21 A From my understanding there is case law, but
22 truthfully, I'm not familiar with all of the case law around
23 forensic interviewing. I'm familiar with the basic laws.
24 The forensic interviewers are allowed to testify fact
25 witness that they were there, that that was their interview

1 or their report, but to anything beyond that on the
2 interview.

3 Q Okay. So the only things to your knowledge that a
4 forensic interviewer is allowed to testify to is that they
5 conducted an interview, on the way they conducted and move
6 the video into evidence?

7 A Correct.

8 Q So in South Carolina are forensic interviews allowed to
9 be qualified as expert witnesses in court?

10 A No.

11 Q Is that the reason that we have to use blind experts?

12 A I think there are lots of reasons and I think that's
13 one of them in terms of using blind experts.

14 Q Okay. And just briefly, we're talking about different
15 hair color and things like that in terms of somebody
16 identifying a person that sexually abused. If during
17 disclosure the person is able to identify by name, the
18 allegations of who actually did this, tell where in their
19 house, and also disclose that nobody else has ever done
20 these types of things, nor have they ever seen anybody else
21 do these types of things, do you take that at face value?

22 A Those are the things that would be more consistent.

23 So, you know, sometimes we're just looking for consistency
24 in terms of -- are they saying a hair color that matches the
25 name of the person, that's consistent. And if it's not

1 consistent, you would want to ask questions to find out
2 what's leading to that inconsistency.

3 Q And that investigation is done by law enforcement?

4 A Yes, although the questioning of the child is typically
5 done by the forensic interviewer. And that's where you
6 might have a follow-up interview. If there's something that
7 in the law enforcement investigation they find not
8 consistent; there might be a follow-up by the same
9 interviewer to find out what maybe is inconsistent.

10 MS. CORNWELL: That's all the follow-up I have,
11 Your Honor.

12 THE COURT: Okay. Thank you.

13 Yes, sir.

14 MR. PALMER: Excuse me, just a little --

15 THE COURT: You don't get another one though.

16 MR. PALMER: I don't?

17 THE COURT: Not under the rules.

18 MR. PALMER: Okay. I'm sorry, Your Honor.

19 THE COURT: That's all right.

20 Ladies and gentlemen, we're going to quit for today. I
21 ask you to be back at 9:30 in the morning. Come straight to
22 the jury room. If you have an emergency, you need to call
23 us because we can't get started until all of you show up.
24 And I remind you don't talk to anyone or allow anyone to
25 talk to you about what happened. And don't tell your family

1 yet what you're doing. I'll let you tell them at the end,
2 but if they're like my family, they're going to have an
3 opinion. And so you need to wait and not talk to anybody
4 about what's happening until the end of this case. Thank
5 you.

6 (Jury out at 5:02 p.m.)

7 THE COURT: All right. Anything else before we
8 break today?

9 MS. CORNWELL: Nothing from the State, Your Honor.

10 MR. PALMER: No, Your Honor:

11 THE COURT: All right. I'll see y'all at 9:30 in
12 the morning.

13 (Court in recess at 5:02 p.m. on
14 July 25, 2017)

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT
REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL
SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 24
AND THE 25 OF JULY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

March 6, 2018

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

2016-GS-38-00204

2016-GS-38-00204

STATE OF SOUTH CAROLINA)

-vs-

OSCAR JAMES SMALL, JR.,)

Defendant.)

TRANSCRIPT OF RECORD

July 26, 2017

Orangeburg, South Carolina

B E F O R E:

The Honorable R. Ferrell Cothran, Judge and a Jury.

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

Ashley Cornwell, Assistant Solicitor
Attorney for the State

W. Scott Palmer, Esquire
Attorney for the Defendant

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter
Ninth Judicial Circuit

000207

E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
SUSAN LAMB, M.D.	10	47	65	--
DEMETRIA ROBERTS	82	--	--	--
DETRA SMALL	96	127	--	--
DEBORAH ROBINSON	133	149	158	--
CHARLES McLAMORE	161	164	--	--

E X H I B I T S

DEFENDANT'S	DESCRIPTION	MARKED	RECEIVED
1	Forensic Report	48	48
2	Photograph	165	165
4	Photograph	127	127
5	Photograph	127	127
6	Photograph	127	127
7	Clocked-in Court Order	95	95
21	Copy of CASA Interview	4	4

1 (July 26, 2017.)

2 (In open court, jury not present.)

3 MS. CORNWELL: We discussed the video, and
4 it's skipping when -- I'm sorry.

5 We discussed the video yesterday as it was
6 skipping while we played it for the jury. We have both
7 watched video, and it skipped for both us. Given the
8 audio and video problems CASA had previously, we just
9 made the assumption it was part of the video.

10 What we didn't realize is the software
11 program on both of my laptops, as well as his laptop, was
12 not an updated software program. We spoke to another
13 person in our office. She indicated that her laptop had
14 an updated software program and it never skipped on hers,
15 and Mr. Palmer apparently has the same software, so it
16 didn't skip for him. We were obviously confused
17 yesterday when they said it was skipping; however, this
18 is the original from CASA.

19 I have the laptop that it does not skip on,
20 on the updated software, so instead of moving in a copy,
21 we would just like to go ahead and move in this original
22 as the authentic copy, but when we send it back to the
23 jury, we can send the laptop back to the jury so they can
24 see the video completely without skipping.

25 That is what we would consider a clean laptop

1 where there is nothing on it. I think the solution we
2 have on that, we can just disable the wifi on there so
3 they can't get to the Internet or anything.

4 MR. PALMER: No objection.

5 MS. CORNWELL: So based on that, the State
6 would like to mark this as Exhibit 21 and have it moved
7 into evidence.

8 MR. PALMER: No objection.

9 THE COURT: It's admitted without objection.

10 (State's Exhibit 21 was marked for
11 identification and admitted into evidence.)

12 MS. CORNWELL: I don't know if it's necessary
13 to have a finding of fact on the record. Obviously,
14 under Kromah, without having the forensic interviewer
15 testify and all of that, the Courts have stated there
16 were five factors the Court has to determine regarding
17 the trustworthiness of the video for it to be admissible.

18 I think we've stipulated to that, but I don't
19 know if Mr. Palmer needed to waive the fact that the
20 Court still needs to say that there is that
21 trustworthiness for PCR purposes or for purposes of
22 appeal down the road, the nature of those five factors,
23 and certainly that the statement was not elicited by
24 leading questions, the interviewer was trained in
25 conducting investigative interviews, that the State has

1 represented a detailed account of the alleged offense,
2 that it had internal adherence, and that there was sworn
3 testimony of the participants.

4 I'm not sure if there's a link to the
5 stipulation. All of that is agreed to, but I don't know
6 if Your Honor needs to make a finding on the record or if
7 we need to waive a finding on the record.

8 THE COURT: And you agree to --

9 MR. PALMER: Yeah, Your Honor. I mean, I've
10 actually got a copy of the interviewer's employment
11 records. She seems qualified, and that is part of my
12 stipulation, that the Kromah factors have been met.

13 THE COURT: Then the Court so finds that the
14 Kromah factors have been met.

15 MS. CORNWELL: Thank you, Your Honor. I
16 think that's all we have with the video, and we're
17 prepared to call our next witness up.

18 THE COURT: Okay. I've got to get the
19 defendant up here.

20 MS. CORNWELL: The HIV statute actually has
21 about five different factors: You know, knowingly
22 engaged in sexual intercourse without first informing or
23 committed an act of prostitution without informing or
24 donate blood, and it goes through different things.

25 I think this would specifically fall under

1 section four, which is just to forcibly engage in sexual
2 intercourse without consent of the other person, so in my
3 legal charge that I would present to the jury, I just
4 told them basically that obviously you have to forcibly
5 engage in sexual intercourse, and I'll do that.

6 The second one is it has to be without
7 consent, and the third has to be that it is while knowing
8 that you're infected with the status, so those are just
9 the three factors that I put as opposed to doing all five
10 of them and having to explain, None of these apply, we're
11 just focussing on this.

12 THE COURT: And I usually -- you know, if
13 there's no factual basis for the rest of them, I don't
14 even charge it because that way sometimes you confuse the
15 jury.

16 MS. CORNWELL: And that was why I submitted
17 the jury charge for the CSC with a minor first. I also
18 put the A1. There was no need for us, I don't think, to
19 go into the second one to say it's a second offense or
20 something like that because that's not the allegation
21 here. So I think if we can eliminate those four
22 standards, it makes it a little bit less confusing.

23 MR. PALMER: Judge, I have some proposed
24 charges, none of which are too exotic or specialized, but
25 there are some about -- they're actually just the

1 Anderson charges, which some judges think are a little
2 too wordy, I think.

3 THE COURT: And some of them are.

4 MR. PALMER: Yeah, but I have them available.

5 THE COURT: And what are they charges on?

6 MR. PALMER: Okay. And some of them are
7 general charges. I have a reasonable doubt.

8 THE COURT: I got that.

9 MR. PALMER: And I'm sure Your Honor has
10 presumption of innocence.

11 THE COURT: Yeah, I got that.

12 MR. PALMER: Defendant not testifying.

13 THE COURT: Yeah.

14 MR. PALMER: Expert witness.

15 THE COURT: Yeah.

16 MR. PALMER: Statements of counsel. This is
17 very brief. It just says statements of counsel isn't
18 evidence.

19 THE COURT: I already told them that, and I
20 always tell them that. I tell them at the get-go that
21 what y'all say isn't evidence, so --

22 MR. PALMER: Okay. And that's all I have.

23 THE COURT: I got all that covered. Now, I
24 normally go over the defendant's rights with him about
25 testifying on the record. I can either do it in the

1 State's case or I can do it now, whenever you want me to
2 do it.

3 MR. PALMER: I think now would be good.

4 THE COURT: Mr. Small, if you would, stand up
5 and raise your right hand, sir.

6 (Defendant duly sworn.)

7 Now, you understand that when the State
8 finishes its case, you have a right to testify in this
9 case, and you also have the right under the Fifth
10 Amendment not to testify, and if you decide not to
11 testify, then I will instruct the jury they cannot
12 consider that in any way. They cannot hold that against
13 you. The State has the burden of proof in this, and they
14 can't even talk about it in the jury room, the fact that
15 you didn't testify and you exercised your constitutional
16 right; however, you also have a right to testify, but if
17 you do testify, you'll be subject to a cross-examination
18 and possibly impeachment, just like any other witness.

19 I don't know whether you got a criminal
20 record or not, but if you do and under our rules it's
21 admissible to impeach you, and I guess I'll discuss that
22 with your attorney, that could be brought out.

23 You understand?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, your attorney can advise you

1 as to what he thinks you should or should not do, but
2 this decision is yours. It is your constitutional right,
3 and he can only tell you what he thinks as far as trial
4 strategy is concerned or whatever, but it's ultimately
5 your decision whether you testify or not.

6 You understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You got any questions you want to
9 ask me concerning that, concerning your rights?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Thank you, sir. Okay.

12 MR. PALMER: Yes, sir.

13 MS. CORNWELL: Thank you. Just out of
14 curiosity, your reasonable doubt charge, is that hesitate
15 to act?

16 THE COURT: It's all of it. I do the
17 hesitate to act. You know, when it first came out, I
18 didn't like it. Of course, I sat at that table at that
19 time. So now I've tried to put everything about
20 reasonable doubt, and I can show you all what it is, but
21 just hesitate to act and -- as well as, you know, not
22 overcoming any possible doubt, but it goes into the whole
23 thing.

24 MS. CORNWELL: And I don't have any objection
25 to that. I generally like to -- when I'm explaining to

1 the jury what my version of reasonable doubt is, I
2 basically want to state the same thing to the jury so it
3 doesn't seem that I'm contradicting you in any way.

4 THE COURT: Usually hesitate to act and
5 reasonable doubt can all be proof that leaves you firmly
6 convinced of the defendant's guilt and there are very few
7 things in this world that we know with absolute certainty
8 in a criminal case.

9 MS. CORNWELL: Perfect. That's what I
10 generally do. Thank you, Your Honor.

11 THE COURT: All right. We'll bring the jury
12 in and get started.

13 (In open court, jury present.)

14 THE COURT: Good morning. Solicitor, you may
15 call your next witness.

16 MS. CORNWELL: Thank you, Your Honor. The
17 State would call Susan Lamb.

18 SUSAN LAMB, M.D.,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 THE CLERK: Please state your name for the
23 record.

24 THE WITNESS: I'm Dr. Susan Lamb, L-a-m-b.

25 BY MS. CORNWELL:

1 Q. Good morning, Dr. Lamb.

2 A. Good morning.

3 Q. Could you please tell the jury a little bit about
4 your educational background.

5 A. Sure. So I'm a child abuse pediatrician, so I did
6 my undergrad at Johns Hopkins University in molecular and
7 cellular biology. I then went on to medical school at
8 the University of Virginia where I graduated there with
9 my M.D., and then I went on to further training in
10 residency, which is pediatrics, for three years, and then
11 from there I became a specialist in child abuse and
12 neglect, which was an additional three years of
13 fellowship training.

14 Q. That additional three years of fellowship
15 training, is that what's considered postdoctoral
16 training?

17 A. Yes. It's a postdoctoral fellow, so it's similar
18 to your pediatric cardiologist. It's that additional
19 training in a subspecialty that happens after you're a
20 general pediatrician.

21 Q. And your subspecialty was in child abuse and
22 neglect?

23 A. Yes. It's a subspecialty.

24 Q. Can you tell the jury a little bit about your
25 employment history and where you're currently employed?

1 A. Sure. So I did my fellowship and was employed at
2 the Children's Hospital of the Kings Daughters, which is
3 in Norfolk, Virginia for three years and then I came here
4 and took a job with the USC School of Medicine, which is
5 now Palmetto Health USC Group, so I'm employed there at
6 the children's advocacy center.

7 Q. And do you hold any professional licenses?

8 A. Yes. I have a medical license in South Carolina
9 as well as Board certifications in pediatrics and child
10 abuse pediatrics.

11 Q. Are you a member of any professional
12 organizations?

13 A. Yes. I'm a member of the South Carolina AMA --
14 I'm forgetting what the acronym stands for. The American
15 Academy of Pediatrics, as well as the section on child
16 abuse and neglect; the Helfer Society, which is the child
17 abuse and neglect physicians' honor society; as well as
18 the Kershaw Medical and Dental Association.

19 Q. And the AMA, is that the American Medical
20 Association?

21 A. Yes.

22 Q. Do you currently or have you ever participated in
23 any professional Boards or review teams in regards to
24 sexual abuse cases?

25 A. Certainly. So both in Virginia and here there are

1 what are called multi-disciplinary teams so that periodic
2 meetings of everyone involved in any kind of child abuse
3 case, so law enforcement, DSS, solicitor's office,
4 counselors, school officials, forensic interviewers, and
5 medical professionals, and they're specific to each
6 jurisdiction.

7 So in Virginia, I was on ones for every
8 jurisdiction, Norfolk, Virginia Beach, Portsmouth,
9 Yorktown and such. Here, I sit on the Kershaw, the
10 Orangeburg, the Lexington, as well as the Richland, and I
11 attend the Lee County and York County and Lancaster
12 County.

13 Q. And are those counties specifically the areas
14 where you look at what the case is personally?

15 A. Certainly. So we have referral covering, so
16 Greenville has the Upstate, and most of the counties
17 there, because it's closest, will send their children
18 there for evaluation. Charleston has the Lowcountry and
19 so there's centers there where they'll send children for
20 evaluations. So we have the Midlands and some of the
21 PeeDee, just because they don't have a large children's
22 hospital out there.

23 So those counties that refer to us, those are the
24 ones that we have contact with. I sit on the team and
25 assist them in their cases.

1 Q. And that's based out of your Columbia office?

2 A. Yes.

3 Q. Have you ever been qualified as an expert in a
4 court of law?

5 A. Yes, I have.

6 Q. And what have you been qualified as an expert in?

7 A. I'm qualified as an expert in child abuse and
8 neglect because that's the name of my Board, my
9 subspecialty.

10 Q. And approximately how many times have you been
11 qualified as an expert in child abuse and neglect?

12 A. Approximately 50 times.

13 Q. Out of that number, approximately how many times
14 have you been qualified as an expert in South Carolina?

15 A. Five out of that 50. The rest are in Virginia and
16 North Carolina.

17 Q. And your specialty is child abuse and neglect. Is
18 that specifically in the areas of examination, review,
19 and diagnosis of sexual abuse?

20 A. Sexual physical abuse, neglect, yes.

21 MS. CORNWELL: Your Honor, at this time the
22 State would move to have the witness qualified as an
23 expert in the field of child sexual abuse and neglect
24 specifically in the areas of examination, review, and
25 diagnosis of child sexual and physical abuse.

1 MR. PALMER: I'm not going to object, Your
2 Honor, but I want to make sure I heard that correctly.
3 Stipulating in the areas of what?

4 MS. CORNWELL: Examination, review, and
5 diagnosis of child abuse.

6 MR. PALMER: Okay. No objection.

7 THE COURT: The Court so finds.

8 MS. CORNWELL: Thank you, Your Honor.

9 BY MS. CORNWELL:

10 Q. How are clinical patients referred to you?

11 A. Certainly. So our referral system is primarily
12 from DSS or from law enforcement. It can also be through
13 the court systems, guardian ad litem, judges, and then
14 from pediatricians, medical providers that have children
15 in their urgent care in their office where there is a
16 concern.

17 Q. Does there always have to be a disclosure of abuse
18 before you examine a child?

19 A. No. Sometimes there are other concerns, such as
20 the child could have vaginal discharge, or, if it's
21 physical abuse, a fracture that we can't really explain.
22 Sometimes it's sexualized behavior, a child displaying
23 sexual knowledge beyond their age. Other concerns may be
24 that they were in a house where another child has
25 disclosed abuse and so they want us to evaluate all the

1 children that were in the home. Sometimes they're too
2 young to talk. Sometimes they have some mental or speech
3 disability, so we get a wide variety of children from a
4 wide variety of situations.

5 Q. And your purpose in these cases is to assist in
6 the investigation; is that correct?

7 A. Yes. So, in general, we become involved when
8 there's something that's been opened or some concern
9 that's been raised or a report. We can't see every child
10 in the community, but once it raises to that threshold
11 where somebody's concerned, we are assisting and working
12 with them.

13 We're not employees of DSS or law enforcement. I
14 work for the children's hospital, but because they don't
15 have the medical knowledge that we have, we assist them
16 in doing the exams and explaining the medical lingo and
17 what things mean because we don't expect them to have a
18 background in medicine.

19 Q. And so in order for there to be a diagnosis or a
20 review regarding consistency or inconsistency of abuse,
21 you have to be specialized to make that type of
22 diagnosis; is that correct?

23 A. Yes. So you either have to be Board certified,
24 such as I am, or there are some medical providers in this
25 state that are certified with our state organization, the

1 South Carolina Child Abuse Medical Response System, and
2 those are pediatricians that are specially trained and
3 overseen by the child abuse pediatricians, so it's a very
4 high standard of training. This is not something you can
5 go into an urgent care or an ER or a general
6 pediatrician, what we train to do.

7 Q. Can you explain what your standard protocol is
8 when examining a female child who has been referred to
9 you?

10 A. Certainly. So it's very similar to what you would
11 go through in any doctor's office, so the parents fill
12 out a medical questionnaire, a caretaker questionnaire,
13 telling us if they have any medical conditions, any
14 symptoms, any medications that they're taking, what their
15 concerns are and such while we bring the child back for a
16 medical exam. Everything is explained to them ahead of
17 time because a lot of people are nervous. They think
18 we're doing something invasive, that something is going
19 to go inside the child or it's going to hurt, so we
20 explain to everyone that that's not what we do.

21 We're a general pediatrician as well. We do a
22 head to toe exam, listen to their heart, listen to their
23 lungs, look in their ears, and we don't dress them out in
24 a gown to keep them comfortable and let them have control
25 and just move a clothing part aside, look at their arm,

1 put it back on. Take their socks off, look at their
2 feet, put their socks back on, and we just work our way
3 down, feeling their belly.

4 When it comes to the genital exam, everything I
5 need to see I can see from the outside. Nothing is going
6 inside. There's no specialized equipment. I have a
7 bright light and a camera, just to help me see there, and
8 the camera is for the purpose of peer review. So all of
9 our findings are reviewed by the entire medical team to
10 make sure that we're seeing what they are seeing and
11 we're in agreement about any findings.

12 So they do a frog leg position where they just
13 slide their pants and their underwear down to their
14 ankles, feet together, knees flopped out like frog legs
15 or butterfly wings there, and I just look at the outside.
16 And then they just pull their legs up to their chest like
17 they're doing a cannonball into the pool so I can look at
18 their anus, and we pull everything up and we move on with
19 the exam.

20 So it's not invasive. It's not a grownup woman
21 exam. Everything you need to see you just see from the
22 outside.

23 Q. So you would be able to see any injury of sexual
24 assault without having to put a camera up inside of them
25 or do any exploring that way?

1 A. Yeah. The only time where there's an internal
2 exam that is necessary is when we see visible bleeding
3 coming from a source inside, so higher up in the vagina
4 that we can't see, but in that case, we're going to the
5 hospital. We're going to be sedating the child because
6 they're probably going to need some type of surgery just
7 to sew up whatever is torn that is bleeding up there, but
8 in general, I've never had to do that in my career, and I
9 think my partner has done it twice in her 30-year career.

10 Q. During the physical exam, what are you
11 specifically looking for to determine if sexual abuse has
12 occurred?

13 A. Certainly. There are a couple of things. So
14 we're dealing with not acute exams. So when people think
15 of an evidence recovery kit, a stain exam, something like
16 that, if you've heard those words, that's where you're
17 going to the ER. It just happened, and they're doing all
18 the swabs and all the evidence for DNA and such.

19 That only hangs around about 24 hours in a kid who
20 hasn't gone through puberty, so on that, you may see
21 bleeding. You may see tears. You may see lacerations,
22 bruising, but that's just for that acute exam, like right
23 then. When you're talking about everything else, so
24 everything else that happens after 24, 72 hours, what I'm
25 looking for is evidence of sexually transmitted

1 infections.

2 So is there any discharge? Are there any genital
3 warts, genital herpes, things like that, or is there an
4 old healed injury? So the only place where you're going
5 to find an old, healed injury is a part of the body
6 called the hymen, and it's a big word that -- for a very
7 insignificant body part.

8 So when you look at the female genitalia, just
9 from the outside, what most people think of a virginity
10 of a child is the hymen. What it is, is a thin rim of
11 tissue right around the vaginal opening there, and
12 there's always a hole that goes into the vagina there.
13 So most people think that when you have your first sex
14 the penis goes through it and creates a hole and you lose
15 your virginity, but that's not what happens. There is
16 always a hole there.

17 If you think about it, kids have their period
18 before they have sex, so they have to have some way for
19 that menstrual blood to get out there. So we're looking
20 at the opening to the vagina and this little thin rim of
21 tissue that goes around it that sometimes, when
22 penetration occurs into the vagina, there's a tear there.
23 It's not all the time. There's sometimes a tear, and
24 then sometimes it heals up just fine, and occasionally
25 you can still see a little scar where the tissue hasn't

1 gone back together.

2 So that's what I'm looking for when I do the exam,
3 is that evidence that there was penetration before and
4 that there's some kind of healed injury. I know it's
5 difficult, so --

6 Q. So what you're saying is it's a common
7 misconception regarding the hymen?

8 A. Yes. There's a very common misconception that you
9 have a virginity test, that a doctor can look at you and
10 always see if you're a virgin or not, that it always
11 bleeds, it's always painful, and that you always -- you
12 know, you never have a hymen afterwards after you first
13 have sex, and that, unfortunately, is not true.

14 Q. And if you find an intact hymen, is that evidence
15 that penetration did not occur?

16 A. No. So if you think about the hymen and the
17 genital tissue down there, the tissue is just like the
18 inside of your mouth. So if you bite your mouth, it
19 bleeds, it hurts. Two days later, it's gone, and there's
20 not any scar that you can see on the inside.

21 It's the exact same tissue in the genitals, on the
22 other end, so it heals up incredibly well. We have
23 studies that show girls who are pregnant, so you know
24 penetration occurred -- you do an exam on them, you look
25 at their hymen, and guess what? Nothing there. And so

1 only about 95 percent of the time everything heals just
2 fine. Five percent of the time, so the minority, the
3 itty-bitty minority, there will be some type of healing
4 that wasn't complete, and there's a gap in the hymen that
5 we can say came from penetration. So when I'm doing the
6 exam, I'm expecting everything to be normal because 95
7 percent of the kids are going to be normal, but we still
8 need to do it because we're looking for that 5 percent
9 that have that finding from penetration.

10 Q. And you just touched on it for me, so
11 statistically 95 percent of all physical examinations of
12 sexually abused children are normal with no injuries
13 documented and no sort of biological evidence taken?

14 A. Yes. Because we're seeing kids, days, weeks,
15 months, sometimes years after the abuse actually
16 occurred. Everything heals up very well. There's one
17 study I like to talk about because people are, like,
18 Well, how did you determine this, like, scientifically?

19 So, Hagger, in 2002 did a study. They looked at
20 just under 2,400 children that were referred for some
21 concern of abuse, whether it was sexualized behavior,
22 someone else in the house, they made a disclosure. They
23 examined all of those children. Just under 2,000 were
24 girls, so about 400 were boys there. Of those children,
25 96 percent had a normal exam.

1 When you take the kids who just disclosed
2 penile-vaginal penetration, so they made a very good
3 disclosure, saying that this happened, the number only
4 goes down to 94 percent. So 6 percent of them had
5 abnormal findings, but 94 percent of the kids who were,
6 like, yeah, the penis went into my vagina, 94 percent are
7 normal, and then you're, like, oh, well. What about the
8 kids that it happens multiple times too? Well, we looked
9 at that at well.

10 That's an Anders study that came out in 2009, so
11 500 kids, all disclosing more than 10 times they've been
12 sexually abused and had a penile-vaginal penetration,
13 there's multiple repetitive events. In that study,
14 normal was 86 percent, so even with repetitive
15 penetration and abuse it still only goes to 14 percent
16 that have a finding. So we know, scientifically, we
17 looked at these kids over and over again, and it's just
18 normal. It's counterintuitive. Most people think that
19 if this happened to a child it has to be a horrible
20 injury, but I'm telling you the science says no. The
21 vast majority, almost all of them, are going to have a
22 completely normal exam.

23 Q. And is that often given both the vagina's and
24 rectum's ability to kind of stretch and move that would
25 not cause those injuries?

1 A. Right. So we talked about the tissue being the
2 same as in your mouth. If you also think about it, those
3 structures are very elastic because once you go through
4 puberty and such, those structures are made to have
5 intercourse and made to push babies through them, and
6 there aren't horrible scars or things from those.

7 And when you come to the anus, you're talking
8 about something that allows very large stools to pass
9 through it with no injury, or an injury that heals very
10 rapidly there.

11 Q. You've also touched on this, but a lot of it also
12 has to do with the interval of time between the alleged
13 abuse and the examination; is that correct?

14 A.. We probably would find more findings if everyone
15 disclosed immediately and we saw them within 24 hours,
16 but after you've gone through something that traumatic, a
17 lot of people aren't running out to say things,
18 particularly in children who don't have a context for
19 what's happening there.

20 So when you talk about days, weeks, months, even
21 if there was something, it probably is healed by now,
22 given the interval of time.

23 Q. So, basically, what you're saying is when you have
24 a finding of no physical injury, that could mean one of
25 two things: That could mean an injury never occurred and

1 there is no tearing, scarring or anything like that, or
2 it could mean that it's possible that an injury did occur
3 but by the time you're seeing it, any evidence of that
4 injury would have already completely healed, leaving no
5 evidence of -- behind?

6 A. Yes. Either are possible.

7 Q. Okay. And in these examinations that you do with
8 the children, do you draw blood or collect urine?

9 A. Certainly. So on most of our sexual abuse victims
10 where there's been any skin to skin contact or any
11 possibility that they might have caught a sexually
12 transmitted infection, we send urine to test for
13 chlamydia and gonorrhea, and if there is allegations of
14 penetration, more serious physical contact besides just
15 fondling or rubbing, if there's been any oral contact,
16 penile contact, anal contact, we also draw blood to test
17 for HIV and syphilis as well because those are the major
18 sexually transmitted infections you can get from sexual
19 contact.

20 Q. And do young, prepubescent children generally test
21 positive for those types of infections or STDs?

22 A. So not as often as teenagers. So in young
23 children, their bodies are not made to hold on to
24 infections there. We've had studies where even kids who
25 have had an STD and then, for some reason, they lost a

1 follow-up, they don't get their antibiotics and such.
2 When we test them weeks and months later, their bodies
3 fought it off themselves.

4 Now, that's not true for HIV or syphilis, but
5 sometimes chlamydia, gonorrhea, trichomonas, those can.
6 So because their bodies aren't made for having sex at
7 that age they're not very susceptible for sexually
8 transmitted infections.

9 Q. But, obviously, with HIV, that's not the case.
10 HIV is not a curable infectious disease.

11 A. Right.

12 Q. So let's talk a little bit about HIV. If you have
13 sex with someone who is known to have HIV at the time of
14 the sexual act, will you always contract HIV?

15 A. No. So it all depends on how much contact there
16 was and what body fluids you were exchanging. So say
17 your body is infected with HIV and it's everywhere. Your
18 highest count of HIV particles or virus will be in your
19 blood there. Lower amounts are going to be in semen,
20 seminal fluid and even lower amounts are going to be in
21 your saliva. That's why you can kiss someone with
22 HIV and not get HIV.

23 You can sit on a toilet that someone who has had
24 HIV goes on and you're not going to catch it from there.
25 The highest count and the most dangerous is blood, so if,

1 for some reason, they bled and you had an open wound and
2 the blood got in your wound, that would be the most
3 likely to transmit HIV from one person to another, and it
4 also depends if the person knows they have HIV and if
5 they're on treatment.

6 So if they're on treatment the virus count in
7 their body is very low, sometimes almost undetectable.
8 It's still there, but it's very, very, low, so oftentimes
9 people with known HIV who are getting treatment, they
10 almost can't -- unless someone is very, very, very
11 unlucky, like one in the hundreds of thousands will there
12 be some type of transmission between the two, so it all
13 depends, and then it also depends -- even if you're
14 having penile-vaginal or penile-anal intercourse, it
15 depends if there is any blood or open wounds or tearing
16 on the part of the person who's receiving the penile
17 penetration because then, if there's an open wound, you
18 have more of a risk. So there are actually ways to
19 stratify the risk based on both the person who has
20 HIV and the person who they're having some type of sexual
21 contact with.

22 Q. And just to follow up -- and this is based on my
23 uneducated Google search, which Lord forbid if anybody
24 ever looked at my Google search, it seems like, according
25 to the CDC, that HIV transmission through vaginal

1 intercourse when not being treated is only a 0.08 percent
2 risk of transmission, and that 0.08 percent is
3 significantly lower --

4 MR. PALMER: Objection, Your Honor. Counsel
5 is basically testifying here. She can ask the question,
6 but this is testimony based on a Google search?

7 THE COURT: I understand that, but she's
8 asking a question, and at this point -- I'll let her
9 finish the question, and after she finishes, I may rule,
10 but she's not necessarily suggesting an answer at this
11 point because the person she's talking to is an expert in
12 the field, and I assume she's got her own views and can
13 correct.

14 Go ahead.

15 BY MS. CORNWELL:

16 Q. Does that 0.08 percent, is that even less when
17 there's treatment for the disease?

18 A. Yes. It would be much less if the person is being
19 treated because they would have much lower virus counts
20 in all of their body fluids.

21 Q. Okay. And would there ever be an occasion where a
22 child could see blood or red on a perpetrator's penis?

23 A. Certainly. I can think of two different scenarios
24 in that case. The first would be if there's been some
25 type of injury to the person receiving the sexual

1 contact, so say something is lacerated, abraded, tore,
2 then once the penis left contact with that person, there
3 could be a little blood on the shaft of the penis from
4 where they were in contact with the other person's blood.
5 The other thing would --

6 MR. PALMER: Your Honor, I'm going to object
7 to this too. We dealt with this before trial. This is
8 improper bolstering. This is not based on any objective
9 finding that this doctor made. This is speculation and
10 it's certainly designed to bolster the complaining
11 witness's testimony.

12 THE COURT: I don't think it's bolstering in
13 that it's simply scientifically explaining certain facts,
14 so I'll allow the question.

15 Go ahead.

16 MS. CORNWELL: Thank you, Your Honor.

17 THE WITNESS: So aside from there being
18 injury to the person who's having sexual contact, the
19 other would be if the person who, you know, belongs to
20 the penis, if the person engaging in this has any type of
21 skin tear or any skin lesion anywhere along the penis or
22 anywhere along the urethra where the semen would come
23 out, any type of that would leave red flecks in the
24 seminal fluid or as it came out there, and certainly when
25 people have any type of irritation from an infection or

1 something else, you could see flecks of blood as they
2 come out, which obviously would appear a certain color.

3 BY MS. CORNWELL:

4 Q. Prior to examining a child, are you ever made
5 aware of the specific allegations or suspicions of these?

6 A. Certainly. So it all depends on our referral
7 source and what information that they have, so our
8 information may come from law enforcement, from an
9 incident report that someone made. It may come from a
10 DSS report that someone called in. Oftentimes, if they
11 have any type of interview beforehand, we're made aware
12 about the importance of knowing, going in ahead of time,
13 because I need to know those factors so that I know what
14 testing to do as far as sexually transmitted infection
15 testing.

16 It doesn't affect the exam. We do the exact same
17 exam on anyone coming for any allegation, whether it's
18 physical abuse, sexual abuse, or neglect there because so
19 many children experience multiple things or someone has
20 incorrect information when they're referring them to us.
21 So there's been many a time when someone comes in for
22 sexual abuse and I find findings of physical abuse, or
23 vice versa, if someone comes in for physical abuse and we
24 find an STD or some concern for sexual abuse. So, for
25 that reason, we're very thorough with all of our exams.

1 We don't tailor the exam or rule out certain things based
2 on what the referral information is.

3 Q. And in getting those law enforcement reports,
4 forensic interviews and things like that, when reviewing
5 those, what do you look for in those things to assist
6 with your diagnosis?

7 A. So as far as referral sources, we look at if it's
8 an incident report or a report there. We look at if they
9 talked to the actual child. If there was an actual
10 witness to what happened, those can be very helpful, so
11 independent sources there that are credible witnesses.

12 We always take with a grain of salt reports where
13 somebody told somebody who then reported it. The
14 telephone game doesn't work very well as far as accurate
15 information, and then, of course, if we have a forensic
16 interview that's been performed ahead of time, we're very
17 familiar with the children's advocacy centers, with the
18 forensic interviewers, with their training and so the
19 information is given a little bit more weight as far as
20 the credibility of what the disclosure was.

21 And, again, I'm just using that to direct what I
22 test for as far as sexually transmitted infections or if
23 I'm going to order X-rays or such, because if a child
24 made a disclosure in a forensic interview that a
25 particular bone was broken, I'm going to X-ray that bone,

1 even if it doesn't hurt now, because I may find a healing
2 fracture before. So it directs, but it doesn't directly
3 affect my medical findings.

4 Q. And during the course of your examination, do you
5 question the child regarding the allegations or the
6 suspicions?

7 A. Absolutely not. So when we do medical exams, I'm
8 always open to if a child makes a spontaneous disclosure,
9 but best practices have proven that multiple questions of
10 a child can be re-traumatizing because they have to live
11 it over and over again. That's why we use forensic
12 interviews, so law enforcement and DSS and everyone that
13 needs to be there can be there, direct their questions to
14 an interviewer who is trained in a child appropriate and
15 friendly way without leading the child, and so we don't
16 re-question a child.

17 Some questions I ask are like, Is anything hurting
18 or bothering you today? Is there anything you want me to
19 make sure I check out there, if they're concerned or
20 something is bothering them. If I see something on their
21 body, I don't say, Oh, that's a bruise. Who hit you?
22 That's very leading.

23 I'm like, Oh, what's that?

24 And they're like, Oh, you know, that's a scratch.

25 Oh, you know, what happened? Open, general

1 questions there because I'm not the interviewer. That's
2 not my job and I stay in my lane.

3 Q. And so when you're reviewing these forensic
4 interviews and things prior to your diagnosis, you're
5 looking for what you just said, non-leading questions.
6 If it was voluntarily given, are you looking for the
7 details of the statement?

8 A. Certainly. When we talk about forensic
9 interviews, when we review them at one of the
10 multi-disciplinary team meetings-- or sometimes if I'm
11 not exactly sure what happened, I pick up the phone and
12 call the interviewer. I say, Hey, I'm not exactly sure
13 what happened or what the contact was, so we discuss
14 them.

15 So what you really want from a child is a free
16 narrative, full of description, sights, sounds, basically
17 what was going on ahead of time, after; kind of a full
18 picture where you can see that they're seeing it in their
19 mind and able to give that type of context. Those are
20 the best kind of disclosures.

21 Q. And is age also a factor in that?

22 A. Certainly. So if you ask a four-year-old what
23 they did yesterday, they have no concept of time. You
24 know, last week could be yesterday or it could be a year
25 ago. They can't, you know, figure out what's going on

1 there.

2 We also want to see their language, what they're
3 using for words. So how a child would describe
4 ejaculation, oftentimes, they'll say he peed on me
5 because they have no context for what was going on, and
6 then they'll say he peed, but it was white or something
7 like that.

8 So we want to hear descriptions in their terms at
9 their development, not something else that may have come
10 from someone else's mouth there because they could be
11 picking up things they heard from adults.

12 Now, if you get an older child -- I absolutely
13 love, like, eight-year-olds because they'll talk about
14 anything. They have great descriptions. They can tell
15 what happened yesterday, what happened tomorrow; they can
16 tell you about their last birthday, and then sometimes
17 it's hard when you get up to teenagers because oftentimes
18 they have a lot of emotional angst over it, so they'll do
19 things like, I don't want to talk about it; I don't want
20 to talk about it.

21 So it kind of depends on what age you're dealing
22 with and what they can do.

23 Q. And the forensic interviewer is trained on that,
24 correct?

25 A. Yes.

1 Q. And that's what you're looking for. Are you
2 trained in forensic interviewing?

3 A. I am trained just so that I can be part of the
4 team. I'm trained at the ASAP, which is the national
5 training, and then I also did the South Carolina specific
6 Child First training, just so I could be aware of what's
7 appropriate, what's not appropriate as I'm part of the
8 team, and sometimes in our center, I'll sit in and watch
9 the forensic interviewer so I can tell what is accurate,
10 what's good versus what might have been leading or might
11 have been a bit of a problem there.

12 Q. And to your knowledge, in South Carolina are
13 forensic interviewers allowed to be qualified as experts?

14 A. I don't recall either way.

15 Q. All right. And once you've reviewed everything,
16 are you also -- and I'm sorry. We didn't talk about
17 this. Are you also looking at the behavioral and
18 physical characteristics that are associated with sexual
19 abuse when looking at a child?

20 MR. PALMER: Objection, Your Honor. This
21 expert is qualified in pediatric child abuse not
22 behavioral science.

23 THE COURT: Okay.

24 MS. CORNWELL: I believe the qualifications
25 are in the examination, review, and diagnosis.

1 BY MS. CORNWELL:

2 Q. I think, as a medical examiner, your review is
3 going to be in physical and behavioral characteristics as
4 well?

5 MR. PALMER: Your Honor, we had a behavioral
6 expert yesterday.

7 THE COURT: Ask the question again.

8 BY MS. CORNWELL:

9 Q. When making your diagnosis, do you also review
10 behavioral and physical characteristics that are
11 generally associated with sexual abuse?

12 THE COURT: Ask her in her field is that
13 common. You know, if normally in her view, in her field
14 are those -- is that commonly done by an expert?

15 BY MS. CORNWELL:

16 Q. Doctor, in your field as a pediatric specialist
17 who specializes in pediatrics, in diagnosing both
18 physical and sexual child abuse, is it normal practice
19 for you to also review behavioral characteristics and
20 physical characteristics that would be associated with
21 those common abuses in making your diagnosis?

22 A. Certainly. So as I spoke before --

23 MR. PALMER: Your Honor, not to be
24 disruptive, just so the Court would note my ongoing
25 objection.

1 THE COURT: Okay. And the objection is
2 noted, but I will allow the question if, based on her
3 qualifications, she would review that.

4 Your objection is noted. Go ahead.

5 THE WITNESS: So when a caretaker comes and
6 fills out a medical questionnaire, one thing we're going
7 to ask about is any physical symptoms, such as belly
8 pain, headaches, cough, colds, trouble breathing, all the
9 way down to any vaginal discharge, genital itching,
10 genital pain because we're also looking for medical
11 causes of genital issues there.

12 So there are a lot of things such as pinworms
13 around the anus or a yeast infection that a child has, or
14 if they're having poor hygiene that's related to genital
15 itching or genital pain. I'm a pediatrician, so I am
16 going to want to know and treat those things. There are
17 a lot of things I treat that aren't related to abuse, but
18 if we find them, we're still medical doctors, so I treat
19 ringworm. I treat scabies. I treat lice. I'll treat a
20 tooth infection. I need to know all those things in a
21 medical history.

22 When we move on, we also do a behavioral
23 history to know if there were any concerning behaviors
24 that a child is doing, and those are partially to aid in
25 my diagnosis, but mostly to guide me for what I'm going

1 to refer afterwards. So if a child is going to need a
2 specific type of therapy, if they're going to need to see
3 a specialist about something, whether it's forensic
4 psychiatry, trauma-focussed, cognitive-focussed therapy,
5 parent-child interaction therapy, or counselling for
6 domestic violence or such, I need to know those things
7 because a child who has PTSD related to some trauma is
8 going to have trouble sleeping, is going to have angry
9 outbursts. Maybe they're withdrawn and losing their
10 appetite. So we're also looking for depression, anxiety,
11 PTSD, things like that, so that's part of what I do.

12 BY MS. CORNWELL:

13 Q. And in your profession, when diagnosing sexual
14 abuse, are you looking at prior sexual behavior and how
15 that is applied to age of the child?

16 A. Certainly. So sexualized behavior can come on a
17 wide spectrum. Sometimes it's absolutely normal, and we
18 have to reassure parents that it is normal.

19 So at age four, it's very normal for little boys
20 to be like, "I'll show you mine, you show me yours" kind
21 of thing. It's also normal for young children to just
22 explore their bodies, and the parents are very concerned
23 about, Why are they always digging in their pants? And
24 you're, like, there's no context for it. Their pants are
25 just like their ear or their nose. It's a body part, and

1 they're just exploring it. So we take that into account.

2 Then there's the sexualized behavior that's
3 outside the developmental norm, so a child at four or
4 five, younger children, should have no concept of what a
5 blow job is, what it means to try to stick a penis in
6 somebody's mouth or ask someone to lick their genitalia.
7 When they're using behavior and words that are outside of
8 a developmental norm, then we're concerned because
9 there's a concern of, Where did they hear that? Where
10 did they learn that?

11 And that can be a variety of sources, whether it
12 was pornography or someone living in a hotel room, where
13 there's no way to really separate the sexual activity of
14 the parents from the child. So we look at that, and then
15 in teenagers, you have sexualized behavior that may
16 indicate something that is going on, but a 14-year-old
17 certainly can figure out what oral sex is and be doing
18 that, so at that age that's not abnormal. I wouldn't be
19 concerned about that. That's age appropriate sexual
20 development.

21 So we always take and consider that and kind of
22 counsel the parents as to whether this is concerning or
23 not concerning, based on the age of the child.

24 Q. And after reviewing all the reports and physically
25 examining the child, are you generally able to give a

1 definitive diagnosis as to whether or not abuse has
2 occurred?

3 A. So as far as definitive diagnosis, as I've
4 explained, there may not be physical findings. There may
5 be other sources for sexualized behavior, so the bulk of
6 the case rests on the child's disclosure, which is not
7 something that I do. So I can tell you that things are
8 consistent or not consistent, but I'm not the final one
9 doing the investigation and making that. I make a
10 medical diagnosis on whether sexual abuse could have
11 occurred, based on my findings.

12 Q. Okay. And so based on that and your diagnosis,
13 even if you're saying that it's consistent, you're not
14 ever going to go into who the abuser could or could not
15 be?

16 A. Absolutely not. So we don't question the child.
17 We're not provided that information. The only case that
18 I could make that disclosure or make that statement would
19 be if I personally witnessed it or if I need to testify
20 to a spontaneous statement that the child made while in
21 my exam, unsolicited, they just wanted to tell me,
22 because doctors are sometimes trusted individuals. And
23 so children just really, you know, want to tell someone.
24 Sometimes we're kind of like police officers or teachers
25 or such. They trust us and sometimes they'll tell us.

1 Q. And I would assume the only other time you could
2 make anything on the abuse is if you had DNA?

3 A. Certainly, but I'm not processing the DNA. That
4 would be the lab, the state lab, that would do that kind
5 of testing.

6 Q. And you would never testify to that either?

7 A. No. I could testify as to if I did the swabs and
8 the collection on the child, that it was done properly,
9 that there was no contamination to it, but then someone
10 else would testify as to the lab results.

11 Q. And in doing your review of these cases, how often
12 do you determine that a case is not consistent with
13 sexual abuse?

14 A. Certainly. So about a third of my cases don't
15 have any type of abuse or neglect in them. We don't
16 diagnose 100 percent. Sometimes it's a medical disease
17 or medical finding, where someone thought they saw a
18 vaginal discharge and it's a yeast infection or poor
19 hygiene or something. Other times it's sexualized
20 behavior that the parent comes in and is very bothered
21 because the kid's got their hand in their pants, and
22 we're, like, no, that's normal development, and we give
23 the children direction.

24 So only in about two-thirds of my cases are they
25 either undetermined with risk factors for abuse or

1 diagnosed with abuse.

2 Q. Once you've made a diagnosis, do you discuss that
3 diagnosis with anyone? I think earlier you were talking
4 about peer review and things like that.

5 A. Certainly. We peer review any cases that have
6 physical findings or where it's questionable with the
7 other child abuse pediatrician and the two nurse
8 practitioners who form our medical team here.

9 If we can't come to a decision, then we reach out
10 to colleagues around the state or nationally, so we peer
11 review there. We also turn over our medical reports to
12 DSS and law enforcement and so then cases will often be
13 discussed at those multidisciplinary teams, if somebody
14 needs clarification about what's going on or what's going
15 to happen with a case.

16 Q. And in these MDT meetings, are those limited to
17 people specifically involved in that particular case?

18 A. No. So all of the law enforcement. So here in
19 Orangeburg, it's the Orangeburg public safety, Orangeburg
20 sheriff's department, solicitor's office, Orangeburg DSS,
21 a representative from mental health for Orangeburg area,
22 and then a school representative, so we meet once a month
23 and we discuss all of the open cases for the jurisdiction
24 at that time.

25 Q. And is that limited just to sexual abuse or does

1 that also include physical abuse?

2 A. That includes any kind of concern for abuse or
3 neglect, for a child that's been referred for any kind of
4 forensic interview, for a medical, or if they've not yet
5 been referred and something is just happening and someone
6 needs some kind of direction as to where to go with a
7 case.

8 Q. When you meet on those cases, are you discussing a
9 single case at a time, or do you discuss multiple cases
10 at a time?

11 A. Multiple cases. We discuss all the open cases at
12 each meeting.

13 Q. And have you and I ever served on these teams
14 together?

15 A. Yes.

16 Q. And do we always agree?

17 A. No, no. We disagree at times.

18 Q. And that was all of the general stuff. I'd like
19 to now move on to directly related to this case.

20 Did you examine the victim in this case, [REDACTED]
21 [REDACTED]?

22 A. I did.

23 Q. When and where did that exam take place?

24 A. That exam was January 4 of 2016, and we saw her at
25 our clinic in the children's hospital in Columbia.

1 Q. And did you follow your standard protocols that
2 you just discussed with her?

3 A. Yes, I did.

4 Q. So you reviewed the report, you reviewed her
5 victim statement, the behavioral and physical symptoms?

6 A. Yes.

7 Q. You did the full physical exam with the frogleg,
8 knee to chest?

9 A. Yes, I did.

10 Q. And did you also draw blood for screen?

11 A. Yes. I took blood and urine for sexually
12 transmitted infections.

13 Q. And when you reviewed [REDACTED]'s statement, were
14 you able to make any findings that assisted you in your
15 diagnosis of this case?

16 A. The diagnosis didn't depend on the disclosure that
17 she made, but at that point she had had a forensic
18 interview on December the 10th there, so I was aware of
19 the content and that the disclosure had been rated clear
20 by the forensic interviewer.

21 Q. And your review of that, you're not basing your
22 diagnosis based on what anybody else said regarding the
23 disclosure, are you?

24 A. No.

25 Q. When you reviewed [REDACTED]'s behavioral and

1 physical symptoms, were you able to make any findings
2 that assisted you in your diagnosis?

3 A. Somewhat. She was displaying sexualized behavior
4 that was abnormal for her age according to her caregiver.
5 So her aunt, who was her guardian, her mother and
6 grandparents were all there for the medical, and they
7 assisted in filling out the medical and caretaker
8 questionnaires.

9 Q. Did your physical examination of [REDACTED] result
10 in any abnormal findings that assisted you in your
11 diagnosis?

12 A. No. She had a normal genital exam.

13 Q. Did you expect to find any abnormalities in her
14 examination?

15 A. No. Given what we had already discussed about the
16 science there, 95 percent are going to have normal
17 findings, even based on her disclosure of penile-vaginal
18 contact, so I expected her exam to be normal.

19 Q. And is that also consistent with the fact that at
20 least five months had passed since the disclosure and no
21 knowledge of the incident?

22 A. Yes.

23 Q. Did her STD panel result in any positive tests
24 that assisted in her diagnosis?

25 A. No. She was negative for all sexually transmitted

1 infections.

2 Q. Did you expect her to test positive for STDs?

3 A. There was the remote possibility because we were
4 aware that the alleged perpetrator had HIV, so we tested
5 for that. But, again, based on what she disclosed and
6 the contact that was disclosed, it was, you know, one in
7 a million, just guesstimating, that she would have
8 contracted HIV, because I also didn't have any
9 information about whether the alleged perpetrator in this
10 case was on treatment, what his viral load was, so I
11 couldn't give an exact number to her risk.

12 Q. And based on the fact that you had no physical
13 findings and there was no genetic DNA, anything like that
14 found, were you able to give a definitive diagnosis in
15 this case of absolutely yes or absolutely no?

16 A. No.

17 Q. Were you able to make any type of diagnosis in
18 this case?

19 A. So the diagnosis was based on the fact that she
20 had disclosed in a forensic interview. I can diagnose
21 that her exam is consistent with her behavior, meaning
22 that what she said could have happened --

23 MR. PALMER: Your Honor, this is clear
24 improper bolstering of the complaining witness's
25 testimony. I made a motion before trial. It was ruled

1 on. I preserved the right to object, and now I'm
2 objecting because this witness is presenting herself as
3 an expert, and she's here bolstering, trying to bolster,
4 the credibility of the witness, and it's completely
5 improper.

6 THE COURT: Okay. I will overrule the
7 objection. I don't think under the Court definition of
8 bolstering and the cases that follow that that her
9 testimony is doing that. She's simply dealing with the
10 medical aspect of it.

11 MS. CORNWELL: Thank you, Your Honor. That's
12 all the questions I have.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 BY MR. PALMER:

16 Q. Good morning.

17 A. Good morning.

18 Q. First thing I'm going to do, Dr. Lamb -- and, by
19 the way, I'm Scott Palmer. I represent Mr. Small. It's
20 nice to meet you this morning.

21 I'm going to show you my first exhibit of the
22 case, and I ask if you recognize that.

23 A. Yes. This is our protocol and the report that I
24 made on [REDACTED].

25 Q. And do you believe that's a true and accurate

1 copy? Take your time.

2 A. Yes. This is the entire report.

3 Q. Any evidence or any concern on your part it's been
4 altered?

5 A. No. I reviewed it and everything is here.

6 Q. Okay. Thank you.

7 MR. PALMER: Move to admit, Your Honor,
8 Defendant's 1.

9 THE COURT: Any objection?

10 MS. CORNWELL: No, Your Honor.

11 THE COURT: Okay. It's in without objection.

12 (Defendant's Exhibit No. 1 was marked for
13 identification and admitted into evidence.)

14 BY MR. PALMER:

15 Q. Okay. As a layperson not trained in medical
16 science or anything in that field, I'm going to try to
17 summarize your testimony, not the theoretical testimony,
18 but the testimony concerning your examination of this
19 particular witness.

20 A. Okay.

21 Q. Is it a fair summarization that everything you
22 tested for was normal and/or negative; normal being the
23 vaginal exam, normal being defined as no evidence of
24 physical injury?

25 A. Yes.

1 Q. Okay. And negative in the context of no evidence
2 of infection of either STD or HIV.

3 A. Yes.

4 Q. Okay. And your statement at the end where it
5 provides for diagnosis, let me just read it and see if I
6 can decipher this. [REDACTED] is a six-year-old girl with
7 a clear disclosure of sexual abuse. Her examination is
8 normal, which is to be expected due to the rapid healing
9 of genital tissue. She was tested for sexually
10 transmitted infection, and all tests were negative.

11 I read that correctly?

12 A. Yes, you did.

13 Q. Okay. So in order to summarize this, you didn't
14 find anything, but you're not ruling out the fact that
15 she may have been sexually abused; is that a fair
16 statement?

17 A. Yes.

18 Q. Okay. And she was tested, and all tests were
19 negative, but you're here in court today to tell the jury
20 that you're not ruling out that she could have picked up
21 some infection. Is that what you're saying?

22 A. No. I'm saying that she was negative for all the
23 tests; however, you can have sexual contact and not
24 contract a sexually transmitted infection, even when the
25 person who you had sexual contact with has the infection.

1 Q. Okay. Now, do you agree with me, Doctor, that a
2 layperson, a non-trained person such as yourself, is
3 likely to be able to figure out that two human beings can
4 have sexual contact without one injuring another? Is
5 that a fair statement?

6 A. Not in my experience. I talk to a lot of
7 families, so after an exam, we'll tell families that the
8 exam is normal, if that's the case, or what happened, and
9 most of my families, I would say 99 percent of them, are
10 always very confused. They can't understand why this has
11 happened or why their child had sex and --

12 Q. I'm not sure you understand my question. Let me
13 try to make it a little simpler.

14 A person with average intelligence can deduce two
15 persons can have sex without injuring each other?

16 A. In my experience, no, that's not the common
17 belief.

18 Q. Really?

19 A. Yes.

20 Q. And keep in mind that my question had no reference
21 to any either partner being a child.

22 A. No, and so I always see post-pubertal individuals
23 and I routinely get asked by their parents to check their
24 children, particularly their female children for
25 virginity because I'm seeing them for something else, and

1 they know I did the exam and they're asking me to tell.
2 So the common perception is that you can look at someone
3 and tell whether they've had sex or not.

4 Q. Well, I asked about injury.

5 A. Right, and so injury would be tearing and the fact
6 that there would be some type of injury which is what
7 people look at when they look at virginity tests. So
8 that's what I'm speaking to, injury being what people
9 think of when sex happens and you lose your virginity.

10 Q. Well, my question was much simpler than that.

11 A. I'm sorry.

12 Q. I basically asked, can two human beings have sex
13 without injuring each other?

14 A. Yes.

15 Q. And a normal person knows that, right?

16 A. I couldn't say based on my experience that isn't
17 what people normally think of.

18 Q. Okay. All right. Now, when you were presented
19 this case -- and you called it a case, right?

20 A. So --

21 Q. Let me ask you, now, you called it a case, and in
22 your profession, what is defined as a case?

23 A. So case is a term that law enforcement or
24 DSS uses, so for me it's a patient, but when we discuss
25 at MDTs or such is the case, I go back and forth between

1 the language, so a case would be a specific allegation, a
2 specific concern related to a specific patient that I'm
3 seeing.

4 Q. Okay. And when you use the term case, would you
5 agree that it doesn't have necessarily any kind of legal
6 connotation?

7 A. No. It just means that we use it interchangeably
8 for an investigation that we're a part of. It just is
9 less pejorative than investigation.

10 Q. Is your work as a physician limited to those types
11 of investigations; in other words, is everything you work
12 on connected with law enforcement and allegations like
13 this?

14 A. Either law enforcement or DSS or physicians'
15 concerns. The only children I see, there is some concern
16 for child abuse or neglect.

17 Q. So you don't have a general practice or a
18 pediatric practice open to the public?

19 A. No, I do not.

20 Q. Okay. Now, your report here -- this case came to
21 you, and you said you were referred by law enforcement,
22 and that's the common practice?

23 A. Sometimes law enforcement or DSS. That's our
24 normal referral.

25 Q. Okay. And looking at the report here, you said

1 there was child's disclosure, and the disclosure you're
2 referring to would have been the forensic interview?

3 A. There are two different sections on my report.
4 One is what we received from law enforcement; one is the
5 forensic interview. So I can show you which one is
6 specific to which.

7 Q. Okay.

8 A. So here where there's clinical history, this is --
9 it says brief history of allegation as provided by
10 referral source.

11 Q. That would be law enforcement?

12 A. That would be that law enforcement told us, so
13 here I say forensic interview, so I gave the date of
14 interview, what the interviewer's assessment was, and
15 what disclosure was based on the interview so we have
16 both pieces there.

17 Q. And in another section of your report, it's
18 described as a clear disclosure, correct?

19 A. Yes. So that's the rating by the forensic
20 interviewers, will be a clear disclosure and inconsistent
21 or not 100 percent disclosure and then no disclosure, so
22 there are three different categories that the forensic
23 interview ranks, and we just reflect that in our report.

24 Q. And clear is determined by the forensic
25 interviewer and not anyone in your office, including you?

1 A. Correct.

2 Q. You don't have any involvement in rating the type
3 of disclosure; is that a fair statement?

4 A. Unless I personally attend and watch the forensic
5 interview and then I may have a discussion with the
6 interviewer, but they're the ones that determine the
7 rating of the interviewer.

8 Q. Did you watch this interview? Did you watch the
9 video of it?

10 A. No, I did not watch it.

11 Q. What type of information do you get from the
12 forensic interviewer other than it was a clear disclosure
13 or is that it?

14 A. So they make a forensic interview report that they
15 send to us, and it's the same report that law enforcement
16 and DSS get, so we get those reports, and then because we
17 attend MDT, every case that is discussed goes through all
18 the pieces. So the forensic interviewers describe the
19 interview and what happened during it, and then we
20 provide the medical information, so I get it both ways.

21 Q. Okay. If I showed you a copy of the forensic
22 interview report that you received, would you recognize
23 it?

24 A. Most likely. Yes. This is the forensic interview
25 report related to [REDACTED]

1 Q. You would expect to have a copy of this in your
2 chart or your file, whatever you refer to?

3 A. Yes.

4 Q. Is it common for the forensic interviewer to
5 summarize the contents of the interview?

6 A. Yes. Because interviews can sometimes be long,
7 they can have kind of rabbit trails that go off in one
8 direction or another. They get a copy of the DVD, but
9 there is also a copy given to them so they can look over
10 it.

11 Q. Is it common for a five-year-old to use terms to
12 describe anatomy such as mussy and titties?

13 A. Yes.

14 Q. It is common?

15 A. Yes. Most parents do not teach their children
16 anatomical words for it so we see a wide variety of terms
17 that are used to describe, particularly, the female
18 genitalia.

19 Q. Well, if the parents don't teach it, where do they
20 get it, generally?

21 A. Generally, it's from the parents; sometimes other
22 children, common words that they hear.

23 Q. So those types of terms would be in a normal
24 setting picked up at home?

25 A. Normally, they're from the family.

1 Q. I see. And your questionnaire that you said the
2 caregiver filled out in this case -- and do you remember
3 who the caregiver was?

4 A. Certainly. So I noted on the first page everyone
5 who was there, so it says child brought by, and I give
6 their full name here and then their relationship to the
7 child, and so all of them were present and could have
8 provided information for the caretaker questionnaire.

9 We give it to the legal guardian as the first
10 person, but if they don't know something, certainly -- in
11 this case, the guardian was the aunt. She might have
12 looked over and asked mother. Grandparents might have
13 had something to say in these cases, but, generally, it
14 would be the aunt who would be the primary person as the
15 guardian.

16 Q. Okay. So you can hang on to that one because I
17 have another one so we don't have to keep trading it back
18 and forth.

19 So in this case -- the caregiver, or the
20 caregivers, in this case, were the legal guardian, an
21 aunt, mother, grandmother, and grandfather.

22 A. Yes.

23 Q. And they all showed up with the minor child for
24 this examination?

25 A. Yes, they did.

1 Q. And so the history, you get it from them and not
2 the child?

3 A. No. We do ask basic questions of the child. At
4 this age, they would be able to tell us if they take any
5 medication every day. Generally they'll remember if they
6 broke a bone or got stitches or had to spend the night in
7 the hospital, but anything more descriptive than that
8 they're not going to know.

9 Q. Okay. And in this case, on page three of seven,
10 it says review of symptoms. About halfway down, you
11 have, really, the only -- under behavioral ROS, you have
12 sexual behavior?

13 A. Yes.

14 Q. Do you have any recollection of any specifics
15 about what was alleged as far as sexual behavior?

16 A. No, I don't have any of the specifics with me.

17 Q. Okay. All right. And under physical review of
18 symptoms, down at the bottom, you have checked three
19 things: Constipation, soiling of underpants, a vaginal
20 discharge?

21 A. Yes.

22 Q. Are any of those in and of themselves indicative
23 of sexual abuse?

24 A. No. At this age, it can be very common because
25 children want to do everything themselves, so sometimes

1 their genital hygiene is not the best at this age.

2 Q. Now, back up to the top where it says -- there's
3 no heading, but maybe the heading is on the previous
4 page.

5 A. Yes. It's social history.

6 Q. One of them is prior history of child abuse and
7 caregiver, parentheses, asked and history or diagnosis of
8 mental health disorder in caregiver.

9 Do you recall, since there's four potential
10 caregivers on this form, which one that would apply to?

11 A. I don't remember specifically which one it applied
12 to.

13 Q. And is that something that you or your office
14 would have determined happened prior to your examination?

15 A. Certainly. So as we meet with the family -- it
16 may not be prior to the exam, but afterwards when we talk
17 to them, we'll clarify, because prior history of child
18 abuse in caregivers, when they go through a child abuse
19 investigation or a case with their children, it
20 oftentimes will bring up past abuse issues, so routinely
21 we'll recommend therapy for them, individual therapy so
22 that they do well when the child's doing well, and the
23 same thing with any type of mental health disorder.

24 If it's someone who is there and caring for the
25 child, we would encourage and give referrals for them to

1 seek help out this point.

2 Q. Okay. Thank you. So you've described how you
3 react to this, receiving this information, but what is
4 the significance of asking that?

5 A. The significance of asking that, sometimes when we
6 are asking about any of these, they are generally risk
7 factors for abuse or neglect that are noted, such as a
8 history of DSS involvement, if a child has been in foster
9 care before. If there's some type of criminal history in
10 the family; if there has been some kind of familial
11 sexual abuse that has gone on, so we're screening for
12 risk factors in asking these questions.

13 Q. Besides asking the caregiver or caregivers that
14 appear with the child, does your office make any
15 independent investigation as to any of these factors,
16 such as prior DSS involvement?

17 A. No. So we don't do any independent investigation.
18 As I say, we stay in our lane, but we generally are
19 provided that information. We're generally in contact
20 with DSS and law enforcement as we discuss the case at
21 MDTs and then individual calls between.

22 Q. So if I understand your answer, if you are
23 referred a case from law enforcement, it's common for law
24 enforcement or the referring agency to include that
25 information -- in other words, you can get indication of

1 prior DSS involvement from someone other than the
2 caregiver themselves?

3 A. Yes. I can generally find out that information if
4 DSS chooses it to share it with us.

5 Q. And are there cases where there's DSS involvement
6 and you don't get a heads up on that?

7 A. Certainly. There are many times -- obviously, no
8 one sends us a person's records or internal documents, so
9 sometimes we don't have that information.

10 Q. Okay. Now, you have some statistics earlier in
11 your testimony, very high percentage rate -- you said 95
12 percent of sexually abused children, I believe is the
13 term that you used?

14 A. Yes.

15 Q. So how do you define sexually abused children. Is
16 it children that appear in your office with disclosures
17 or is it some other way that you define sexually abused
18 children?

19 A. So it all depends on the scientific study. If
20 you're asking me specifically about the study with --

21 Q. Actually, first I'm asking you to define sexually
22 abused children in the context of your testimony.

23 A. In the context of my testimony, it would be a
24 child with a clear disclosure or witnessed or
25 DNA evidence or a sexually transmitted infection they

1 couldn't have gotten from -- you know, it's not a
2 16-year-old, it's a six-year-old. Those would be
3 definitions of sexual abuse for us. It can also be
4 defined as if they've been convicted in a court of law.

5 Q. Not the child, you're talking about the alleged
6 perpetrator?

7 A. If the alleged perpetrator has been convicted of
8 sexual abuse of that child, then we define that case or
9 that patient as having experienced sexual abuse.

10 Q. So does the 95 percent include both allegations
11 and convictions?

12 A. It depends on the study.

13 Q. Well, I just want to be clear for the finder of
14 fact here, because 95 percent is a pretty overwhelming
15 percentage, and when you say sexually abused children, I
16 need to know if that definition includes those in the --
17 I'll call it the allegation stage, or is that limited to
18 those cases that have actually resulted in a conviction?

19 A. So it can refer to, based on the study, those who
20 have had clear disclosures, so allegation means before
21 the forensic interview, so those with full disclosures or
22 those who have been convicted. There are different
23 studies. I have the studies, if you would like to see
24 them.

25 Q. I don't know if we have time for that. I'll take

1 your word for it. I'm just trying to figure out, really,
2 what your testimony is because if you're saying 95
3 percent of sexually abused children, what does that mean?
4 Does it mean that of those children that cases go to
5 court and results in a conviction, or are those children
6 that report, because there is a difference, do you agree?

7 A. Yes, I agree there's a difference. In the
8 scientific study where I quoted the 2,400 children with
9 2,000 females in the 96 percent, in that case they
10 defined sexual abuse as having had a forensic interview
11 and making a clear disclosure of sexual abuse.

12 Q. Okay. All right. And what if that clear
13 disclosure was later determined by the finder of fact,
14 such as in this setting, to be not so clear? Would that
15 affect your statistics?

16 A. I have a different paper of just convictions, and
17 the percentage is the same.

18 Q. And it's -- the percentage is the same. So is
19 what you're here today -- what you're trying to tell us
20 is 95 percent of sexually abused children have no
21 positive exam?

22 A. Yes.

23 Q. Or they have a normal exam.

24 A. Yes.

25 Q. Okay. And -- but that could also mean that

1 children that have a normal exam aren't necessarily
2 sexually abused.

3 A. That's not what I'm saying.

4 Q. Okay. Well, isn't that sort of reversed logic? I
5 mean, if you're saying that 95 percent of sexually abused
6 children show a normal exam, if you logically follow that
7 out, the next step would be, well, here's a child with a
8 normal exam, so there's a 95 percent chance this child
9 was abused? Isn't that reverse logic?

10 A. No. That's an incorrect logic paradigm, so it's
11 just like if you say -- let me think of a non-abuse
12 example. If you say that, you know, 95 of monkeys are
13 brown, and then you say, oh, well, here's an animal
14 that's brown, it must be a monkey, it doesn't work --

15 Q. That's a syllogism, right?

16 A. Right. So the syllogism is incorrect if you say
17 of children who have normal exams, 95 percent of them
18 should have been sexually abused, because you're dealing
19 with two different populations. You're dealing with
20 children who have made a clear disclosure versus children
21 just off the street.

22 Q. Right. Okay. So now that you've cleared that up,
23 let me ask you this: In this particular case, which you
24 found a normal exam, falls into the 95 percent, right --
25 let me try to artfully phrase my question.

1 Okay. If this normal exam falls into the 95
2 percent, then, really, the statement at the end of your
3 question, at the end of your protocol that says this is
4 to be expected, it sort of presupposes that the sexual
5 abuse took place, doesn't it?

6 A. The statement is if you separated that out from
7 the sentence before, where I said this child gave a clear
8 disclosure, I'm very clearly saying that the disclosure
9 is where the weight of the determination rests, and so
10 I'm responding to that saying in light of that
11 disclosure, you can expect a normal finding because 95
12 percent of children -- so it logically follows.

13 Q. I understand, and that's what I was asking and
14 it's a much better answer to my question than the
15 question was.

16 A. Okay.

17 Q. So, really, let me put it in much simpler terms
18 that I can articulate: It really boils down to what the
19 disclosure was; in other words, without this disclosure
20 if you had done the same exam, would you have had the
21 same reason to put that comment in there?

22 A. If you take away the disclosure and the sexualized
23 behavior?

24 Q. Yeah, let's say that.

25 A. Then yes, you could make a statement that a normal

1 exam is a normal exam.

2 Q. And with regard to the sexualized behavior, you've
3 already stated on direct that some sexualized behavior is
4 normal.

5 A. Yes. If we -- but in the cases where the
6 sexualized behavior is developmentally normal, I would
7 not that in my assessment.

8 Q. Okay.

9 A. So if it was normal and the parents were
10 counselled that it was normal six-year-old behavior, I
11 would have stated that to make it very clear why I was
12 saying there was no abuse.

13 Q. Okay. And so you've noted sexualized behavior,
14 but as I understand your testimony a moment ago, at this
15 time you don't recall exactly what it was?

16 A. No, I don't.

17 MR. PALMER: Okay. No further questions.

18 REDIRECT EXAMINATION

19 BY MS. CORNWELL:

20 Q. Just very briefly, Dr. Lamb.

21 We talked about screening risk factors of
22 caregivers and why you ask for that. In this case, did
23 you receive anything from DSS regarding any prior abuse
24 from the caregivers or any cases that they were involved
25 in with any of these caregivers?

1 A. No. There was no history from DSS or law
2 enforcement.

3 Q. All right. And we went over this 95 percent, and
4 then you gave a great example of 95 percent of monkeys
5 are brown, that doesn't mean all brown animals are
6 monkeys. I think you indicated that a normal finding has
7 two outcomes: It could either mean nothing happened, or
8 it still could mean that because there is no findings
9 something could have still happened, but you have to look
10 at other details to make that diagnosis?

11 A. Yes, that's correct.

12 Q. And I believe you've also testified that not all
13 examinations where there's an allegation of sexual abuse
14 are found to be consistent after your review; is that
15 correct?

16 A. That's correct. So that one-third of cases where
17 they -- clearly, there was an allegation for them to get
18 to me. There was a concern of sexual abuse, and after we
19 did the interview and medical and everything, there was
20 no abuse found. So an allegation doesn't always mean a
21 diagnosis of sexual abuse.

22 Q. So even though you work at a children's hospital
23 and employed by a child advocacy center, you're not there
24 to rubber stamp every allegation as yep, it's abuse; yep,
25 it's abuse?

1 A. No. We always start from the precept position
2 that there was no abuse and that there's a medical
3 finding or some other explanation. Abuse is not a
4 diagnosis you want to make freely or lightly.

5 Q. And the way you're able to make those is whether
6 it's consistent or inconsistent?

7 A. In sexual abuse cases, yes, if there are no
8 findings.

9 Q. And, obviously, we're talking about sexual abuse
10 in this case, but in physical abuse, it may be a little
11 bit different as far as findings, injuries, previous
12 injuries, healing, things like that; is that correct?

13 A. Correct.

14 Q. You're not saying 95 percent of all abuse has
15 normal findings; it's specifically 95 percent of alleged
16 sexual abuse, correct?

17 A. Yes.

18 Q. And you say you did not watch this video, forensic
19 interview?

20 A. No, I did not.

21 Q. So the only information you had was the written
22 report?

23 A. Yes.

24 Q. And you did not question the victim in this case
25 regarding this allegation?

1 A. I did not.

2 MS. CORNWELL: Nothing further, Your Honor.

3 THE COURT: Okay. You can step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: All right. Ladies and gentlemen:

6 We'll take a ten- or fifteen-minute break. Please don't
7 discuss this case, and I'll have you back out in ten or
8 fifteen minutes.

9 (In open court, jury not present.)

10 MS. CORNWELL: I believe we were -- I agree
11 with Your Honor's ruling regarding Mr. Palmer's objection
12 for bolstering. Without arguing in front of the jury, I
13 did want to put my thoughts and reasons behind that.

14 As far as his objection to the bolstering
15 regarding blood on the perpetrator's penis, that was
16 asked as a general medical question during her general
17 testimony about medical issues. It was nonspecific to
18 any testimony or case, definitely not specific to this
19 victim.

20 Regarding the victim, the interviewer did not
21 watch the forensic video. She did not interview the
22 child on any of the allegations. She indicated that her
23 diagnosis was based off of a number of different factors.
24 I don't believe that counts as bolstering in any way
25 because she made it clear she never spoke to the child

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1 about this. She also indicated that she doesn't do
2 anything as far as diagnosing any assessment of who the
3 abuser is or anything like that.

4 She stated that she does not give the
5 definitive yes or no diagnoses unless there is something
6 very specific that's found in her medical, and she stated
7 all she could say is whether or not it is consistent or
8 not. She never gives opinions based on that.

9 I think, based on those, it's clear she was
10 not bolstering any testimony. She was not testifying as
11 to the truthfulness or credibility of the victim. She
12 was simply giving her testimony as a medical expert as to
13 the medical reasonings for her findings under her expert
14 field. So based on that, I believe that Your Honor's
15 rulings on the objections were proper, and that is what
16 we wanted to place on the record.

17 THE COURT: Okay. Mr. Palmer, you want to
18 put anything on the record?

19 MR. PALMER: Just briefly, Your Honor. You
20 may be surprised that I take issue with some of that.

21 My position, Your Honor, and the whole reason
22 for my pretrial motion and my objection was that we've
23 now seen the forensic interview -- and now we've heard
24 the child's testimony in court and she was specifically
25 asked, I believe, as a result of what she said on the

1 forensic interview that when she observed her alleged
2 assailant during what is supposed to have happened,
3 especially with regard to his penis, that she described
4 it as red at times, and that's exactly what that question
5 was designed to elicit, testimony that would corroborate
6 the child's -- I mean, the testimony that would
7 corroborate the child's statement.

8 I don't believe that's a question that would
9 have arisen with an expert like this in a normal direct
10 examination had the child not said it repeatedly, and so
11 even though they can argue that this expert was
12 testifying in a hypothetical sense, it is sort of
13 circumventing the objectionable testimony by saying,
14 well, it's just hypothetical.

15 It wasn't a hypothetical question. It was
16 directly related to the evidence in the case, and I think
17 it clearly fits the definition of bolstering.

18 THE COURT: Okay. And, you know, I
19 understand the Supreme Court's decision in forensic
20 interview, and they made a determination that a forensic
21 interviewer was not recognized as an expert and that they
22 were concerned that this whole forensic interview, many
23 times, was essentially their bolstering the child's
24 testimony, that their forensic interview, when they
25 testified in court, gave the impression to the jury that

1 they believed the child and therefore the child was
2 telling the truth, and the Supreme Court said that that
3 wasn't proper, that there's not a scientific field on
4 that. There's not enough scientific research, and so
5 they couldn't bolster the child's testimony.

6 In this situation, I think that doesn't
7 prohibit the State from offering medical testimony that
8 corroborates certain facts. That happens all the time in
9 a murder trial. The pathologist gets up and says,
10 Certainly, you know, based on my findings of the body,
11 they could have been murdered in this way if the bullet
12 could have passed this way, et cetera.

13 In corroborating testimony, medical testimony
14 which has been recognized by our Courts, as she was
15 qualified as an expert in this field, and she could give
16 her opinion about facts in this case, whether it was
17 medically possible or not, and so I didn't think it went
18 to bolstering, you know, as the Supreme Court described
19 in forensic interviewers, and so, you know, I still think
20 my ruling is correct.

21 I don't know -- I don't think they have gone
22 that far yet, and they may in this case, I don't know,
23 but I don't think that's their intentions in this. So I
24 don't think it's bolstering under the cases the Supreme
25 Court has set out, so that's why I ruled the way I did.

1 So at least I think the record is complete, and then the
2 Court of Appeals or Supreme Court would at least know
3 what I was thinking, and whether I'm right or wrong,
4 they'll let me know.

5 MS. CORNWELL: Thank you, Your Honor.

6 THE COURT: Anything else?

7 MR. PALMER: Yes, sir, Your Honor. I have an
8 evidentiary issue that I present to the Court with no
9 pleasure, and here is it: Throughout this case there's
10 been evidence that has been presented by this child, both
11 in the forensic interview twice and in result of the
12 prosecutor's direct examination that was specifically
13 asked to identify the color of my client's genitalia
14 during the alleged sexual assault.

15 Each time one of the most consistent things
16 about this child's statements and testimony have been
17 that it was yellow: Three times, Your Honor, once on the
18 video, once during your examination for competency, and
19 then during my cross-examination, when I went around the
20 courtroom, this child has demonstrated sort of an
21 extraordinary consistency with being able to identify
22 color. Your Honor, my client's genitalia is not yellow,
23 and don't ask me how I know this, but it's anything but.

24 Your Honor, I have a right to present that
25 evidence. It goes to the core of our defense. Now, I

1 have his wife here. I plan to ask her, but I don't think
2 that's good enough, Your Honor. I have the actual
3 evidence here, and so I want to consult with the Court to
4 see the best way to present it.

5 THE COURT: I have had this issue come up
6 twice before, and both those times, a photograph was
7 taken and introduced into evidence. Assuming you
8 authenticate it, and that's not an issue, first, just
9 having your client expose his penis to this jury -- and
10 in both of those situations, the photograph was
11 introduced into evidence, once you authenticate that, and
12 we had to deal with that.

13 Now, I'll be glad to hear from the State's
14 position. I don't know of anywhere in the state that any
15 judge has allowed him expose his penis to the jury, and
16 I'm not going to be the first one, but I have had
17 situations where a photograph -- I had one where the
18 victim allegedly claimed that they bit the assailant, and
19 a photograph was introduced on bite marks, and then
20 another one -- and it was a similar situation on color.
21 And in this situation, there was some unusual scarring or
22 something, color variations that became an issue in that
23 case, and photographs were introduced in both of those.

24 Now, if y'all have some other better way to
25 do it, I'll be glad to listen to you.

1 MR. PALMER: Here is what I would propose: I
2 have a private investigator here in court. I have a
3 digital camera. The defendant is obviously here. If the
4 Court would allow me to let Mr. Dowling back in the
5 holding cell or the conference room back there and
6 photograph Mr. Small -- I have the ability to display the
7 digital photograph, and Mr. Dowling can take the stand
8 and testify that he just took the photo. I would propose
9 we do it like that.

10 THE COURT: Well, I haven't heard from the
11 State yet. One issue about a digital photo, if it's
12 going into evidence, I need some way to preserve it into
13 evidence. I need an actual photo that my court reporter
14 is going to be able to stamp and it goes up the chain
15 with the digital photo on a phone, you know, and they
16 need to explain, you know, that it -- the fact it was
17 taken today -- I don't know what the situation was, and
18 obviously things could change in that.

19 What's the State's position? I'll be glad to
20 hear from you before we --

21 MS. CORNWELL: Your Honor, I agree with the
22 Court that I think photographs would be the best way. I
23 don't think it would be appropriate for him to drop trou
24 in open court. I do think it is, under the rules of
25 evidence, admissible and appropriate. I note I have also

1 had instances where we have had to introduce a photograph
2 based on whether or not there was a circumcision or not,
3 and that was something that was shown through
4 photographic evidence.

5 I believe that's proper. We wouldn't object
6 to the photograph coming into evidence; however, I do
7 agree with Your Honor that it doesn't need to be a
8 digital photograph because we've got to preserve it for
9 evidentiary purposes. We also have to be able to send it
10 back to the jury, and I'm sure your investigator would
11 like to keep his phone, so if -- I know it's 11:30 now.
12 I would assume -- the State's about to rest.

13 I don't know if he's going to put up a
14 witness or not, but there would be time, maybe at lunch,
15 to go somewhere and have it printed out, and we could do
16 it that way, but I think that it would need to be a
17 physical, printed copy, if we were going to do that.

18 THE COURT: And sometimes it's easier for
19 your investigator and some representative of the state to
20 be present when it's taken, and then authentication does
21 not become an issue. That's fine, but I don't -- you
22 know, the last time, that was the way it happened. Both
23 parties were present, and then we didn't have an
24 authentication issue.

25 So I don't know whether they want to take

1 that position or whether they even care about it being
2 authenticated. Once you authenticate it, it's in, but
3 sometimes it's hard to authenticate -- last time I sent a
4 representative of the state or police officer in the room
5 and both parties were present, photograph was taken, and
6 then, you know, assuming that there's going to be
7 adequate light and it will be a good representation,
8 where you could determine color, circumcision, whatever
9 the issue is. Now, if y'all can work that out, if not,
10 we can go through the authenticating process, but every
11 other time that I've had it done, we skipped that, simply
12 since both parties were present, and a couple of times
13 the State introduced it.

14 MS. CORNWELL: Yes, and that's been my
15 experience in the past.

16 THE COURT: All right. However y'all want to
17 work it out.

18 MR. PALMER: Well, I have a camera that's not
19 a phone, because, as my wife reminded me -- she's also a
20 lawyer. She said, you know, That will be on the cloud,
21 and I don't want that. Not my cloud. So all I would
22 need then, Your Honor, is a way to print it, or sort of
23 up-to-date color printer would suffice.

24 THE COURT: All right.

25 MR. PALMER: Can I try to get that done at

1 lunch?

2 THE COURT: Okay. That's fine.

3 MR. PALMER: I don't know where to take that
4 photo to print it.

5 MS. CORNWELL: And I, unfortunately, agree
6 that a representative from the state probably needs to
7 be -- I believe your investigator, if he takes the
8 photograph, is going to have to testify and stipulate,
9 you know, that he has taken everything, but I think, for
10 argument's purposes of lighting, date, time, and all
11 that, it would be appropriate for the State to have a
12 representative there.

13 THE COURT: Okay. I'll let you decide who
14 needs to go. Okay? Anything else?

15 MS. CORNWELL: Before we bring the jury in,
16 like I said, the State is going to rest when the jury
17 comes back in. I don't know if we're going to go into
18 motions as opposed to bringing them in, me resting, and
19 then sending them right back out for motions at the
20 conclusion of the State's case.

21 MR. PALMER: My motions will be brief, Your
22 Honor, in this case.

23 THE COURT: Well, let me ask you this: Are
24 we -- it's 20 minutes to 12:00. Is this a situation you
25 want to break for lunch early, or do you want to put up

1 your case? I don't know how long your witnesses are
2 going to be. If your first witness is going to be past 1
3 o'clock, we need to deal with that. If you can get one
4 up and done by 1:00, that's okay too.

5 MR. PALMER: The first witness I plan to
6 call, Your Honor, is Mr. Small's wife, and, quite
7 frankly, she's got a lot to say, and the sister-in-law as
8 well. They know a lot of the facts surrounding this --
9 not that alleged incident, but these circumstances.

10 THE COURT: Okay.

11 MR. PALMER: So maybe the 20 minutes to 12:00
12 would be better spent dealing with this photograph issue.

13 THE COURT: Break for lunch and come back and
14 give you time to start your case. Anything suits me.
15 I'm just trying work out what is going to work best for
16 y'all.

17 MS. CORNWELL: That's fine, Your Honor. I
18 know generally at the end of the State's case the defense
19 puts motions on the record regarding directed verdict.

20 THE COURT: I won't do that, but I can send
21 the jury to lunch. I can bring them out and send them to
22 lunch. We can argue those motions and go to lunch, come
23 back, and start the trial.

24 Okay? That suit you?

25 MR. PALMER: Yes, sir.

1 THE COURT: All right. Bring me the jury.

2 (In open court, jury present.)

3 THE COURT: Okay.

4 MS. CORNWELL: Thank you, Your Honor. At
5 this time, the State would rest.

6 THE COURT: Okay. Ladies and gentlemen: The
7 State has presented all the evidence in the case in chief
8 they're going to present to you. I've got to deal with
9 some matters of law at this point in time, so instead of
10 leaving you locked up back in the jury room, I'm going to
11 send you to lunch and ask what time do y'all think we
12 need, based on everything, starting back?

13 MR. PALMER: I don't know. 1:30, Your Honor?

14 THE COURT: Does that suit the State?

15 MS. CORNWELL: Yes, sir.

16 THE COURT: If you could, be back at 1:30 in
17 the jury room. Don't discuss this case or allow anyone
18 to discuss it with you, and I'll see you back at 1:30.

19 Thank you.

20 (Jury recessed for lunch.)

21 MR. PALMER: Your Honor, at this time I very
22 respectfully move under Rule 19 of the rules of criminal
23 procedure for directed verdict based on the general
24 grounds that the State has failed to prove its case
25 beyond a reasonable doubt and there's no genuine issue of

1 fact for the jury.

2 THE COURT: Okay. And I respectfully deny
3 that motion. I think there's the existence of evidence
4 in this record, and I'll let it go to the jury.

5 MR. PALMER: One more, Your Honor, and I hate
6 to belabor this, but I just want to put it on record.
7 Your Honor has already ruled on the issue of my pretrial
8 motion and my objection to the bolstering issue. I would
9 further, however, move for a curative instruction on that
10 particular topic.

11 THE COURT: I understand, and if I were to
12 rule in your favor, I don't think I can give that without
13 commenting on the facts to this jury, and I don't think
14 that would be proper, and I just don't think it leads to
15 a level of bolstering, so I deny your motion, if I'm
16 wrong, I guess they'll tell me in Columbia.

17 MR. PALMER: Yes, sir. Thank you. That's
18 all I have.

19 THE COURT: Anything you got?

20 MS. CORNWELL: No, Your Honor.

21 THE COURT: All right. Now, I'll see y'all
22 at 1:30.

23 (Recess taken.)

24 A F T E R N O O N S E S S I O N

25 (In open court, jury present.)

1 THE COURT: Okay. Yes, sir?

2 MR. PALMER: Your Honor, there is one witness
3 in the courtroom that is still under subpoena,
4 Ms. Roberts. We would ask that she be sequestered.

5 MS. CORNWELL: Ms. Roberts has already
6 testified in the matter of this trial. I believe that
7 allows her to be in, since her testimony has been given
8 and she's been released.

9 MR. PALMER: I'm talking about Demetria.

10 MS. CORNWELL: She's the victim's mother, and
11 she's, allowed under the victims' rights bill, to be in
12 the courtroom.

13 MR. PALMER: I may need to call her as a
14 witness, Your Honor. I mean, I understand the victims'
15 rights bill, but the alleged victim is not here and is
16 not going to testify today.

17 THE COURT: Okay. Come here and let me talk
18 to y'all for a minute.

19 (Discussion held at sidebar.)

20 MR. PALMER: I call Demetria Roberts.

21 THE COURT: Come around, ma'am, and place
22 your left hand on the Bible.

23 DEMETRIA ROBERTS,

24 having been first duly sworn,

25 was examined and testified as follows:

1 DIRECT EXAMINATION

2 THE CLERK: Please state your name for the
3 record.

4 THE WITNESS: Demetria Roberts.

5 BY MR. PALMER:

6 Q. I understand you're [REDACTED]'s mother?

7 A. Yes, ma'am.

8 Q. Who is [REDACTED] father?

9 A.. He's not listed.

10 Q. He's not listed?

11 A. No, sir.

12 Q. What does that mean?

13 A.. He's just not listed.

14 Q. Does that mean, I don't know?

15 A. No, I know who he is, he's just not listed because
16 he's not in her life.

17 Q. What's his name?

18 A. Trey Johnson.

19 Q. And at one time you had told DSS that somebody
20 else was the father, didn't you?

21 A. Yes, sir, I did.

22 Q. Who did you tell?

23 A. Kendrick (c) Drayton?

24 Q. And Kendrick Drayton was found by Court order not
25 to be the father?

1 A. That's correct.

2 Q. Following a paternity test?

3 A. That's correct.

4 Q. Even though you alleged him to the father?

5 A. That's correct.

6 Q. And so you were trying to get child support out of

7 him, weren't you?

8 A. No, sir, I wasn't.

9 Q. Wait a minute. It was a DSS case filed, wasn't

10 it?

11 A. Yes, sir, it was.

12 Q. And the DSS case sought an order to pay child

13 support, correct?

14 A. That's correct.

15 Q. And your intention was to appear as a witness for

16 DSS to name Kendrick as the father?

17 A. That's correct.

18 Q. And you had told Kendrick he was the father; isn't

19 that correct?

20 A. That's correct.

21 Q. And as a result of that, he signed [REDACTED]'s

22 birth certificate; is that correct?

23 A. That's correct.

24 Q. And he -- you agreed to give [REDACTED] his name,

25 and that's why she's [REDACTED]?

1 A. That's correct.

2 Q. Okay. And none of that information was true that
3 you gave him, about being the father, was it?

4 A. No, sir, it wasn't.

5 Q. Now, have you ever been in foster care?

6 A. No, sir, I haven't.

7 Q. Has [REDACTED]?

8 A. No, sir, she hasn't.

9 Q. Okay. You were involved in this court case. Any
10 other court cases in family court?

11 A. No, sir.

12 Q. And you obviously know Detra Small?

13 A. Yes, sir, I do.

14 Q. What's your relationship with her?

15 A. We don't have a relationship. My aunt and my
16 grandmother, they were friends.

17 Q. Well, you understand that your daughter has spent
18 a lot of time with Detra; is that correct?

19 A. That's correct.

20 Q. And how did that happen? How did [REDACTED] ever
21 come to spend time with Detra? They're not related by
22 blood, are they?

23 A. No, sir, they're not.

24 Q. So tell us what happened.

25 A. What happened was, I grew up in the same church.

1 I grew up in the church that they attended. It was
2 Greater Target AME church in Holly Hill, South Carolina,
3 and while going to church, that's how I became to know
4 Detra, Detra Smalls.

5 Q. Okay. And when you grew up in that church, were
6 you a minor, a child?

7 A. Yes, sir, I was.

8 Q. And how old were you when [REDACTED] was born?

9 A. Twenty.

10 Q. And so how did the relationship between [REDACTED]
11 and Detra happen?

12 A. Because her sister Deborah Shaw asked could she be
13 [REDACTED]'s godmother, and I told her yes, so the reason
14 how Detra became into [REDACTED]'s life was because Detra
15 and Deborah are sisters. So when one would do for her,
16 the other one would do for her too as well.

17 Q. Okay. And did this happen when [REDACTED] was very
18 young?

19 A. Yes, it did, sir.

20 Q. How old was she when you first introduced her to
21 Deborah?

22 A. I mean -- when I had her, when she was born?

23 Q. She was just a few days old, wasn't she?

24 A. Yes, sir, she was.

25 Q. Was she initially with Deborah? Did you actually

1 leave her with Deborah for a period of time?

2 A. No, sir. I never left her. I would go visit.

3 Q. Okay. Even as a baby?

4 A. Yes, sir.

5 Q. And as [REDACTED] grew older, would the visits be
6 regular?

7 A. Yes, sir. She would go every weekend and on
8 holidays.

9 Q. Okay. And that continued until when?

10 A. Until she was four, going on five.

11 Q. Okay. Now, when -- as of August 2015, was
12 [REDACTED] in school?

13 A. Yes, sir, she was.

14 Q. What school was she in?

15 A. Brookdale Elementary.

16 Q. And let's say I'm suggesting to you, because I
17 don't know the exact date school started, but let's
18 assume the date that school started in August was around
19 the middle of August; of 2015 now, is what I'm talking
20 about.

21 A. Yes, sir, that's correct.

22 Q. [REDACTED] would have been five?

23 A. Yes. She would have been five going on six
24 because her birthday is in October.

25 Q. So what grade would she be going into?

1 A. At that time?

2 Q. At the time.

3 A. She would have been going to the first grade.

4 Q. Okay. And she ended up going into the first
5 grade?

6 A. Yes, sir, she did.

7 Q. And shortly after that time, she came to live with
8 you, and has she been back to either Detra or Deborah's
9 house since then?

10 A. No, sir, she hasn't.

11 Q. And you haven't let her go back, have you?

12 A. No, sir, I haven't.

13 Q. Okay. Understood. Even though Oscar has been
14 incarcerated?

15 A. Uh-huh.

16 Q. You still think there's a threat of harm with
17 Detra and Deborah?

18 A. No, sir. I don't think there's a harm or threat,
19 but when you know something that I didn't know for as
20 long as you did and you didn't come tell me, I have a
21 problem with that.

22 Q. Okay. Well, the answer is, I didn't want her
23 going there, is perfectly fine, if that's the answer.

24 A. No, sir. I didn't want her going.

25 Q. Okay. Fair enough. I just wanted to know what

1 the reason was.

2 A. Okay.

3 Q. Now, let's go back in time a little bit. Have you
4 and Detra, or Deborah, ever had any falling out or
5 disagreements about [REDACTED]?

6 A. I wouldn't say any big disagreements or any big
7 arguments.

8 Q. Do you remember when Detra's father's died?

9 A. Yes, I do.

10 Q. And did you go to that funeral?

11 A. Yes, I did.

12 Q. And do you remember Detra telling you that they
13 wanted to take [REDACTED] up to New York to take care of
14 the estate?

15 A. Yes, sir, I do.

16 Q. And didn't you agree to that?

17 A. Yes, sir, I did.

18 Q. And they took [REDACTED], and there was a whole
19 bunch of people on a bus, right?

20 A. Yes, sir.

21 Q. And you were okay with that?

22 A. At first I was, yes, sir.

23 Q. And then what happened?

24 A. And then I kept calling them and calling them to
25 try to find out when my daughter was coming back. They

1 told me that she will be back one day, or one certain
2 time, and she wasn't there. She didn't -- they didn't
3 bring her back till a couple of weeks later.

4 Q. Okay. And in the meantime, you went to the Holly
5 Hill police department and told them that your child had
6 been kidnapped.

7 A. That's incorrect, sir.

8 Q. So what happened?

9 A. It wasn't the Holly Hill police department. It
10 was the Orangeburg police department.

11 Q. But otherwise the statement is correct?

12 A. Yes, sir, it is.

13 Q. So you alleged that these ladies had kidnapped
14 your child?

15 A. Yes.

16 Q. And when they got back, you were waiting with the
17 police for them over in the yard of the school, correct?

18 A. No, sir. That's not correct.

19 Q. Well, were you waiting anywhere with the police
20 when they got back?

21 A. No, sir, I wasn't.

22 Q. Did the police eventually go to Detra's house and
23 retrieve [REDACTED] at your request?

24 A. Yes, sir.

25 Q. And I understand charges were never filed.

1 A. No, sir, they wasn't.

2 Q. But you definitely alleged kidnapping?

3 A. Yes, sir.

4 Q. Even though you knew where she was, and they had
5 offered to pay your travel to go up there and be with
6 them.

7 A. No, sir.

8 Q. No? You deny that?

9 A. That's not true at all.

10 Q. Okay. Did you ever represent to Detra or Deborah
11 that you had come down with breast cancer?

12 A. Yes, sir.

13 Q. Why did you do that?

14 A. Why? Because at the moment of time that's what
15 the hospital had told me, but then when I got a second
16 opinion when I was in Columbia, they told me I didn't
17 have it.

18 Q. Okay. All right. Fair enough.

19 Now, how about -- you were living where at the
20 time, as of the last time [REDACTED] was over at Detra's,
21 which was August 2015? Where were you living?

22 A. [REDACTED] wasn't with Detra and them in August
23 2015. She wasn't with them.

24 Q. Didn't they go to vacation Bible school for a week
25 before she was to go back to school?

1 A. That was in July. [REDACTED] was back with my
2 sister and my mother by August.

3 Q. All right. July, where were you living?

4 A. Where was I staying?

5 Q. Yes.

6 A. I was staying in Florence, South Carolina at the
7 moment.

8 Q. All right. And how long did you live there until
9 [REDACTED] came home?

10 A. Till [REDACTED] came --

11 Q. Came home to your sister's house? Because your
12 sister testified that came to live with her.

13 A. Yeah. She was staying with my sister at the time.

14 Q. Okay. But you were in Florence?

15 A. Yes, sir, I was.

16 Q. Who were you there with?

17 A. Who was I staying with?

18 Q. Yes.

19 A. My cousin.

20 Q. What's his name?

21 A. Johnny Singleton.

22 Q. And is Johnny a married man, or was he then?

23 A. Yes, sir, he was.

24 Q. Married with kids but separated?

25 A. No, sir. He don't have any kids.

1 Q. Okay. All right. Fair enough.

2 Any other instances where you've had disagreements
3 with either Detra or Deborah and you've taken action like
4 contact law enforcement or the Family Court?

5 A. No, sir.

6 Q. And have you ever lived in subsidized housing?

7 A. No, sir, I haven't.

8 Q. No?

9 A. No, sir.

10 Q. Have you ever threatened to take [REDACTED] and not
11 bring them back for any reason, threatened to Detra and
12 Deborah?

13 A. Could you repeat the question, sir?

14 Q. And -- thank you, because the questions need to be
15 clear.

16 Have you ever made any kind of threats to Detra or
17 Deborah to use [REDACTED] -- to take her away from them, so
18 to speak, and I know they didn't have custody; they would
19 take her for periods of time and bring her back -- in
20 order to get something you wanted?

21 A. No, sir.

22 Q. Okay. Well, how did the arrangement work with
23 Detra and Deborah? Were you involved in that or did they
24 deal mostly with Destiny?

25 A. They would deal mostly with me.

1 Q. Okay. And so how did [REDACTED] get over to their
2 house, say, on a typical visit?

3 A. They would come get her.

4 Q. Where would they come to?

5 A. My mother's house.

6 Q. Where is that?

7 A. My mother was staying on Sawyer Street at the
8 time.

9 Q. 1259 Sawyer?

10 A. Yes, sir, she was.

11 Q. And your mom's name was Zelda Fuller?

12 A. Yes, sir, it is.

13 Q. And she's obviously [REDACTED]'s grandmother.

14 A. Yes.

15 Q. And I just met her. She seems very nice.

16 A. Yes, she is.

17 Q. So when it was tie for [REDACTED] to come back,
18 would they bring her back?

19 A. Yes, sir, they would.

20 Q. So would it be fair to say that most of the time,
21 if not all, they did the picking up and dropping off?

22 A. Yes, that's correct.

23 Q. And when they would pick up and drop off, would
24 they spend time in the house or would they just get her
25 and leave?

1 A. It depends on what is the occasion.

2 Q. Fair enough. And did you have some sort of social
3 relationship because of that?

4 A. Can you --

5 Q. Would you have called them friends, or would your
6 mother have considered them friends?

7 A. No. I would -- before all this happened, I would
8 consider them as family.

9 Q. Okay. All right.

10 A. Yes.

11 Q. And do you think [REDACTED] considered them family?

12 A. Yes, sir, she did.

13 Q. Do you think she considered Oscar family?

14 A. Yes, she did.

15 Q. What was your relationship with Oscar?

16 A. I really didn't have one with him.

17 Q. No?

18 A. No.

19 Q. You didn't deal with him at all?

20 A. I try not to.

21 MR. PALMER: I don't have any other
22 questions, and I just want to say your daughter is
23 adorable. I told you that earlier, and I'll tell you
24 that again.

25 Thank you.

1 THE WITNESS: You're welcome.

2 MR. PALMER: Your Honor, before I stand --
3 this is an original clocked court order. I'll just
4 proffer it into evidence. I believe it's admissible
5 under the rules. It's already a Court record, so --

6 THE COURT: I don't know what it is. Have
7 you shown it to the State?

8 MR. PALMER: I previously provided a copy.

9 MS. CORNWELL: I have a copy of it. I don't
10 necessarily have an objection to it. I think it's
11 extrinsic evidence that she testified to, so I don't know
12 that it needs to go back or anything, but I'll leave that
13 to the discretion of Your Honor.

14 THE COURT: You know, if you object, I'll
15 rule on admissibility. If you don't --

16 MS. CORNWELL: I don't have an objection,
17 Your Honor.

18 THE COURT: All right. I'll let it in then.
19 It's in without objection.

20 (Defendant's Exhibit No. 7 was marked for
21 identification and admitted into evidence.)

22 MR. PALMER: Thank you, Your Honor.

23 MS. CORNWELL: Your Honor, I have no
24 questions for this witness.

25 THE COURT: Okay. You can step down.

1 MR. PALMER: I call Ms. Detra Small.

2 DETRA RENEE DAVIS SMALL,

3 having been first duly sworn,

4 was examined and testified as follows:

5 THE CLERK: Please state your name for the
6 record.

7 THE WITNESS: Detra Renee Davis Small.

8 DIRECT EXAMINATION

9 BY MR. PALMER:

10 Q. Detra, I want to ask you some questions, and most
11 of them pertain to [REDACTED].

12 A. Yes.

13 Q. When did you first become acquainted with
14 [REDACTED]?

15 A. First was acquainted with [REDACTED] in 2009 when
16 she was born at ten days of age. She was with my sister.
17 I was in New York caring for our father, but when I
18 returned, my sister had her.

19 Q. And your sister's name is --

20 A. Deborah Robinson Davis.

21 Q. Okay. And you live in Holly Hill?

22 A. Yes.

23 Q. At what address?

24 A. 1157 Lowell Street, Holly Hill.

25 Q. And that address was the address you lived when

1 you first met [REDACTED]?

2 A. Yes.

3 Q. What is the address of where Deborah lives?

4 A. The address of where Deborah lives is 306 Sugar
5 Hill Road, Holly Hill.

6 Q. Is that in close vicinity to your house?

7 A. Yes. It's approximately ten minutes away.

8 Q. And you are the wife of Oscar Small?

9 A. Yes.

10 Q. How long have you been his wife?

11 A. Oscar and I have been knowing each other for ten
12 years. Five of them we have before married.

13 Q. And in those five years, you've lived at the
14 address on Lowell Street?

15 A. Yes, 1157 Lowell Street. Well, he and I also have
16 lived in Columbia, on Belt Line.

17 Q. Okay. And what year -- was that before you knew
18 [REDACTED] or --

19 A. That was after knowing [REDACTED]

20 Q. Okay.

21 A. But we weren't -- she wasn't in our household,
22 never, at Belt Line in Columbia.

23 Q. I see. Okay. So how would you describe your
24 relationship with this child?

25 A. Per the mother's request, Demetria Roberts asked

1 her sister and her husband at the time, Theodore Shaw, to
2 be her godparents. We're a very close-knit family, so
3 that included myself and Oscar.

4 Q. Now, are you related by blood to Demetria?

5 A. We are not related by blood by no means, no.

6 Q. Can you give us a little bit of insight as to why
7 you would be chosen as the godparents.

8 A. In 2008, Demetria Roberts and Destiny Roberts used
9 to come to my sister's house at 306 Sugar Hill Road to
10 babysit her step-grandchildren. When Demetria became
11 pregnant again, she asked my sister, her husband at the
12 time, Theodore, to the godparents.

13 When we went to the church, Greater Target AME
14 Church in Holly Hill, Oscar, myself, and Deborah were
15 present at the church at the altar, and we took the oath
16 to become her godparents and to rear her as should be, to
17 become a young lady.

18 Q. Okay. And after that, how old was [REDACTED] when
19 that happened?

20 A. She wasn't even one yet. She might have been
21 about six, eight months old.

22 Q. And at that time, was she visiting in your house
23 on a regular basis?

24 A. Yes, she was. Like I stated before, when I was in
25 New York in 2009, [REDACTED] was born October 27th of 2009.

1 When I came from New York, she was in my sister's house
2 already. Yes, she was in the house regularly. It wasn't
3 weekends; it wasn't a week; it wasn't a day. It was on a
4 regular basis.

5 Q. Was it on a continuous basis?

6 A. Yes, it was, up until the time that she started
7 owe cat, which was around about 2013, '14. Then she
8 would go -- then she would be on Orangeburg on a regular
9 basis and on the weekend come to Holly Hill.

10 Q. I see. And at what point -- or let me ask you in
11 a different way. So she was at Deborah's house during
12 that time?

13 A. She was between both homes because Deborah worked
14 a lot at that time.

15 Q. I see.

16 A. She she would be at 306 mostly during the evenings
17 but at 1157 during the day because Deborah was at work
18 and I'm disabled and my mom is a retired schoolteacher.

19 Q. Okay. Was there any time when [REDACTED] either
20 lived at Deborah's house or your house full time, if you
21 understand the expression?

22 A. Yes, she did.

23 Q. Okay. And tell us about that.

24 A. And I'm not going to quote dates, because I'll get
25 y'all confused. When Demetria asked for us to be

1 godparents, after that fact was during the time that my
2 sister and I were dealing with my father's sickness, in
3 New York, at Elmont -- in Elmont, New York, and when
4 we -- when we returned after his death, at the funeral,
5 and Demetria Roberts was present, she -- my sister asked
6 her, will [REDACTED] be able to go to New York with us.

7 She says, Yes, I have no problem with that.
8 That's fine, and those were her famous words.

9 We went to New York. If anybody knows about
10 death, you don't just go there one day and sign some
11 papers and come back. It's a process. This is a total
12 new state, New York. So it took some time. While it's
13 taking time, she called and said that she was missing her
14 baby.

15 Q. You're talking about Demetria?

16 A. Demetria. She said, I'm missing my baby.

17 My sister says to her, You want to come to New
18 York? You want to see your baby -- and she was calling
19 every other day or every day. My sister said, I will pay
20 for you to come to New York.

21 Why would I come and you're coming back? I
22 can wait.

23 This is also during the time when she asked
24 my sister, Deborah Robinson, Will you adopt [REDACTED]

25 My sister said, Let me think about it, and

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1 she has thought of that. She did think about it, and she
2 knew Oscar and I were engaged, going to be married. She
3 said, I would want my sister to adopt [REDACTED] because
4 she does not have children.

5 Q. That means you?

6 A. Yes, me.

7 Do you have a problem with that?

8 She says no.

9 Well, in between that time, I was in New York, so
10 we hired you to do the adoption. Paperwork was getting
11 in place in order to get the designated persons to have
12 signed. I was in New York. You overnight the papers
13 before they got signed. Before they got signed, she
14 calls you and she tells you she wants her baby back.

15 Q. She changed her mind?

16 A. Yes, she changed her mind. So the papers never
17 got signed, and she also went to Orangeburg County, I'm
18 going to assume, because they were the ones that --

19 Q. I don't want you to assume, okay?

20 A. Okay.

21 Q. I just need to know what you know, actually.

22 A. She went -- well, I don't know that she went, so I
23 know this for a fact. Orangeburg County sheriff's office
24 was dialling my sister at that time, saying, You're
25 holding [REDACTED] against the will of her mother,

1 Demetria Roberts. She's claiming that you're kidnapping
2 her child. When will you be returning to South Carolina?

3 We had one date where something occurred as far as
4 getting business straight, dealing with my father's
5 death, that we were unable to return on that particular
6 date. My mom's birthday was on August 20th. That's how
7 I can remember that day.

8 We left that evening, returned to South Carolina
9 on the 21st of August. Police knocked on the door.
10 Demetria Roberts was in the driveway. Other family
11 members were in the car. The officer from Holly Hill was
12 Henry. Knocked on the door. No one went to the door
13 right away.

14 Then Oscar Small got up, went to the door.
15 [REDACTED] followed. Asked for Deborah Robinson. She came
16 out of the kitchen, went to the door: I'm Deborah
17 Robinson.

18 Are you holding [REDACTED] against the
19 will of the mother, Demetria Roberts?

20 No, but here is the child. She was at the
21 door. Demetria took her for approximately a month or so
22 and she returned.

23 Q. Okay. Now, I want to tell -- I want to ask you
24 about your church. Which church is it?

25 A. Greater Target AME.

1 Q. And have you been a member of that church since
2 you've known [REDACTED]?

3 A. I've been a member of that church since my
4 movement from New York.

5 Q. Okay. And so is that a yes?

6 A. Yes.

7 Q. Okay. Are you active in the church?

8 A. Yes, I am.

9 Q. And as you've known [REDACTED] to grow older --

10 A. Yes. We had [REDACTED] on the youth choir, YPD,
11 which is the Young People's Department. She was going to
12 begin praise dancing. Yes, she was very active in the
13 church.

14 Q. Well, just tell us -- and, you know, I don't know
15 a lot of detail, but as [REDACTED] became three, four, and
16 five, was she still active in the church?

17 A. Yes, she was. She was active until the day that
18 she was no longer coming to Holly Hill, which was in
19 August of 2015.

20 Q. Yeah, I'll ask you about that in a minute, but I
21 really want to know about [REDACTED]'s involvement in the
22 church. Would she go with you on a regular basis?

23 A. She would always go with -- Deborah's in the
24 ministry, so she went to church earlier. Sunday school
25 is 8:45 to 9:45. Church services begin 10:00 till 12:00,

1 sometimes 1:00, depending on what's going on, so Deborah
2 went to church earlier.

3 So if [REDACTED] -- [REDACTED] loves her church. If
4 she felt I was taking too long, she would call Mimi,
5 Deborah Robinson, to pick her up for church.

6 Q. Okay. And at that time was Keamanni staying with
7 you on the weekends?

8 A. There were times when her hair was undone and --

9 Q. What I'm asking you is, what was the arrangement?
10 I mean, you're saying --

11 A. I'm getting to it.

12 Q. -- that she'd go to church with you, but --

13 A. Yes. There were times when -- she would come on
14 Fridays when she was in school at this time.

15 Q. And would you pick her up?

16 A. Yes, myself or my sister. Mostly me.

17 Q. From where?

18 A. From OCAB, and I can't give you the address
19 because I don't know anything much about it.

20 Q. What was Keamanni doing?

21 A. She was in the OCAB Head Start program, and I
22 would pick her up after the school hours, yes. Myself or
23 my sister, but mostly me.

24 Q. And you would take her to your house?

25 A. Yes. We would go to Holly Hill, yes.

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1 Q. And would she be returned and where would she
2 return to?

3 A. She would return on Sunday evening after church
4 services.

5 Q. Where would she go?

6 A. Greater Target AME.

7 Q. No, I mean, where would you return her to?

8 A. To 1259 Sawyer Street.

9 Q. And who lived there at the time?

10 A. At the time I'm going -- Demetria, Destiny, Zelda,
11 Donald, Desmond, little Charles, Javeon, Janaya.

12 Q. Okay. Would you say this happened every weekend?

13 A. Yes, every -- yes, every weekend except when
14 Demetria would say, [REDACTED] cannot come to Holly Hill
15 this particular weekend because we're going to be doing
16 X, Y, Z.

17 Q. Okay. All right. And the weekends that [REDACTED]
18 would be with you, you would take her to church?

19 A. Yes. Every Sunday we would go to church.

20 Q. And she would go with either you or Deborah?

21 A. Yes.

22 Q. And would Oscar go to church?

23 A. Yes.

24 Q. Would he go as regularly --

25 A. No. He would not go to church as regular as

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1 Deborah and I would.

2 Q. Was there times [REDACTED] would not go to church
3 and stay with Oscar?

4 A. There was never a Sunday that [REDACTED] was left at
5 home. She wouldn't let you leave her, and you're going
6 to church.

7 Q. Now, during the times that [REDACTED] was with you
8 -- and it sounds like the time we're talking about was
9 weekends.

10 A. Yes.

11 Q. Would you make yourself responsible for her
12 bathing and dressing and --

13 A. Always.

14 Q. Were you buying her clothes?

15 A. Always.

16 Q. Were you basically taking care of her as a
17 surrogate parent?

18 A. Yes.

19 Q. And at that time, you had been ordained, I guess
20 you call it, as her godparents?

21 A. Yes.

22 Q. I don't know if you call it ordained, but
23 christened or -- whatever.

24 A. There is a document, but it's not to be --

25 Q. Okay. Now, you've provided me some photos with

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1 [REDACTED] when she would go to church.

2 A. Yes.

3 Q. Can I show you Defendant's Exhibit 6 for
4 identification. Can you take the clip off? And look
5 through them and make sure that they're the right ones.
6 Yes?

7 A. Yes.

8 Q. Okay. And just tell the jury, just briefly, what
9 those pictures are and when they were taken.

10 A. I'll start with this photo. This is YPD, and they
11 were -- they did, like, a prom, and there is the group,
12 and they went to prom at a church in Charleston.

13 This is the photograph that we took of her before
14 we took her to the church. This is a photograph where
15 she was in a pageant in Charleston, YPD again, and she
16 represented Greater Target, and in order to represent a
17 church, you have to be present and very active in the
18 church.

19 This is a photo on a Sunday morning. She was
20 going to sing on the youth choir, and the uniform was the
21 royal blue shirt and black skirt, black shoes. This goes
22 along with the pageant, and so does this other one. It's
23 like a duplicate, and, again, at the pageant representing
24 Greater Target AME.

25 This is one Easter Sunday morning, and she's

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1 walking into the sanctuary. This is a Sunday afternoon
2 after church, visiting one of our cousins. We went to
3 dinner, actually.

4 Q. Were you present when all those photos were taken?

5 A. Yes, I was, actually.

6 Q. Who took them?

7 A. My sister, Deborah Robinson, took them, except for
8 this one here in my cousin's house. I took that one.

9 Q. Okay. Would you say that those photos would give
10 the viewer a good idea of what -- how [REDACTED] would
11 typically appear when she went to church?

12 A. Yes.

13 Q. Okay. And all those clothes and things she was
14 wearing, is that stuff you had bought?

15 A. Yes.

16 Q. And had her hair done like that and everything?

17 A. Yes. We had her hair done every two weeks. We
18 would pay to have her hair done every two weeks.

19 Q. And you said that she was active in the church.

20 A. Very, yes.

21 Q. Was she enthusiastic about church?

22 A. Very, very enthusiastic about church, and on
23 Saturday, she wasn't even present at 1157 or 306 because
24 she was active with YPD, so most times they had meetings
25 in Charleston. She would be with the YPD group on

1 Saturday morning beginning 7:00, 8:00, until 5:00, 6:00
2 in the evening.

3 Q. Were there times other than Sunday services,
4 Sunday school, and that sort of thing that you -- either
5 you or Deborah or you and Deborah would go to church?

6 A. Yes, there were. There were several occasions
7 where there were evening programs, either at Greater
8 Target or a neighboring church, yes.

9 Q. And during those times, do you ever recall leaving
10 [REDACTED] alone with Oscar in the house?

11 A. Never. Like I said, she was very enthusiastic at
12 church. Even if we were attending a funeral and it was
13 in a church setting, [REDACTED] wanted to go.

14 Q. Okay. Now, I want to fast forward a little bit to
15 2015.

16 A. Yes.

17 Q. Let's say July.

18 A. Yes.

19 Q. Was this still the case? What you've described in
20 great detail, was that still pretty much the case?

21 A. That was still the case. Beginning May 2015,
22 [REDACTED] graduated from the OCAB program, and she was
23 going to start public school, and we attended the
24 graduation. From the graduation, [REDACTED] got in our car
25 and went to 1157 Lowell Street.

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1 Q. Your house?

2 A. Yes, which she stayed until the last day we saw
3 her, August 15, 2015.

4 Q. She spent the summer with you?

5 A. Yes..

6 Q. Was there times when she lived somewhere else?

7 A. There were times when Demetria would call and say,
8 I want to do this, that, or the other with the kids
9 before they went back to school. She would come to
10 Orangeburg for a couple of days but back then to Holly
11 Hill.

12 Q. And so for those couple days, would she be at
13 Sawyer Street or some other address?

14 A. She would be at Sawyer Street or with Demetria's
15 friend Mecca Davis.

16 Q. And do you know Mecca?

17 A. I do not.

18 Q. Have you ever been to Mecca's house?

19 A. I've been there to the house in my car, but not in
20 the house, yes.

21 Q. And it's your understanding [REDACTED] would be
22 there overnight sometimes?

23 A. Yes. [REDACTED] has told us, yes, I stayed with
24 Auntie Mecca last night, or I stayed with Auntie Mecca
25 the weekend or whatever, yes.

1 Q. Okay. Now, [REDACTED] had graduated OCAB, summer of
2 2015 --

3 A. Yes.

4 Q. -- and she was going to public school into what
5 grade?

6 A. Kindergarten.

7 Q. And were you taking responsibility for preparing
8 her for that?

9 A. Yes, I have; yes, I did.

10 Q. Did you take her for a physical?

11 A. Oscar and I, per Demetria Roberts's request -- on
12 August 14th, Oscar had an appointment at the Dorn VA,
13 Columbia. [REDACTED] and I, on Thursday evening, packed an
14 overnight bag. We went with Oscar to the VA appointment.

15 After the appointment -- she loved to swim, and
16 Oscar is the only person she trusts in the water. Oscar,
17 myself, and [REDACTED] went swimming. Afterwards, the
18 weather got bad, so that cut it short.

19 Afterwards, my sister has an apartment in
20 Columbia. We went to get out of the wet clothes, went to
21 get dinner at a Chinese restaurant pickup, Chinese
22 pickup, and then we returned to the apartment, watched
23 television, and then --

24 Q. Let me ask you, what date are we talking here?

25 A. That is August 14th. On August 15th --

1 Q. Let me back you up a minute. Earlier in August,
2 had there been a vacation Bible school or a --

3 A. August 10th through the 14th there was vacation
4 Bible school from the hours of 6 p.m. to 8 p.m.

5 Q. And during those dates, was [REDACTED] living in
6 your house?

7 A. Yes, she was, and we attended vacation Bible
8 school every single evening.

9 Q. You went with her?

10 A. Yes, my sister and I.

11 Q. And what about in the daytime? Was there any
12 instance where you would leave her with Oscar?

13 A. No. We would -- the temperatures were very, very
14 warm, just like it is now, so, basically, we would be in
15 the house, preparing for the evening, taking a nap,
16 getting our clothes out for what we were going to wear.

17 Q. And vacation Bible school lasted until when?

18 A. It was August 10th through the 13th because the
19 14th is when we went with Oscar -- it was Monday through
20 Thursday.

21 Q. Okay. So Friday being the 14th, you go to
22 Columbia, the VA?

23 A. Right.

24 Q. You come back the same night?

25 A. No. We don't return to Holly Hill. We stay in

1 Columbia at my sister's apartment. We go swimming; we
2 have dinner. On August 15th, we wake up and we take
3 Keamanni to the family health center for a physical.
4 because she's beginning public school, and after the
5 appointment, she's returned to the grandmother, Zelda
6 Fuller, at 1259 Sawyer Street.

7 Q. That was on 8/15, which would be a Saturday?

8 A. Yes, yes.

9 Q. Okay. Family health center was open on Saturday?

10 A. Yes.

11 Q. And --

12 A. And they had a lot of back to school supplies and
13 a book bag, which she had, she got. I have it because
14 she was supposed to return to get it, but she never did
15 return, so I still have that.

16 Q. Okay. And so this physical, was it something that
17 was scheduled?

18 A. Yes. Demetria Roberts, the mother, asked, Would
19 you take [REDACTED] to the physical, because she was -- I
20 can't remember if she wasn't in town or -- either way,
21 she didn't have means of taking her there.

22 Q. Okay. And the physical, was [REDACTED] examined by
23 a doctor?

24 A. Yes, she was.

25 Q. Was this something that was required before she

1 could go to school?

2 A. Yes, to make sure all her shots had been given
3 before entering public school.

4 Q. Did someone take a photo of her at that physical?

5 A. I did.

6 Q. I'm going to show you Defense Exhibit 4. Is that
7 the photo?

8 A. Yes, it is.

9 Q. And that was taken by you?

10 A. Yes, it was.

11 Q. And that's her on the examining table?

12 A. Yes, it is.

13 Q. Okay. Thank you. Now, describe your house in
14 Holly Hill. Is it a one story, two story?

15 A. It's one level; three bedroom, den, living room,
16 dining room, kitchen, garage, laundry room.

17 Q. In the living room, what does the floor look like?

18 A. The floor is unfinished because Oscar had taken up
19 the carpet, and for our anniversary, he was removing the
20 carpet and was going to tile it for me. He never got to
21 do so, so there are exposed wood, and where -- in the
22 doorway, where the tacks would be down to hold the carpet
23 there, is unfinished.

24 Q. And was that the case in August 2015?

25 A. Yes. It's been like that for three years now,

1 yes.

2 Q. And if someone were going -- let me ask you first,
3 is it your living room or your den?

4 A. Den, yes.

5 Q. Is that where the television is?

6 A. Family room, yes, yes.

7 Q. And if [REDACTED] was going to watch TV, is that
8 where she would be?

9 A. That's where she would be, with every toy that she
10 owned in the middle of the floor.

11 Q. And describe where one would go and how far it
12 would be to get to your bedroom from that spot.

13 A. Okay. [REDACTED] would be in front of the
14 television. You would have to go around, maybe about 20
15 steps to the doorway and then maybe another 20 more steps
16 to get to our bedroom.

17 Q. Okay. And I'm going to show you some photos.
18 Have you taken some photos of that area?

19 A. I have.

20 Q. I'm going to show you Defense Exhibit 5, and take
21 a look at those photos and tell me if they're the ones
22 you took.

23 A. Yes. This is the one that's in front of the
24 television, and she would have been in this area, like I
25 said, with every toy that she had in front of it.

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1 Then this is where you would have to walk out of
2 the way, and that's the other unfinished area where there
3 are tacks that are sticking up. This is one that's
4 really clear where the tacks are, sticking up in the
5 unfinished floors.

6 Q. What is that light-colored strip in the middle?

7 A. This is the actual hallway that leads to the
8 bedroom, and there are runners, runner rugs, down that
9 hallway.

10 Q. Okay. So when you leave the den, you make a right
11 to go to your bedroom?

12 A. Yes.

13 Q. And how long is the hallway?

14 A. It's approximately 20, 25 steps down the hall to
15 the bedrooms.

16 Q. Now, typically, when you leave your house and come
17 back, do you have a carport you pull into?

18 A. No. I have a carport, but I would pull into the
19 driveway, and at that time, we always used our back door,
20 so I would drive on some rocks that Oscar had laid to
21 come into the back door.

22 Q. All right.

23 A. Which leads to the laundry room.

24 Q. When you open the back door, what is the first
25 thing that happens?

1 A. I have Vector security, so when you open the door,
2 the chime is on the door, and there is also a voice on
3 there and it would say -- first, it would say, Back door
4 open. Go up the steps, and next it would say, Laundry
5 room open.

6 Q. And when you walk in that back door, can you see
7 your den and the television set?

8 A. When I'm walking to the back door, there's also a
9 patio door.

10 Q. Okay.

11 A. Which at that time it was open. I could -- yes, I
12 would be able to see in there.

13 Q. Okay. Let's say you come home, get out of your
14 car, open your back door. The chime rings, the voice
15 goes off -- Back door open, I think you said?

16 A. Yes.

17 Q. And you walk in, and you were going to walk
18 straight back to the bedroom where you and Oscar sleep.
19 How long would it take you?

20 A. Five minutes, if that long, three minutes.

21 Q. Three minutes?

22 A. Seconds, three seconds. Not long at all.

23 Q. And what do you think the distance is?

24 Let me withdraw that question. Let me just ask
25 you, if you came home in that situation, the chime goes

1 off and [REDACTED] and Oscar were back in your bedroom,
2 would you know it?

3 A. Yes.

4 Q. And has that ever happened?

5 A. No.

6 Q. Has [REDACTED] ever told either you or Deborah, that
7 you know about, that Oscar sexually abused her?

8 A. No, she did not.

9 Q. And have you ever told Oscar to apologize to her
10 for sexually abusing her?

11 A. No, I did not, and if I were -- if that had
12 occurred, it would be more than an apology that I would
13 ask him to do.

14 Q. What would you do?

15 A. The police would have been involved, immediately.

16 Q. Even though Oscar's your husband --

17 A. Yes.

18 Q. I presume you love him.

19 A. Yes.

20 Q. You would have called the police immediately?

21 A. Yes.

22 Q. What about Deborah? What do you think she would
23 do?

24 A. The same. The police would have been involved
25 immediately.

- 1 Q. Do you have any children?
- 2 A. No, I do not.
- 3 Q. Has [REDACTED] been treated by you as a child, as a
- 4 natural child?
- 5 A. Yes, she has.
- 6 Q. And has she responded by treating you as a family
- 7 member?
- 8 A. Yes.
- 9 Q. What does she call you?
- 10 A. In very young days -- she was beginning to call me
- 11 Mommy, she was, but she calls me Titi.
- 12 Q. And what did she call Oscar?
- 13 A. Daddy.
- 14 Q. Okay. In the times that [REDACTED]'s been in your
- 15 house, have you ever heard her use language to describe
- 16 private parts?
- 17 A. She will call breasts titties.
- 18 Q. And what would she call her vagina, if you ever
- 19 heard her --
- 20 A. I never heard her say something about vagina.
- 21 Q. Is that something she would have gotten from you?
- 22 A. No, she would not, because when she would say
- 23 titties, I would say, Do not say that. Say breasts.
- 24 Women have breasts, not titties.
- 25 Q. And did you ever instruct her that there was a

1 particular term to refer to her vagina?

2 A. Vagina.

3 Q. So you taught her that term?

4 A. Yes.

5 Q. Have you ever heard her call it the mussy, or
6 mussie?

7 A. Only on that video.

8 Q. You've seen the video?

9 A. Yes.

10 Q. Okay. Now, you and Oscar, you say, have been
11 married five years?

12 A. Yes.

13 Q. What is your relationship?

14 A. I'm sorry?

15 Q. You're still -- I mean, obviously, you haven't
16 lived in a house with him for a while.

17 A. A year and seven months.

18 Q. And at that time, a year and seven months, in
19 2015, were you on good terms with him?

20 A. Yes.

21 Q. Let me go back. When you met Oscar, did he make
22 you aware that he had HIV?

23 A. Yes.

24 Q. And was that a factor in your deciding to marry
25 him?

1 A. No.

2 Q. Why not? I mean, wouldn't that put you at risk?

3 A. I guess because of my background, I have a
4 bachelor's of science in nursing, I know that it is not
5 the death sentence that it once was when it was first
6 introduced, and that there -- there's no cure, no, but
7 there's treatments, and a person can live a long, healthy
8 life if they do what -- take their medicines properly.

9 I wasn't threatened by that. It wasn't the
10 disease, it's the person that I'm in love you.

11 Q. I see. And are you still in love with him?

12 A. Yes, I am.

13 Q. And I apologize in advance, but I'm going to ask
14 you because this is the type of case it is, about your
15 physical relationship with your husband.

16 A. Yes.

17 Q. Were there times that you were intimate as husband
18 and wife?

19 A. Yes, there were.

20 Q. And how would you deal with the fact that your
21 husband was HIV positive?

22 A. We would use condoms.

23 Q. Each and every time?

24 A. Yes.

25 Q. Were there any times that you didn't?

1 A. No.

2 Q. And were you physically intimate at the time -- as
3 of August 2015? I'm not saying continuously, but were
4 there times?

5 A. Yes.

6 Q. And each time, Oscar would use protection?

7 A. Yes.

8 Q. Okay. And you were comfortable with that?

9 A. Yes.

10 Q. And he received treatment at the VA for his
11 condition?

12 A. Yes, the Dorn VA, Columbia.

13 Q. Just a minute, please.

14 So my understanding of your testimony is that the
15 last time you saw [REDACTED] other than this week in
16 court --

17 A. Yes.

18 Q. -- was around August 15, 20 --

19 A. It was exactly August 15th.

20 Q. And so on that day, after the physical at family
21 health center, did you take her somewhere?

22 A. To 1259 Sawyer Street.

23 Q. And you dropped her off, sort of as normal?

24 A. Yes. Demetria was not present. The grandmother
25 was at home, Zelda Fuller.

1 Q. Okay. And you haven't seen her since except for
2 this week?

3 A. Haven't seen her; yesterday, actually.

4 Q. And do you have an explanation for that?

5 A. She had begun public school. August 15th was the
6 last day I saw her. August 17th, school began. The
7 church were supposed to go to Atlanta, leading up to
8 Labor Day.

9 Demetria was in Florence. She was in Destiny's
10 custody. They were going back and forth to whether or
11 not she would come to Holly Hill to go on the church
12 chartered bus to go to Atlanta. One said she could miss
13 school and go, the other said no.

14 I was not -- kind of aggravated with that, so I
15 said to my sister, This is not going to be the only
16 chance she's going to get to go to Atlanta.

17 Q. Let me just ask you, you've already established
18 you haven't seen her before this week --

19 A. Right.

20 Q. -- since August 15th, 2015. Have you had any
21 communications with either Destiny or Demetria?

22 A. Demetria called --

23 Q. When?

24 A. My cellular phone -- it was in September, on a
25 Tuesday evening. I can remember that clearly because I

1 love the show The Haves and the Have Nots on the OWN
2 channel, and that's what I was watching, around about
3 9:30 p.m., saying, I know what your husband did to my
4 baby, and you know as well, ranting and raving.

5 And I wasn't tolerant of that, first of all,
6 because it's disrespectful. I'm older than she, and I
7 couldn't believe she was making that accusation, knowing
8 that we have that relationship with [REDACTED] that Oscar
9 would do such a thing, so I told her [REDACTED] would no
10 longer be coming to 11 -- yes, I would still love her and
11 always love her, but she will not be coming back to 1157.

12 Q. Okay. And so you made that decision?

13 A. Yes, I did.

14 Q. And was that in light of the allegation?

15 A. Yes.

16 Q. Okay. Now, let's fast forward to this week.
17 You've been in the passageway for the last couple days,
18 being sequestered as a witness, waiting to testify,
19 correct?

20 A. Yes.

21 Q. And yesterday I understand that you got to see
22 Keamanni?

23 A. Uh-huh.

24 Q. What was her reaction to seeing you?

25 A. When she saw my sister and myself, a cousin and a

1 friend, she hugged each one of us, but when she got to
2 me, it was more like, Oh, Titi, and she held on to me for
3 a little while, and then they went on to where they were
4 going.

5 Q. Okay. And that was her mother and her aunt who
6 were with her?

7 A. Yes, yes.

8 Q. I see. Now, were you in the passageway on Tuesday
9 morning?

10 A. Yes.

11 Q. And do you know if you were out there when Destiny
12 testified?

13 A. Yes.

14 Q. Did you see when Destiny exited the courtroom
15 after her testimony?

16 A. Yes.

17 Q. What was her demeanor?

18 A. She was laughing. Demetria was also in the
19 hallway, laughing.

20 Q. And what did they do then?

21 A. Went across the hall into the solicitor's office.

22 Q. Were they still laughing when they went in there?

23 A. Yes, they were.

24 Q. Did they say anything, either one of them?

25 A. Something was said, but I cannot recall right now.

1 Q. Okay. Have you ever known Demetria to use her
2 daughter to get something she wants?

3 A. Yes.

4 Q. Tell me about it.

5 A. There were times when [REDACTED] was in Holly Hill
6 and she would say, [REDACTED] is going to be coming back to
7 Orangeburg, and she won't be coming to Holly Hill for a
8 while, and that was because she needed her child to be
9 able to live with the mother, Zelda Fuller, to be in that
10 household, and she needed [REDACTED], I say, as a pawn.
11 Yes.

12 Q. Okay. Just a couple final questions. You have a
13 bachelor's in nursing?

14 A. Yes.

15 Q. From what school?

16 A. South Carolina State.

17 Q. And have you ever worked as a nurse?

18 A. Yes. I did five years at East Cooper Hospital and
19 five years at Roper Hospital, which is now Roper St.
20 Francis.

21 Q. Are you employed now?

22 A. No, I'm disabled.

23 Q. Do you receive disability benefits?

24 A. Yes, I do.

25 Q. And does your husband also receive benefits?

1 A. Yes.

2 Q. From the VA?

3 A. Yes.

4 Q. He was in the Armed Forces.

5 A. Yes, he was, in the Army.

6 Q. Was he active duty when you met him?

7 A. No, he was not.

8 Q. I see. Okay.

9 MR. PALMER: No further questions. Oh, Your
10 Honor, I move to admit Defendant's 6, 4, and 5.

11 THE COURT: What say the State?

12 MS. CORNWELL: No objection, Your Honor.

13 THE COURT: Okay. 6, 4, and 5 are in.

14 (Defendant's Exhibit Nos. 4, 5, and 6 were
15 marked as for identification and admitted into evidence.)

16 CROSS-EXAMINATION

17 BY MS. CORNWELL:

18 Q. Good afternoon, Mrs. Small. I'm not going to keep
19 you on the stand too long. I know this isn't pleasant
20 for you. Just a couple questions.

21 Have you and I ever met or discussed this case?

22 A. We have not.

23 Q. In fact, I invited you to my office recently to
24 speak?

25 A. Yes.

1 Q. And you respectfully declined speaking to me; is
2 that correct?

3 A. Yes, because I'm the wife of Oscar, yes.

4 Q. Yes, ma'am. But I think you would agree with me,
5 and you've testified and I agree with you, that you love
6 [REDACTED] very much, don't you?

7 A. Yes.

8 Q. And you took a large part in raising her when she
9 was younger?

10 A. I did.

11 Q. And you didn't raise her to lie, did you?

12 A. I did not.

13 Q. And [REDACTED] loved you very much?

14 A. Yes, she does.

15 Q. And she still loves you very much, doesn't she?

16 A. Yes.

17 Q. And she loved your sister very much?

18 A. Yes.

19 Q. And she even loved Oscar very, very much, didn't
20 she?

21 A. Yes.

22 Q. And you had mentioned that after she graduated
23 from OCAB in May of 2015 -- that was summer, so she
24 wasn't in school.

25 A. Right.

1 Q. She got to stay with you a lot during the summer?

2 A. Yes, she did.

3 Q. All the way up to August 15, 2015?

4 A. Yes, she did.

5 Q. Didn't stay the whole time, still got to go home a
6 few times?

7 A. Yes, yes.

8 Q. But you would agree with me that y'all treated
9 [REDACTED] like a princess?

10 A. Yes, we do.

11 Q. You thought of her as your own daughter?

12 A. Yes.

13 Q. And I think you testified you would buy her
14 clothes, toys; she got to go to fun places with you. I
15 think she even told me a part about going to Myrtle Beach
16 with y'all and getting to swim in the ocean.

17 And after August 15 of 2015, you said you never
18 got to see [REDACTED] again?

19 A. No, we did not see her.

20 Q. Up until yesterday.

21 A. Yesterday.

22 Q. Okay. And even after all that time, she still ran
23 right up to you and gave you a hug?

24 A. Yes.

25 Q. But around the end of August and, I believe,

1 September, when you were watching The Have and the Have
2 Nots, you got a call from Demetria, and she said, I know
3 what your husband did, and I know you know?

4 A. Uh-huh.

5 Q. And your response to that was, I'm glad it's all
6 out?

7 A. No, it was not. My response was, I cannot believe
8 you are making this accusation, knowing what we have done
9 for [REDACTED], and you have been in this household, and
10 she knows that Oscar would never, ever do anything to
11 hurt [REDACTED]. That was my response.

12 Q. Okay. So you never told her, I'm glad it's out in
13 the open.

14 A. No, I did not, and I also asked for her, [REDACTED],
15 my sister, Deborah Robinson, myself, and Oscar to go into
16 the office of our pastor at the time, because I wanted to
17 hear [REDACTED] say, Titi, Mimi, Reverend Brown, my daddy
18 did touch me, and she said no.

19 Q. Okay. And you indicated that you had seen the
20 forensic interview.

21 A. Yes.

22 Q. How did you see that?

23 A. Going through the motions with Scott, preparing
24 for this case.

25 Q. Okay. So you know exactly what she said happened?

1 A. Yes.

2 Q. Okay. And you obviously love your husband very
3 much.

4 A. Yes.

5 Q. You're pretty active in the church, you and your
6 sister both?

7 A. Yes.

8 Q. And [REDACTED] was active in the church with you?

9 A. Yes:

10 Q. And I think you just testified she loved going to
11 church?

12 A. Yes.

13 Q. And through the church, she also got to go to
14 exciting places, Charleston?

15 A. She did.

16 Q. So those were always very fun times for her?

17 A. Yes.

18 Q. Okay. And you didn't get to see any of the
19 testimony or anything that was going on, but did

20 [REDACTED] -- the reality is [REDACTED] told you and Deborah
21 at some point --

22 A. That is not the reality because she never told me.

23 Q. She never told you that Oscar was hurting her?

24 A. No, she did not.

25 Q. And you never made Oscar apologize to her?

1 A. I did not. Again, as I stated to Scott, it would
2 have been more than apologize to [REDACTED].

3 Q. Okay. And after all this happened, your
4 relationship with Demetria -- I think you would agree, as
5 she stated, that y'all were family up until this point;
6 that she looked at y'all as family and you looked at her
7 as family.

8 A. Yeah, uh-huh.

9 Q. In fact, you kind of took a part of raising her as
10 well?

11 A. My sister more than me, uh-huh.

12 Q. And that's how y'all became godparents of
13 [REDACTED]

14 A. Right, right.

15 Q. She trusted you with her daughter?

16 A. Yes, yes.

17 Q. So much so that you allowed her to take her out of
18 state and do other things with her daughter?

19 A. Yes.

20 Q. Okay.

21 MS. CORNWELL: That's all the questions I
22 have, Your Honor.

23 THE COURT: Okay.

24 MR. PALMER: Nothing further.

25 THE COURT: All right. You can step down.

1 MR. PALMER: I call Deborah Davis -- excuse
2 me, Deborah Robinson.

3 DEBORAH DAVIS ROBINSON,
4 having been first duly sworn,
5 was examined and testified as follows:

6 THE CLERK: Please state your name for the
7 record.

8 THE WITNESS: Minister Deborah Davis
9 Robinson.

10 DIRECT EXAMINATION

11 BY MR. PALMER:

12 Q. Do you always start your name with Minister?

13 A. Most of the time I do.

14 Q. What kind of minister are you?

15 A. I'm a minister licensed to practice in the AME
16 church since 2013.

17 Q. Are you actively preaching in the AME church?

18 A. I am. As a matter of fact, I'm preaching in my
19 church this Sunday.

20 Q. What church is that?

21 A. Greater Target AME Church on Old State Road in
22 Holly Hill, South Carolina.

23 Q. What is your occupation?

24 A. I'm a private duty nurse.

25 Q. Are you also a nurse?

1 A. I am.

2 Q. Do you have a degree in nursing?

3 A. No, I don't.

4 Q. So --

5 A. I have other degrees.

6 Q. You have other degrees.

7 A. Yes.

8 Q. Tell me about your degrees.

9 A. I have a certificate in industrial math issued by
10 the Miles Corporation. I have a certificate in
11 accounting and secretarial science by Crown Business
12 Institute located in Jamaica, New York. I have a
13 master's of divinity and a bachelor of religion issued by
14 Crown Business Institute. I'm currently a junior at
15 Allen University, a secular school, pursuing another
16 degree in religion.

17 Q. But you're not the pastor of that church?

18 A. No.

19 Q. Pastor is something different?

20 A. Totally different.

21 Q. Okay.

22 A. I'm the local preacher.

23 Q. And you live in Holly Hill?

24 A. I do.

25 Q. You live close to where your sister Detra lives?

1 A. Yes.

2 Q. And, obviously, you're aware that we're here to
3 talk about Oscar and [REDACTED]

4 A. I am.

5 Q. When did you first meet [REDACTED]?

6 A. The day she was born.

7 Q. Were you there when she was born?

8 A. Not for the actual birth. I arrived at the
9 hospital right after.

10 Q. And what drew you to the hospital? What compelled
11 you to go there to see her?

12 A. I was there in the capacity of her godmother.

13 Q. You were already her godmother the day she was
14 born?

15 A. Yes. I was already asked.

16 Q. So you must have had a relationship with her
17 mother, Demetria?

18 A. I did.

19 Q. Describe that.

20 A. I met her at one of the church members' house,
21 someone she calls Aunt. Whether they're biologically
22 related, I don't know. She would be over there, so then
23 I asked her -- her and her sister, a few times, came to
24 my home to babysit my step-grandchildren while I was at
25 work.

1 Q. Okay.

2 A. And when she conceived, she asked me and my then
3 husband to be her godparents.

4 Q. Okay. So at some point did [REDACTED] live in your
5 home?

6 A. Oh, yes.

7 Q. And how old was she when she first came to live in
8 your home?

9 A. She was ten days old.

10 Q. And were -- was anyone else there but you?

11 A. In my home?

12 Q. Yes.

13 A. That lived in my home? No.

14 Q. So for a while, it was just you and [REDACTED] in
15 the house?

16 A. Yes, yes, because my husband and I were already
17 separated.

18 Q. Okay. And are you divorced now?

19 A. Oh, yes.

20 Q. Okay. So [REDACTED] is a little baby. Did you take
21 responsibility for raising her?

22 A. At that time, it was a family effort.

23 Q. I see.

24 A. She's known to all our family, on both sides.

25 Q. Okay.

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1 A. And she's treated as though she is a biological
2 relative, on both sides. How she got -- if I may
3 elaborate, she was at my home. I was then working a
4 full-time job. I would take her to my mother's home,
5 where my mom and my sister and Oscar reside, for them --
6 you know, when I went to work.

7 And [REDACTED] was born in October, so my mother
8 would fuss because she's a very doting mom. Because of
9 my preacher capacity, I would have meetings and so forth
10 and so on after work, so it would be at night when
11 sometimes I finished, and she said it was too cold to be
12 taking her out, so she said, Leave her here.

13 So every evening after work, I would go, do the
14 bottles, and we would have play time and family, do what
15 we always did, and that's how she got to stay there, and
16 then it got to the point she didn't want to come with me.
17 She wanted to stay there.

18 Q. And you're talking about 1157 Lowell Street?

19 A. I am.

20 Q. Did you have any involvement in getting [REDACTED]
21 involved in the AME church?

22 A. We all did because it was instilled in us. That
23 was something that was instilled in us, in our rearing.
24 It wasn't on Sunday you were asked if you wanted to go to
25 church, it was something that the family did and it was

1 something that you did on Sunday morning. So being that
2 she was a resident in our home, she automatically just
3 fell into the routine of worship.

4 Q. And as [REDACTED] grew older, did you still maintain
5 a relationship with her mother, Demetria?

6 A. Yes.

7 Q. And what is your relationship with Demetria now?

8 A. Since this came about, we have not been able to
9 communicate. Yesterday was the first time I've seen them
10 since this.

11 Q. You said you weren't able to communicate. Is that
12 something that was someone's choice or has it been -- is
13 there some external reason?

14 A. I've had personal experiences with her in the
15 past, and I know that manipulation that can come behind
16 it. We took it as a personal choice, not to communicate,
17 so that it would not be turned around or be used against
18 us, and then once the legal proceedings started, then it
19 was decided that that is what needed to be done.

20 Q. And the legal proceedings started, what, with
21 Oscar's arrest?

22 A. Exactly.

23 Q. Okay. Now, you use the term manipulative. Have
24 you experienced Demetria to be a manipulative person?

25 A. I have.

1 Q. And what do you mean by that?

2 A. We were born and raised in New York, so we have a
3 home -- my parents had a home in New York, and we had a
4 home there. It just happened with their health
5 disparities one ended up here more than the other, so my
6 mom was here. My dad was in New York, which is where he
7 died, in New York.

8 So we came here -- well, my sister was already
9 there. I went to New York in preparation for the
10 funeral, and we had a service there, of course, and we
11 came here. Oscar and [REDACTED] met us, because we went --
12 the family rented a bus. They met us, and, of course, we
13 had had the arrangements and had the funeral and stuff
14 here, and, of course, as a family member, she attended.

15 When it was time to return to New York, the plans
16 was divulged to her, and she agreed. Okay. Fine. She
17 was already living at our home with us. She said fine --

18 Q. Now, wait a minute. Who was living at your home?

19 A. [REDACTED]

20 Q. Okay.

21 A. She had gone to, I think, Philadelphia to a
22 funeral --

23 Q. You're talking about Demetria now?

24 A. Yes. And when she came back, Oscar met them and
25 got [REDACTED] from them, and then they came and met us

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1 when we came from New York on the bus.

2 We returned to New York on that very same bus, a
3 public bus, Greyhound, so to speak, bus full of people,
4 so she was not hidden in any kind of way, and [REDACTED] is
5 the type of person -- she's lovable.

6 Q. Yes. We've seen her.

7 A. So everybody talks to her. And then I started
8 getting phone calls from Holly Hill, that the word on the
9 street was the police was looking for me for kidnapping.

10 Well, prior to that, I had three or four phone
11 calls from Orangeburg County. I'm in New York, and she
12 told her mom and told the officers I kidnapped her baby.
13 Nassau County was about to arrest me.

14 Q. Nassau County in New York?

15 A. Yes, and charged me with kidnapping, and my sister
16 thought to call y'all office, and so we stayed and
17 finished our plans and we returned.

18 But I told the officer -- and she was standing
19 right there. I told him, She speaks to this baby. She
20 know where she was. As a matter of fact, we even offered
21 her to come to New York.

22 I can't afford to come to New York.

23 I said, Demetria, nobody asked you about any
24 money. Do you want to come to New York?

25 We were going to fly up there. She said she

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1 didn't need to come up to New York. She knew [REDACTED]
2 was coming back to South Carolina, but she went and told
3 the officers that three or four times, never did report
4 and this and that, and da da da, and she had her mom
5 believing that.

6 Well, we got back that night. We were still
7 getting in the process of unloading stuff. We still had
8 on our traveling clothes. Knock came on the door. It
9 was the Orangeburg County sheriff department and Holly
10 Hill officer, his first name is Henry, I don't know his
11 last name, and he knows our family very well.

12 And they took [REDACTED], and she leapt at her
13 like this, and after she got back in her mom's home, two
14 weeks, later [REDACTED] was back. That same officer saw us
15 in the gas station, and he had said that we needed to
16 report and document everything that is done and said and
17 her condition and everything when she comes back, he
18 said, because this seems like it's going to be trouble,
19 if somebody is going to do that, and that was that.

20 Then, some year or so whatever later, call
21 me, ranting and raving --

22 Q. This is Demetria?

23 A. Yeah, and I'm hearing from people in the
24 background, She's going to jail, da da da.

25 They accused me of IRS fraud. I hadn't even filed

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1 my taxes that year.

2 Q. Why would she do that?

3 A. What I found out later, someone else had filed --
4 someone filed her the year before.

5 Q. Filed her, what do you mean?

6 A. Filed [REDACTED] as a dependent.

7 Q. As a dependent?

8 A. Yes. So evidently -- not evidently. That same
9 person filed her again that year and must be not -- she
10 didn't, you know, give that consent. So when she went to
11 file, you know, of course the system spit it out because
12 that number was already used.

13 Q. Have you ever tried to claim [REDACTED] as a
14 dependent for tax purposes?

15 A. No. I told her I didn't have to do that. I
16 didn't need that money, but I would have been well within
17 my right had I done so because she lived in our home. We
18 cared for her. We bought everything for her, so I would
19 have been well within my right, had I done so, but I
20 never did, never.

21 Q. I see. Since this allegation has come out, which
22 I understand to be about the middle of August of 2015,
23 does that --

24 A. Well, a little later.

25 Q. Is that your recollection? Have you ever had any

1 conversations, either in person or on the phone, with
2 Demetria?

3 A. Yeah, yes.

4 Q. Well, tell us when it happened and what the
5 conversation was.

6 A. May I add, please, too, regarding the kidnapping
7 situation, she had convinced her mom that I kidnapped
8 this child, and when it surfaced, when the truth
9 surfaced, her mom even apologized to me and said she
10 would not let her embarrass her like that again.

11 Q. Okay. So back to the question.

12 A. Uh-huh.

13 Q. Have you had any conversation with Demetria since
14 the allegations came out?

15 A. Yes. We spoke by phone several times.

16 Q. And what was the purpose and the context of those
17 conversations?

18 A. Because we were all concerned about this child,
19 you know, who lived in our home since she was ten days
20 old, and not only we were god -- me and my then husband
21 godparents, we had her officially baptized in the church,
22 beautiful baptism ceremony, clothes and everything, and
23 they became godparents also. Oscar and Detra were
24 godparents also.

25 So she called me Mimi. She called my then-husband

1 Dada. Oscar was Daddy, because I don't know who her
2 father is, but that is the only daddy that has ever taken
3 care of her, and she called Detra either Mama Titi, or
4 Titi, because, you know, in the islands Titi means aunt.

5 Q. Okay. I didn't know that, but --

6 A. Yeah.

7 Q. So have you been involved with [REDACTED] in the
8 church?

9 A. Yes.

10 Q. And would it be a fair statement that you and
11 Deborah took it upon yourselves to make sure she was in
12 church every Sunday?

13 A. Yes. She took it upon herself also because during
14 the week and by Sunday morning, every Sunday morning, she
15 would have a new Bible verse memorized or she wanted
16 to -- because we have children's time in our church every
17 Sunday, so she wanted to look like the bigger children
18 because it's 12 and under, so we would write the Bible
19 verse on an index card, piece of paper or something. So
20 she would have a phone --

21 Q. Keamanni had a phone?

22 A. Oh, yeah. We would pull up -- she was very
23 pampered, pull up the Bible verse on the phone, and she
24 couldn't read. She had her verse memorized and what we
25 do, line the children up and we pass the mike, and all

1 the children would recite a Bible verse. And then when
2 one of the ministers, me or one of the other three
3 ministers that are down there with them, we would do our
4 Bible verse last, and then we would have maybe a five- or
5 seven-minute instruction period, and [REDACTED] was down
6 there every Sunday morning, and before that, she would
7 have already given her her Sunday school summation of
8 what she learned in Sunday school class.

9 Q. Were there ever any times that you and Deborah
10 would go to church and leave [REDACTED] in the home with
11 Oscar?

12 A. No.

13 Q. Would [REDACTED] ever want to stay home from church?

14 A. No.

15 Q. Would she ever be in a hurry to get to church?

16 A. Oh, yes. Oh, yes. She would be very upset
17 because she would tell you she had to go to Sunday
18 school. She wanted to be on time, and she wanted to be
19 present because she had to go in the secretary's office
20 and speak to them first.

21 If the pastor is already there, she had to go in
22 the pastor's office, and then she'd go in her Sunday
23 school class. From there, she'd go into fellowship hall,
24 do her Sunday school summation, and if it's fourth
25 Sunday, she'd go in the choir room because she sings in

1 the choir. If not, she sit with the other children until
2 it's time for children's time, and then they go out for
3 children's church, if it's children's church Sunday. If
4 not, they go and sit as a group during the worship
5 service.

6 Q. I see. And you've already said you haven't seen
7 her since August 2015 until this week?

8 A. Not until yesterday.

9 Q. And what was her reaction to seeing you?

10 A. She was happy, and we were elated. She hugged my
11 cousin, my sister's sister-in-law, myself, and Detra.

12 Q. Now, have you been here Tuesday and Wednesday, or
13 today?

14 A. I've been here all week.

15 Q. You've been out waiting in the passageway?

16 A. Yes.

17 Q. Were you here when Destiny Roberts testified?

18 A. I was.

19 Q. Did you witness Destiny Roberts exit the
20 courtroom?

21 A. Yes.

22 Q. What was her demeanor?

23 A. She came out kind of happy and jolly. She smiled
24 and was laughing and came out, and her sister was
25 standing in the door of -- I think -- what does that door

1 say, solicitor's office, and they laughed, and when they
2 went in the room, you could hear laughter.

3 Q. I see. Who is Charles McLamore?

4 A. He is a former pastor, but he's a spiritual mentor
5 and a very close family friend, and he's -- he was at our
6 church. He was the leader of the church during
7 [REDACTED]'s younger years.

8 Q. I see. Was he the pastor in August of 2015?

9 A. No.

10 Q. He had already gone by then?

11 A. Yes.

12 Q. How old do you think [REDACTED] might have been when
13 he was -- last served as pastor?

14 A. Maybe four-and-a-half.

15 Q. Okay.

16 A. But she was --

17 Q. So would he have had ample opportunity to observe
18 her in church?

19 A. Oh, yes. She would go in his office too when he
20 served as the pastor of the church, and he was in our
21 home a lot.

22 Q. Now, you've had a lot of opportunity, it sounds
23 like, to observe the relationship between Oscar and
24 [REDACTED]

25 A. Yes. We're a very close family.

1 Q. And how would you describe that, other than what
2 you did? What was their relationship?

3 A. She loved her daddy, and her daddy loved her.

4 Q. I see.

5 A. And he treated her as if she was a princess, and
6 she knew that. She would listen to him more than she did
7 the rest of us, but their relationship, it was -- knowing
8 the background that he is not her biological father, you
9 would never know it, because most people -- and that came
10 up also, things that we didn't know, that a lot of people
11 thought Detra and Oscar were her biological parents
12 because she was in our home twenty-four seven, every day,
13 seven days a week.

14 So that is all they knew, and Oscar and Detra was
15 basically all she knew. I mean, she knew Demetria, but
16 during that time, she didn't spend time with her.

17 Q. I see.

18 A. Because her very first Mother's Day -- as a matter
19 of fact, after church service I drove her to Orangeburg
20 and took her to the house where she could see her, and
21 then when they spent some time together, I put her back
22 in the car and I took her home.

23 Q. Was that the house on Sawyer Street?

24 A. Yes.

25 Q. And who is Mecca?

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1 A. A friend of Demetria's. I don't think they're
2 related.

3 Q. I see. Okay. Have you ever been over to Mecca's
4 house?

5 A. I have never been out -- I have never put my foot
6 on the ground in her yard, but I have been there to pick
7 her up and drop her off.

8 Q. I see. Okay.

9 A. When Demetria lived there with her.

10 Q. All right. Thank you.

11 MR. PALMER: I don't have any further
12 questions.

13 THE COURT: Hang on just a minute.

14 CROSS-EXAMINATION

15 BY MS. CORNWELL:

16 Q. Ms. Robinson, how are you doing this afternoon?

17 A. I'm doing fine, thank you. How are you?

18 Q. I'm good. I'm going to try not to keep you on
19 that stand too long. I know this is not a fun
20 experience.

21 Have you and I ever met or talked about this case?

22 A. No. You asked me to talk to you.

23 Q. But you declined?

24 A. I wouldn't.

25 Q. You would agree with me that you helped raise

1 [REDACTED] She was in your home often; she would go back
2 and forth between your home and where her Aunt Destiny
3 lived and Zelda and Demetria?

4 A. She was reared in our home, yes.

5 Q. And through that, you told her not to lie, didn't
6 you?

7 A. Of course.

8 Q. Because telling the truth is very important, isn't
9 it?

10 A. Yes, it is.

11 Q. And when she got to be with you and stay with
12 y'all, you said y'all treated her like a princess?

13 A. We did.

14 Q. She did not have to want for anything?

15 A. She did not.

16 Q. She got to go to fun trips with y'all?

17 A. She did.

18 Q. She even told me about a time you took her to
19 Myrtle Beach and she got to swim in the ocean for the
20 first time.

21 A. No, ma'am.

22 Q. You never took her to Myrtle Beach to swim in the
23 ocean?

24 A. No, I did not.

25 Q. All right. But you would agree that you've taken

1 her to fun places --

2 A. Now, maybe she may have gone with -- because,
3 like, I work and I go to school. My sister and Oscar had
4 more time with her.

5 Q. Okay.

6 A. They took her more places.

7 Q. Okay. But she may have just gotten confused, and
8 it may have been that Titi and Oscar took her to Myrtle
9 Beach to swim?

10 A. May have, but it wasn't Mimi.

11 Q. But she also got to have fun. She was treated
12 well. You raised her right, under the eyes of the
13 church?

14 A. We tried to make her rearing experience as happy,
15 pleasurable, and accommodating as ours was, and we had a
16 very good childhood, and as her -- in trying to rear her
17 properly, we gave her and did her the way our parents had
18 did us, and our godparents, so we knew how godparents are
19 supposed to do, and that is what we did.

20 Q. And, no doubt about it, you love her like a
21 daughter?

22 A. Of course. I still do.

23 Q. And, no doubt about it, she loves you.

24 A. Yes.

25 Q. In raising her -- we talked about being truthful

1 and being honest. Did you get to see the video of her
2 forensic interview?

3 A. I saw parts of it.

4 Q. Okay. So you know parts of what she said happened
5 to her.

6 A. Yes.

7 Q. And let's talk a little bit about honesty. I
8 think earlier you said that you work as a private duty
9 nurse?

10 A. Yes.

11 Q. But you don't have a nursing degree?

12 A. No.

13 Q. So you would be more of a caregiver and not a
14 nurse?

15 A. My title is I'm a private duty nursing assistant.

16 Q. All right. And you said when [REDACTED] came, when
17 [REDACTED] was born, you and your husband were already
18 separated?

19 A. Not when she was born.

20 Q. But y'all are no longer together?

21 A. No.

22 Q. And isn't it true that as far as being honest and
23 being truthful, the only person in this courtroom that
24 has ever been dishonest about sexual allegations is you?

25 A. No, it is not. Why and how would you say that?

1 Q. In February of 2011, didn't you accuse your
2 then-husband of criminal sexual conduct of second
3 degree --

4 A. I did.

5 Q. -- by claiming that he raped you?

6 A. And if you want to bring those charges up, I'll be
7 more than happy to discuss that. Yes, I did. I accused
8 him of criminal sexual conduct. I accused him of
9 domestic violences, but he was threatening me. I dropped
10 it, yes, I did, but he also went to jail before that,
11 after and before.

12 Q. Okay. I'm not asking about any of those times,
13 but you would agree with me that after you made this
14 allegation that he raped you and beat you, that
15 approximately two weeks after they arrested him on those
16 charges, you filed a statement -- and that's your
17 handwriting, correct?

18 A. Yes, it is.

19 Q. It's a five-page statement where you tell law
20 enforcement that the day you called them and alleged this
21 rape and domestic abuse, you were not being truthful;
22 that you had found out, or you had heard rumors, that he
23 was cheating on you, and because that fuelled your fire,
24 you called the police, reported a rape that did not
25 occur, and two weeks after he was arrested, you felt that

1 you needed to be honest. You spoke to your pastors about
2 it, and you wrote a statement admitting that you lied
3 about the allegation.

4 A. I did, and I spoke to my pastors, and they advised
5 me not to do that. Even the arresting officer that
6 investigated and all of them told the judge that they
7 knew that I was being threatened and that I did not --
8 and that I was telling the truth.

9 Q. Okay. So let me get this straight: You were
10 lying here or you were lying to the Court when you said
11 you were lying --

12 A. At the time -- okay. You want to put that in a
13 box, and especially you want to bring that in to a
14 spiritual standpoint, and I'm not going to be a part of
15 that because I'm not going to allow you to put God in a
16 box and then bring him out for your momentary purposes,
17 okay?

18 That has nothing to do with how we reared her, to
19 go to church, and that and me as an adult, with me and my
20 husband, has nothing to do with this man being a daddy to
21 a little girl that does not even have a father and was
22 being reared properly in a home that was wholesome.

23 Q. You would agree with me the very last question
24 asked in this statement is, Did anyone, including
25 Theodore Shaw, threaten you to change your statement?

1 And your answer was, No. I'm doing so
2 because it was wrong and because God is not pleased with
3 me.

4 A. I did.

5 Q. That's why you said you made up the allegation?

6 A. I did.

7 Q. And you write in very clearly that the reason --

8 A. I did.

9 Q. Okay.

10 A. And I will say again, I'm under oath, and I'll say
11 again, just as I said then when the officers and everyone
12 know he was threatening me, and that is why I did that.
13 And I will also say again, it was since then that
14 everyone knew what kind of person he was, and that has to
15 do with what?

16 Q. So you talk about Demetria being manipulative?

17 A. Yes.

18 Q. But you're also --

19 A. No, I'm not manipulative. That wasn't about to
20 ruin anybody's life.

21 Q. So you haven't used the police to further an
22 agenda?

23 A. No.

24 Q. Okay. You've also mentioned -- you said [REDACTED]
25 had a phone. She was very pampered?

1 A. She was.

2 Q. And y'all would use that phone to text her and let
3 her know y'all were coming home and things like that,
4 correct?

5 A. Use what phone to text who?

6 Q. [REDACTED]'s phone you gave her. Y'all would send
7 her text messages on her phone?

8 A. To let her know what?

9 Q. Different things, like, Hey, I'm coming home, or,
10 I'll see you in a few minutes, things of that nature?

11 A. No.

12 Q. Did you ever text her on her cellphone?

13 A. Not that I can remember.

14 Q. Okay.

15 A. First of all, she never took that phone home.
16 When she left, it stayed in her room at the house. She
17 never took that phone to Orangeburg.

18 Q. Okay. But she would use it when she was at that
19 house, when she was at Detra's house.

20 A. Yes, sir, she would.

21 Q. And the people that had that phone number and
22 would call and text her would have been you or Detra or
23 Oscar or Teddy?

24 A. Why would we have to call or text her when she was
25 with us? And when she left us, she didn't take the phone

1 with her.

2 Q. I'm just asking. I haven't had an opportunity to
3 speak with her.

4 A. I just told you. When she left our home, she
5 didn't take the phone with her.

6 Q. You also said that you never, ever left her at
7 home alone with Oscar and Detra never ever left her at
8 home alone with Oscar?

9 A. We would go to the store. She's outside riding
10 her four-wheeler or something, but did we go to church
11 and leave her for hours? No.

12 Q. But you would admit that there have been times
13 where she has been left at home alone with Oscar?

14 A. Yes. She's been left alone with a lot of people.

15 Q. Okay. All right. You also said you saw Destiny
16 laughing when she came out of the courtroom, kind of
17 jolly.

18 A. Yes.

19 Q. Could that also have been relief?

20 A. I don't know.

21 Q. Okay.

22 A. I'm not in her heart; I'm not in her mind; I don't
23 know. Only thing I'm saying, I knew when she walked out
24 she was laughing.

25 Q. Okay.

1 A. I don't think it looked like relief.

2 Q. And when [REDACTED] saw you yesterday, along with
3 Detra and, I believe you said, your cousin --

4 A. Yes.

5 Q. She had no hesitation running up to you and giving
6 you a hug and hugging you?

7 A. Not at all.

8 Q. Did she tell you she missed you?

9 A. She said, I love you. She told me to tell one of
10 the young ladies in church that she spent a lot of time
11 at their house -- she told me to tell Ms. Lasia (C) that
12 she miss her.

13 Q. Okay.

14 A. But during the times that I was still
15 communicating on the phone, she would tell me that she
16 missed us and that she loved us and that she wanted to
17 come with us. She would never say, I want to come with
18 you, she'd say, I want to come with y'all.

19 MS. CORNWELL: Okay. Thank you for answering
20 my questions, Ms. Robinson.

21 REDIRECT EXAMINATION

22 BY MR. PALMER:

23 Q. Deborah, that situation that you just spoke about
24 with the solicitor --

25 A. Yes.

1 Q. -- with your ex-husband, obviously, you ended up
2 divorcing him, correct?

3 A. Yes.

4 Q. And would you consider your divorce an unpleasant
5 experience?

6 A. It was something that was needed for my safety and
7 for my life to still be and for my wholeness, and, no, I
8 do not think it was an unpleasant experience. It was
9 a -- now, that was a relief. It was a relief to me.

10 Q. And now it's over.

11 A. Oh, yes. Thank God.

12 MR. PALMER: No further questions.

13 THE COURT: You can step down.

14 MR. PALMER: I got a five-minute witness,
15 Charles McLamore.

16 THE COURT: Will that be your last witness
17 for the day?

18 MR. PALMER: It will be except, for if I have
19 to call a witness for this, but that will be very brief
20 as well.

21 THE COURT: Do y'all need a break before we
22 take another short witness? Everybody okay? You need a
23 break? If you need one, we'll take one.

24 We'll take a short break. I'll get you back
25 out in ten minutes.

1 (Recess taken.)

2 THE COURT: Any issues I need to deal with?

3 MS. CORNWELL: The State is ready.

4 THE COURT: Have y'all decided how you're
5 going to offer the photograph?

6 MR. PALMER: I think the agreement is we'll
7 just stipulate and it goes into evidence, and I don't
8 know if Your Honor wants to give them a heads up --
9 because I didn't even ask his wife about it, so they
10 don't know it's coming.

11 THE COURT: Okay. And do y'all want to
12 publish it in the courtroom or do you want to wait for
13 them to look at it in the jury room?

14 MS. CORNWELL: I think the jury room is fine.
15 I don't know that we need to publish it in the courtroom.

16 THE COURT: That's fine. Maybe you can tell
17 them that it's part of the evidence. Do y'all want to --

18 MS. CORNWELL: Mr. Palmer can, in front of
19 the jury, say, Your Honor, based on the State's
20 stipulation, we're going to move this in as whatever
21 exhibit, whenever it was taken, today during the lunch
22 break, and then we can address it in arguments.

23 THE COURT: Okay. And I get guess you need
24 to tell them at least what it is, when they open the
25 photograph --

1 MR. PALMER: Yes, sir, and I'll have it in
2 this envelope.

3 THE COURT: All right.

4 (In open court, jury present.)

5 THE COURT: Okay. You may call your next
6 witness.

7 MR. PALMER: I call Reverend Charles
8 McLamore.

9 CHARLES C. McLAMORE,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 THE CLERK: You may have a seat, and please
14 state your name for the record.

15 THE WITNESS: My name is Charles C. McLamore.

16 BY MR. PALMER:

17 Q. Reverend, I first apologize for keeping you here
18 all day, but I'm not going to keep you any longer than I
19 can. It will be momentary.

20 You were previously pastor of Greater Target AME
21 Church in Holly Hill?

22 A. That is correct.

23 Q. During what time period, sir?

24 A. From December 2010 to December of 2013.

25 Q. Okay. And during that time, you presided over the

1 church, and your parishioners, did they include Oscar
2 Small?

3 A. Yes.

4 Q. And Detra Small?

5 A. Yes.

6 Q. And Deborah Robinson?

7 A. Yes.

8 Q. And the young girl [REDACTED]?

9 A. Yes.

10 Q. Do you recall [REDACTED]?

11 A. I do recall the baby.

12 Q. She was a baby then, huh?

13 A. She was young.

14 Q. How active was [REDACTED] in your church?

15 A. We had a very active young people's ministry, and
16 she would be involved in every activity, from season to
17 season, through the year that our young people would be
18 engaging in. There's the church school, and they have
19 activities across the year, many meetings. There's the
20 YPD, young people's division, which is children under the
21 women's missionary society; women being like the mothers
22 to the parents, or hands on to the children, so they
23 would be involved in meetings, and then there was the
24 sunbeam choir.

25 The sunbeam choir, kind of from the choir level,

1 had the little babies singing children's songs. So you
2 put those three departments and just about everything
3 else that touched children from the adult and church
4 level and all year long you would be engaging in, not to
5 mention the fact that when her family came to Bible
6 study, she was there.

7 Q. And her family would consist of --

8 A. I'm identifying her family as the Sister Detra,
9 and sometimes it was Sister Detra and Sister Deborah,
10 which is now minister because she started preaching under
11 me, Deborah, and Brother Oscar. I really miss them.

12 And when I anticipate that they would coming
13 certain Sundays and they didn't, which was a rare thing,
14 then I didn't see her, but she had a favorite name that
15 she gave me. I don't know how she got it, but she called
16 me Mack Moore. And she loved herself some Mack Moore, so
17 with that, we grew a bond. She would come into my office
18 occasionally, and not so much just to get candy, but just
19 to be close to her preacher.

20 Q. Would you say she was -- I don't need to ask you
21 that.

22 Would you -- do you recall any instances where
23 Detra and/or Deborah would show up and the child wouldn't
24 be with them?

25 A. I don't recall.

1 MR. PALMER: Thank you. No further
2 questions.

3 CROSS-EXAMINATION

4 BY MS. CORNWELL:

5 Q. So you weren't with the church in the summer of
6 2015; is that correct?

7 A. Not in the summer of 2015.

8 MS. CORNWELL: No further questions, Your
9 Honor.

10 THE COURT: Anything further? Thank you,
11 sir. You can step down.

12 THE WITNESS: Thank you.

13 MR. PALMER: Your Honor, I have one more
14 evidentiary issue. I'm holding in my hand what's been
15 marked as Defendant's Exhibit No. 2, which is out of
16 order, but since we didn't admit one, we substituted this
17 for the one that didn't get admitted.

18 And what it is, Your Honor, is during the
19 prosecution's case, both on the forensic examiner's video
20 and live testimony, there was some testimonial evidence
21 put in the record about -- in support of the allegations
22 about my client -- the color of my client's genitalia by
23 the complaining witness, and by agreement with the State,
24 agreement and stipulation, we have photographed this very
25 day Mr. Small's genitalia, and as unsavory as that may

1 seem, we feel compelled to put it into evidence.

2 The State has agreed to it, is my
3 understanding, and so I therefore proffer it into
4 evidence, inside of this envelope, for the jury's
5 consideration, so we move to admit Defense Exhibit No. 2
6 into evidence.

7 THE COURT: Okay. And what says the State?

8 MS. CORNWELL: The State would agree that
9 that is a photograph that was taken over the lunch break
10 today, and we have no objection to it.

11 THE COURT: Okay. And then it is entered
12 without objection.

13 MR. PALMER: Thank you, Your Honor. Nothing
14 further.

15 (Defendant's Exhibit No. 2 was marked for
16 identification and admitted into evidence.)

17 THE COURT: All right.

18 MR. PALMER: Defense rests.

19 THE COURT: Any reply from the State?

20 MS. CORNWELL: No, Your Honor.

21 THE COURT: Okay. Ladies and gentlemen:
22 You've heard all of the evidence you're going to hear in
23 this case. Next is the closing arguments and I will
24 charge you on the law.

25 That will take us past 5:00, and I have --

1 and once I give you the case, I can't let you go home, so
2 we're going to do that in the morning. And so I ask you
3 to be back at 9:30 in the morning. We will have closing
4 arguments by the attorneys. I will charge you on the
5 law, and I will remind you, please don't discuss this
6 case with anyone or don't allow anybody to discuss it
7 with you, and if you have an emergency, please let us
8 know.

9 I need you here at 9:30 in the morning, and
10 hopefully in an hour, hour and a half, we'll give you
11 this case to decide. I'll see you in the morning.

12 (In open court, jury not present.)

13 THE COURT: Anything else we need to deal
14 with right now?

15 MS. CORNWELL: Not from the State, Your
16 Honor.

17 MR. PALMER: No, Your Honor.

18 THE COURT: All right. Then I'll see you at
19 9:30 in the morning.

20 (Recess taken.)

21 - - -

22 (Whereupon, the proceedings were concluded.)

23 - - -

24

25

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I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Orangeburg County, South Carolina, on the 26th of July 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 23, 2017

Circuit Court Reporter

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG) CASE NO.: 2017-GS-38-1066,
2016-GS-38-0204

STATE OF SOUTH CAROLINA,)

v.)

OSCAR JAMES SMALL, JR.)

TRANSCRIPT OF RECORD

COPY

Thursday, July 27, 2017

COMMENCING AT:

Orangeburg County Courthouse

Orangeburg, South Carolina

Before The Honorable R. Ferrell Cothran, Jr., Judge

APPEARANCES:

For the State of South Carolina:

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1 (This transcript only contains the record of
2 proceedings for the final day of a multi-day trial.)

3 - - - - -

4 (The proceeding began at 9:42 a.m.)

5 THE COURT: As far as charge is concerned, have you
6 shown ---

7 AST. SOL. CORNWELL: I gave Mr. Palmer a copy.

8 THE COURT: Do you have any objection?

9 AST. SOL. CORNWELL: Again, it's the same thing that I
10 gave at the beginning on your desk. The only thing that I
11 added last night is, as we talked about yesterday, I did
12 put, and again, the exposing to HIV charge. It's not from
13 the judge's jury charge. It's not from Anderson. I
14 couldn't find an official one so I just kind of freelanced
15 this one.

16 THE COURT: Okay.

17 AST. SOL. CORNWELL: I mean, it's just basically the
18 statute. Instead of putting all five factors of the statute
19 since it's an or statute, I broke it down to 49 29-145,
20 Subsection 4, because that's really the only one that would
21 apply to this one. Subsection 1 could've applied. But,
22 again, I think that's confusing and I think Subsection 4
23 clearly defines what we can argue, and I don't think that
24 should be an issue. Other than that, I think that the other
25 charges that I've asked for, the criminal sexual conduct

1 with a minor in the first degree, I know that there is a
2 standard charge in the judge's charge book. I'm okay with
3 that one as well. I just, again, took out the excess
4 language that didn't apply in this case as far as it
5 possibly being a second offense and things like that. The
6 only thing that I added to the sexual battery definition --
7 sometimes in the smaller counties the language and the
8 vocabulary isn't always the same. Some juries don't know
9 the terms: cunnilingus, fellatio. So in addition to the
10 standard jury charge that the judge generally gives with the
11 definition of sexual battery, I've also added the Black's
12 Law dictionary definitions of exactly what cunnilingus and
13 fellatio are. So I'm not sure -- it doesn't apply in this
14 case, but what I don't want to have happen is for a jury to
15 get back there and get hung up on terms that they don't know
16 what they mean and wonder if they actually apply to this
17 case.

18 THE COURT: Okay. Mr. Palmer, you have any issues with
19 her charge?

20 MR. PALMER: I don't know why we're -- Your Honor, I
21 don't know why we're defining cunnilingus and fellatio if
22 they don't apply to the case. You know, there is no
23 evidence that either one of those acts took place. Why are
24 they in?

25 THE COURT: They're simply a part of the sexual battery

1 charge now. Other than -- I can charge the whole sexual
2 battery charge. I have to leave out those portions of the
3 charge.

4 MR. PALMER: Your Honor, I'll go with your discretion
5 as long as I can argue that if you hear those words that
6 there's no evidence of them.

7 AST. SOL. CORNWELL: And Your Honor, again, I agree
8 that those terms don't apply. The State is not going to
9 argue that there was any sort of cunnilingus or fellatio.
10 My only purpose for defining them is because they are in the
11 statute, the standard language. And I don't want anybody to
12 get confused and not know what those terms mean and wonder
13 if they apply to this case and get hung up on that.

14 THE COURT: I mean, what option do I have when I'm
15 reading the definition of sexual battery? I can add sexual
16 intercourse, leave out cunnilingus and fellatio, anal
17 intercourse. We don't have any alleged anal intercourse.
18 Can we leave that out? Or any intrusion -- and I was
19 going -- usually I'll say sexual battery is defined as
20 sexual intercourse or any intrusion however slight in any
21 part of a person's body, except as such ---

22 AST. SOL. CORNWELL: That work's for me, Your Honor.

23 THE COURT: --- intrusion is the minimum.

24 AST. SOL. CORNWELL: I can do that.

25 MR. PALMER: That's fine, Your Honor.

1 AST. SOL. CORNWELL: --- confusion that they might
2 have.

3 THE COURT: Okay. Now, as far as 16-3-657.

4 AST. SOL. CORNWELL: Yes, Your Honor.

5 THE COURT: There's a case that came out this year,
6 State v. Stubbs (ph) except we can't charge that anymore
7 even though it's the statute.

8 AST. SOL. CORNWELL: Okay.

9 THE COURT: Supreme Court case if you want to look at.

10 MR. PALMER: I have it, Your Honor. I think I do.

11 THE COURT: So I don't think that ---

12 AST. SOL. CORNWELL: And that was this past year that
13 it came out?

14 THE COURT: Huh?

15 AST. SOL. CORNWELL: That came out this past year?

16 LAW CLERK: It's May 4, 2016.

17 THE COURT: Supreme Court.

18 AST. SOL. CORNWELL: If that's the most recent, I was
19 unaware of that. I was going based off ---

20 THE COURT: It is, you know. I read that case when the
21 Supreme Court did it. And I said, you know, it's clearly a
22 statute that says that.

23 AST. SOL. CORNWELL: And it's the law of the State.

24 THE COURT: The statute says that. We've all charged
25 it at every time we charged the statute. Now the Supreme

1 Court says we can't charge it anymore. I guess they'll take
2 that up with their legislature, but that's what they're
3 telling us. So if you disagree -- if you disagree with my
4 interpretation of the case, I'll be glad -- it seems to be
5 pretty clear.

6 AST. SOL. CORNWELL: Your Honor, everything you have
7 told me this week has been 100 percent accurate. So I would
8 be remiss to argue with you on that. Obviously, on the
9 record, I would state that it is a state statute under the
10 code of laws of South Carolina. It specifically states,
11 16-3-657, that the victim in the criminal sexual conduct
12 prosecution the testimony need not be corroborated as far as
13 evidence. Obviously, the Supreme Court has stated that that
14 law is not allowed to be presented then that's their
15 decision.

16 (Law clerk reviews statute.)

17 AST. SOL. CORNWELL: And, Your Honor, the last thing I
18 want to do is cause any sort of issue. I believe that it
19 doesn't seem like it in that case. I think I can still
20 argue it in my closing and say, you know, that there is
21 state law and state statute. I think that would be the same
22 as the evidence of flight and, you know, presumption of
23 guilt in flight. You don't have to charge it, but I think I
24 still get to argue it in my close.

25 THE COURT: And I think that's probably true. They

1 simply said that's a comment on the facts. It's in the
2 constitution and I can't do it.

3 AST. SOL. CORNWELL: Okay.

4 THE COURT: So they cut out that charge even though we
5 have done it in every case because that's what the law was
6 and it was in our book, and they changed their mind. Now,
7 have y'all seen this possible verdict form?

8 (Brief pause.)

9 AST. SOL. CORNWELL: It's fine. The only thing that
10 maybe specified it is with a minor. I don't know if that is
11 a statute that we charged under. I have no objection to
12 this charge.

13 THE COURT: It needs to be with a minor on there.

14 AST. SOL. CORNWELL: Is this a totally different law or
15 different statute?

16 THE COURT: It is different elements. I'm sorry. That
17 was a miscommunication.

18 AST. SOL. CORNWELL: That's okay. And the indictment
19 is going to go back. It specifically states, you know, with
20 a victim under the age of 11, first degree.

21 LAW CLERK: Does it need to say under the age of 11 or
22 just with a minor?

23 AST. SOL. CORNWELL: It does. The statute is criminal
24 sexual conduct in the first degree with a victim under age
25 11. Actually, it says criminal sexual conduct with a minor

1 with a victim under age 11 in the first degree.

2 (Brief pause.)

3 THE COURT: Anything else that we need to deal with?

4 AST. SOL. CORNWELL: No, Your Honor. I now that in
5 casual conversation you and I have discussed what happens if
6 we do get to the guilty verdict and the findings on that. I
7 know we need to put in an official conversation on the
8 record with Mr. Palmer. Scott, under 16-3-655 part of the
9 penalty statute is if there's a finding of guilt of the
10 sexual battery, that there also has to be a subsequent
11 finding that sexual intercourse occurred. It's not in the
12 guilt or not guilty part of it. Obviously, sexual battery
13 doesn't have to include intercourse. But for some reason
14 the state legislators have decided for the purposes of
15 second offenses and death penalty cases that there has to be
16 a finding of fact by either the judge or the jury, whichever
17 one is appropriate, that intercourse actually did occur that
18 constituted sexual battery. I think that if we get to that,
19 depending on what the jury finds for the criminal sexual
20 conduct, if they find not guilty, then obviously that's not
21 an issue and we don't need to worry about it. If they do
22 find guilty, my suggestion would be that we send another
23 form back with them and send them back to ask them to make
24 the additional finding in accordance with the statute.

25 THE COURT: Okay. Do you have any objection with doing

1 it that way?

2 MR. PALMER: No, sir, Your Honor.

3 THE COURT: Okay. And that's probably a clean way to
4 do it. If they find him not guilty, they won't get that
5 question. If they find him guilty, then we'll send them
6 back with another form to make that determination.

7 MR. PALMER: Okay. That's fine.

8 THE COURT: Anything else?

9 AST. SOL. CORNWELL: Just for general housekeeping,
10 both the State and the defense rested yesterday. I don't
11 know if we need to put the standard motions on the record
12 before we bring the jury in and charge.

13 THE COURT: You got any motions? Anything for the
14 record?

15 MR. PALMER: No, Your Honor. Not at this time.

16 THE COURT: Okay. All right. We'll bring ---

17 AST. SOL. CORNWELL: Is there a standard directed
18 verdict in and ---

19 MR. PALMER: Well, yeah. I would, for the record, just
20 go ahead and make my directed verdict motion again under
21 Rule 19.

22 THE COURT: And I think that it's, you know, in the
23 record of this case, I respectfully deny it.

24 MR. PALMER: Thank you, Your Honor.

25 AST. SOL. CORNWELL: Your Honor, I'll need just a

1 moment. I'm going to set this TV up real quick.

2 THE COURT: Okay.

3 (Brief pause.)

4 AST. SOL. CORNWELL: Thank you, Your Honor. The
5 State's ready.

6 THE COURT: Okay. We ready for the jury?

7 AST. SOL. CORNWELL: Yes, Your Honor.

8 THE COURT: Bring the jury, please.

9 (The jury enters the courtroom at 10:00 a.m.)

10 THE COURT: It's my understanding, ladies and
11 gentlemen, that y'all had selected a foreperson. And
12 Mr. Schriver (ph) is the foreperson. Is that correct?

13 FOREPERSON: Yes, sir.

14 THE COURT: Okay. All right. And we've now reached
15 that point in the trial where you'll hear the closing
16 arguments of the attorneys, and I will charge on the law in
17 this case to decide. So if you would please pay close
18 attention to the attorneys. Madam Solicitor?

19 CLOSING ARGUMENTS

20 AST. SOL. CORNWELL: Thank you, Your Honor. Please the
21 court? Counsel?

22 Thank goodness there is light at the end of the tunnel.
23 It's almost over. And I know that the jurors that have been
24 in here this has not been -- sit it on. This is not what
25 you wanted to hear about. Nobody wants to hear about a

1 five-year-old little girl that got raped much less a
2 five-year-old little girl that got raped by her godfather.
3 So now we know what's going to happen at this point. I'm
4 going to talk to you a minute and then explain a little bit
5 of the law as it applies in this case. But I want you to
6 keep in mind, though, as the judge told you at the beginning
7 of this trial, you are the finders of fact. And nobody
8 else's opinion on the facts of this case matter except for
9 yours. The judge is the ultimate finder of the law. And
10 what he says on the law is what you have to follow. So if I
11 say something on here or if Mr. Palmer says something to you
12 regarding the law that's in contradiction to what the judge
13 tells you, you absolutely do not listen to me or Mr. Palmer.
14 You make your ruling based on the law as the judge gives it
15 to you.

16 But before we go into that, I'm going to go over what I
17 feel like the state law is in this case. And once I've had
18 the opportunity to talk to you a little bit about the law,
19 I'm going to sit down and Mr. Palmer is going to talk to you
20 a little bit. He's going to get to tell you his case and
21 make his arguments. After he makes his arguments, I'll have
22 one more opportunity to get up and speak to you about the
23 facts of this case, and what I believe the facts of this
24 case showed. After that, I will sit down and be quiet and
25 the judge will instruct you on the law. Once the judge

1 instructs you on the law, you'll get to go back in your jury
2 room where you'll finally get to start discussing this case.
3 When you go back to the jury room the first time, the judge
4 is going to tell you don't talk about the case yet because
5 we're going to send the evidence back. And once we've got
6 together and send the evidence back and you have all the
7 evidence, at that point you'll be able to begin your
8 deliberations. Once you've made your major decision, you'll
9 knock on the door and let Ms. D know that y'all are ready,
10 she'll bring you back out.

11 So right now the State has brought the case of the
12 State versus Oscar James Small, Jr. As you'll hear,
13 Mr. Small is charged with criminal sexual conduct with a
14 minor under the age of 11 in the first degree. Under South
15 Carolina state law it states a person is guilty of criminal
16 sexual conduct in the first degree with a minor if the actor
17 engages in a sexual battery of the victim and if that victim
18 is less than 11 years old at the time of the sexual battery.
19 Sexual battery in South Carolina is defined as sexual
20 intercourse, cunnilingus, fellatio, annal intercourse, or
21 any intrusion however slight of any part of a person's body
22 except when such intrusion is accomplished with medically
23 recognized treatment for diagnostic purposes. Obviously, in
24 this case, there was no medical reason for diagnostic
25 purposes for that defendant to stick his penis in [REDACTED]

1 [REDACTED] multiple times on multiple occasions.

2 There's some terms in here that you may not recognize:
3 cunnilingus, fellatio. Those are just fancy words that mean
4 oral sex. Cunnilingus is the oral sex of a female.
5 Fellatio is the oral sex of a male. Obviously, there is no
6 allegation of that. We didn't hear any testimony of that.
7 Those do not apply in this case. The only sexual battery we
8 are discussing in this case is sexual intercourse which is
9 vaginal intercourse. He's also charged with exposing
10 another to HIV. Section 44-29-145, Subsection 4, of the
11 South Carolina Code of Laws states that a person is guilty
12 of exposing another to HIV if the person forcibly engages in
13 sexual intercourse, rather vaginal, anal, or oral, without
14 the consent of the other person. And that includes one's
15 legal spouse. Now, clearly, that doesn't apply in this case
16 either. And he has to do it while knowing that he is
17 infected with the HIV virus. So in this case, you've heard
18 that both parties state and the defense stipulated to the
19 fact that the defendant in December of 2015, in August of
20 2015, was aware of his HIV status and was receiving
21 treatment for it at that time. Mr. Palmer went over this
22 with you in his opening.

23 You're going to hear three types of evidence in this
24 case. We've got direct evidence, circumstantial evidence,
25 and stipulations. Direct evidence is what you, yourself,

1 see, hear, feel, smell. That is direct evidence.
2 Circumstantial evidence is something that you infer from the
3 circumstances. It's a chain of events that prove the
4 existence of a fact. For instance, if you go outside and
5 there is water coming out of the sky. There is water on the
6 ground. You feel the rain hitting your skin. You see it
7 falling. That's direct evidence. You know it's raining
8 because you see it, feel it, hear it, and smell it. On the
9 other hand, if you came into court today and it was sunny
10 outside, no rain at all. But when you leave for lunch,
11 dinner, whatever, and you walk outside and you see puddles
12 on the ground and you feel that thickness in the air, and
13 you smell what smelled like rain, you know it rained. You
14 didn't feel it. You didn't see it yourself. You didn't
15 hear it. You didn't touch it. But, clearly, everything
16 shows that it rained.

17 We also have stipulations. Stipulations, as you know,
18 are evidence that is agreed upon by the parties. In this
19 case, the stipulation was the defendant had HIV in August of
20 2015. The judge is going to tell you that all types of
21 evidence are given equal weight under the law. You can
22 decide a case based solely on circumstantial evidence. You
23 can also decide a case based on direct evidence. In this
24 case, we have both types of evidence. We have the direct
25 evidence where you heard [REDACTED] testify, and you

1 saw [REDACTED]'s interview where she told you exactly
2 what happened to her. She told you what she saw, what she
3 heard, what she felt. That's direct evidence. You also
4 have circumstantial evidence that we talked about. And that
5 circumstantial evidence are the behavioral issues that we
6 discussed. The sexualized behavior that she was exhibiting
7 both at home and at school that's unusual for a child her
8 age. The bedwetting. The hair pulling. Things of that
9 nature. That is all circumstantial evidence that helps you
10 infer a conclusion.

11 Again, you are allowed to give equal weight to both of
12 those. The judge is going to tell you to base your decision
13 on your own interpretation of the credibility of the
14 witnesses. This is where we talked in the beginning about
15 how you came into this courtroom and you brought with you
16 your own set of skills. You brought with you your common
17 sense and you brought with you your life experience. You
18 made it through your whole life knowing how to make
19 judgments, make determinations, and judge the credibility of
20 other people. You have the ability to know when somebody is
21 telling the truth and when somebody is being untruthful for
22 whatever bias, motivation, or reason. And when you
23 determine the credibility of the witnesses, you're going to
24 be able to look at them and ask yourself: What was the
25 demeanor of the witness on the stand? Were they

1 forthcoming? Were they cooperative? Did they hesitate when
2 they answered questions? Did they have to think about
3 things? You get to see was the testimony of the witness
4 consistent with that of the testimony of other witnesses?
5 Did they tell you kind of the same thing or was their story
6 just a little different that didn't make sense; it didn't
7 add up? And, finally, you're going to ask yourself: Did
8 the witness have a reason to be biased or prejudiced? Was
9 there a reason they got on the stand and said what they said
10 for some reason other than you wanting to know the truth?

11 You're going to hear about reasonable doubt. And
12 reasonable doubt is a doubt that will cause a reasonable
13 person to hesitate to act. Proof beyond a reasonable doubt
14 is doubt that leaves you firmly convinced of the defendant's
15 guilt. The law does not require you to find a person guilty
16 beyond all doubt. As we know, there are very few things in
17 this world that can be proven beyond all doubt. I think the
18 colloquy is generally the only thing that is guaranteed in
19 this life are death and taxes. You know you have death and
20 you know you have taxes; and other than that, you can't be
21 certain of anything. However, in a court of law, you can be
22 certain beyond a reasonable doubt if you did as you were
23 asked as jurors when you first came into this courtroom, and
24 you took an oath and you said you knew nothing about this
25 case. I told you that by knowing nothing about this case,

1 that defendant sat in front of you an innocent man. And he
2 is still, as of right now, an innocent man. He's an
3 innocent man because you haven't found him guilty. But now
4 you come into this courtroom, and being an innocent man, and
5 you not know anything about this case, but after hearing all
6 of the testimony that came from the witness stand, after
7 watching the video, you feel convinced that this defendant
8 absolutely did what [REDACTED] said, then the State
9 has proven its case. That is proof beyond a reasonable
10 doubt. You didn't know anything before, and now you think
11 the guy did it. You don't have to be certain beyond all
12 doubt, but just proof beyond a reasonable doubt. You sit in
13 this jury box today, and after thinking about all the
14 evidence, you think the defendant most likely committed
15 these crimes, then you must find him guilty because that is
16 proof beyond a reasonable doubt.

17 As I told you, Mr. Palmer is going to get up and speak
18 to you for a moment. And I'm going to have one more
19 opportunity to get up in front of y'all. And we try not to
20 make it too long. So if you'll bear with us for just a
21 little bit longer, we'll get you back there and let you make
22 the decision. But if you'll give Mr. Scott, Mr. Palmer,
23 your attention now.

24 MR. PALMER: Thank you. May it please the Court?
25 Counsel?

1 I don't have a PowerPoint; just going to talk. I don't
2 usually talk a lot about myself in these trials. It's not
3 about me or what I'm doing. It's about Oscar. But I wanted
4 to tell you something to make a point is that I wasn't
5 always a lawyer. I have a background in the military and
6 law enforcement. And the reason I'm telling you this is not
7 to toot my horn because it's not important what I've done,
8 but I want to show you some consistencies. When I was a
9 naval officer, I took an oath when I got sworn in and got
10 commissioned. And my oath was to uphold and defend the
11 Constitution of the United States. When I became an agent
12 with NCIS, which I did for 15 years in the Navy reserves, I
13 swore to uphold and defend the Constitution of the United
14 States. And when I took the South Carolina bar, I took the
15 same oath. What's my point? The point is that that we're
16 not here to say us versus them. This isn't an athletic
17 event or a contest. This is about justice. This is about
18 putting the Constitution to work and making sure that his
19 rights are protected and the victim's rights are protected
20 and that the Constitution is followed in order to reach a
21 just verdict. And that's what we're here for. We're not
22 here to put a conviction on the scoreboard for the advocacy
23 center. We're here to see that justice is done. And so it
24 doesn't matter which side of the case you're on. We all
25 have the same goal. It's to uphold the Constitution and see

1 that justice is done. And it doesn't matter if I'm working
2 for the government or as I do now a private citizen. The
3 mission is the same.

4 Now, let me put this thing over here. Sorry about
5 that. Now, at the beginning of the case, the solicitor
6 called the case -- I'm sure you remember that -- which means
7 it's the State's case to prove. It's their case. And Ms.
8 Cornwell said it will be my turn to talk about my case. I
9 don't have a case. I don't have to prove anything. All I
10 have to do is tell you what I think the evidence in the case
11 is and what the verdict should be, and whether the
12 constitutional burden of proof has been met. And even it's
13 the State's case, it's not the State's courtroom. This is
14 the people's courtroom. This building and this forum and
15 this process belongs to the citizens. It doesn't belong to
16 either side of the case. It belongs to all of us.

17 Now, we've talked briefly about your role in this
18 situation. What are you here for? You're here to determine
19 the facts. You're the judges, the individual judges, of
20 what the facts of the case are going to be. You're not the
21 finder of feelings. You're the finder of facts. And so
22 your determination of the facts, I suggest, should be based
23 on objective, rational, logical decisions and not feelings.
24 Remember I said -- I asked you one thing: Decide the case
25 with your head, not your heart. Especially important in

1 this case because you have an adorable, precocious little
2 girl as the State's centerpiece. I mean, she's the witness
3 in this case. She's the fact witness. And you have Oscar.
4 He's not so cute. He's not so adorable. Don't let your
5 sympathy for a child -- now, you can consider the fact that
6 she's a child in determining her credibility. I'm not
7 saying that. But don't use sympathy for empathy, for
8 adoration, or how you think my client presents as a means
9 for determining the facts. That wouldn't be an objective
10 process. The State's witness, regardless of who he or she
11 is, should be treated with the same objectivity. The burden
12 of proof is not relaxed, ladies and gentlemen, because the
13 State's witness is a young child.

14 Now, this particular case you didn't get a good draw.
15 This is not an easy case. It's not an exciting case. It's
16 not a glamorous case. It's not a thrilling case. It ain't
17 no fun. It's an unpleasant case and it's not going to get
18 any better. I'm sorry about that, but that's the case we
19 have. Mr. Small is charged with a reprehensible act,
20 actually two reprehensible acts, which are basically all or
21 nothing. If you find he committed the act, then you pretty
22 much have to find, I would think, that he exposed the
23 alleged victim to HIV. He's never made an issue of the fact
24 he's HIV-positive. Like I said at the beginning, he's had a
25 less than savory life. He's had some hardships in his life.

1 And he's been HIV-positive for years, and he gets treatment
2 at the VA. That is what it is. So you can determine -- if
3 you find him guilty on one, whether or not find him guilty
4 on the other, it would seem, however, that it is all or
5 nothing. But the charge about criminal sexual conduct with
6 a minor, it's a damning indictment. I mean, imagine if
7 people have raised kids or have had babysitters, imagine
8 taking the babysitter home and dropping her off and three
9 weeks later the cops show up and said the babysitter said
10 you molested her. How do you defend that? What do you do?
11 You've got an innocent person accusing you of a horrible
12 act. Where do you go from there? And the way you do it is
13 exactly what we're doing here today. You look for evidence.
14 Not just testimonial evidence because people lie. People
15 lie for different reasons and they lie in court sometimes.
16 I mean, anybody with a rational mind and experience in life
17 knows that. And a lot of times they get away with it. So
18 you have testimonial evidence and that is determined by your
19 judgment and your rationale as to whether or not that
20 evidence is credible. In determining that, I would suggest
21 to you that you look for several things. You look at the
22 witness's demeanor and you look for consistency. There's an
23 old saying that most trial lawyers use in some cases that
24 the truth is the same every time you tell it. That's the
25 difference between the truth and a fabrication. Because

1 fabrications or lies change to fit the narrative. But the
2 truth, if it really is the truth, should be the same every
3 time it's told because there's no reason to change it.

4 The other way you would defend the case is to look for
5 physical evidence. In a case like this case or in the case
6 of my hypothetical with the babysitter, is there physical
7 injury? Is there DNA? Is there infection? We don't have
8 that in this case. Now, my position is we don't have that.
9 We had some experts suggest to you that there was physical
10 injury. But I'll talk about the experts in a minute. But
11 the expert that suggested -- her report is in evidence, and
12 it says there was no physical injury. So we don't really
13 have physical injury. And, you know, you heard the experts:
14 it's not uncommon, some kind of percentage. And we get
15 that. I'll address that a little more later.

16 Now, the State has the burden of proof. And I agree
17 with what the solicitor said on her PowerPoint that the
18 burden of proof is beyond a reasonable doubt. I do,
19 however, take issue with the way she described that because
20 she used the term most likely or more likely. That's not
21 what the burden of proof is about. That's in a civil case
22 where you say more likely than not by a preponderance of the
23 evidence. The burden of proof is much stronger than that.
24 The burden of proof says that beyond a reasonable doubt --
25 and a reasonable doubt will be defined by Judge Cothran.

1 But one of the definitions we use in South Carolina in many
2 courts to determine what is a reasonable doubt is a doubt
3 that would cause a person to hesitate to act. So in your
4 deliberations if you run across one or more items of
5 evidence that causes you to go, wait a minute, we need to
6 rethink this, then you can use that to determine there's a
7 reasonable doubt. Because all you need to find is some
8 doubt and assign a reason to it. That's why it's called
9 reasonable doubt. So if you look at this gentleman here who
10 you know very little about other than what you see, and if
11 you looked at him this week, glanced at him here and there
12 or saw him the first day and said, "I don't know. I don't
13 know about that guy. He might've done this." And you use
14 that to decide this case, I would humbly and respectfully
15 suggest to you that you probably should have tried to get
16 yourself disqualified because you're not doing your job. He
17 is who he is. Keamanni is who she is. Don't decide the
18 case with your feelings or your suspicions or your hunches
19 or what you think is reality. - Go by the evidence.

20 Now, I want to talk a little bit about the State's
21 witnesses because that's their case. First, we had Destiny
22 Roberts. I can always tell when a witness is well prepped.
23 Because when she goes through the motions and gives the
24 information on direct examination, and then when it comes
25 time to cross by the defense lawyer, she doesn't know

1 anything. Doesn't remember. Doesn't want to answer. And
2 that was exactly the case with Destiny. But what she did
3 tell us is that the complaining witness, the child, has a
4 mother with ADHD, bipolar, been committed three times for
5 behavior problems. They all live together with this child
6 with other males in the house. They didn't report right
7 away. And here's where it gets interesting because she told
8 us that what gave her suspicion that something was wrong
9 with the child was that she was wetting the bed. She was
10 pulling her hair out. And I'll talk about that more in a
11 minute. But that's what she said. And then we have two
12 witnesses that testified later that said after her testimony
13 here, she walked out of the courtroom laughing. Now, that's
14 evidence. That's an eyewitness that saw her and you can use
15 that to judge her credibility. You can do that.

16 Then we get to the complaining witness. And I'm
17 talking, obviously, about the child. Now, I think this case
18 can be decided without having her come testify, or even
19 those experts that showed up, which I'm also going to talk
20 about. I think we could have just played the video and let
21 you decide whether the child is credible. But the State
22 made that call. They brought the child in. And she said
23 some very interesting things. Obviously, she said some very
24 serious things; some allegations about Oscar. But she also
25 said some other things. Let's start with the video. Now,

1 what I would prefer to do is put that video on and go
2 through it with you frame by frame, but I know I wouldn't
3 have time to do that. So I'm going to just tell you what I
4 think you should look out for.

5 First problem I have with the video is as Dr. Swiecicki
6 said, everything should be recorded. Well, when the video
7 starts out, the interview is already in progress. They're
8 already talking and writing stuff on the easel. So what
9 went on before the camera started to roll? And if that
10 doesn't give you enough concern, but one of the first things
11 that the forensic interviewer, this so-called impartial
12 forensic interviewer, asked her, she doesn't say what's your
13 favorite color. Now, you know, keep this in mind when you
14 watch the video because you'll have it back there. She says
15 it's my understanding your favorite color is purple. Now,
16 where does she get that understanding? Has she been
17 interviewing this child ahead of time or had she been
18 talking with the caregiver? The term used in this trial.
19 Where did she get that information? My understanding is I
20 know this about you before this impartial interview starts.
21 I would submit that, and the expert confirmed this, that
22 that's not proper. The child is not supposed to be prepped.
23 You're supposed to find out what she knows, not what she's
24 going to be prepared to say at trial. And then the child
25 says, "No. You got it wrong. It's pink." So whoever gave

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1 this interviewer this information isn't even giving her the
2 right stuff. And it also tells us that this child, it gives
3 us the first indication, that this child knows her colors
4 and she's all about colors. Colors are her thing. Don't
5 give her the wrong colors because she's going to correct
6 you, right?

7 Okay. So that's about the one-minute mark. Then you
8 start to see the interaction between Ms. Pam and the child.
9 Ms. Pam is a sort of an imposing person. She's dressed in
10 all black. She talks loudly. She has controlling gestures.
11 She's in control of that interview, and she's in control of
12 that child. Stay in the seat. Don't get distracted. Don't
13 draw on the thing. Don't get the tissue. Let's stay
14 focused. And I kind of get why you need to do that with a
15 child. But I think she went too far. She's controlling
16 that child too much. At the four minute and 35 second mark
17 something very interesting happens. [REDACTED] what grade
18 are you in? She's in the third grade. This is a
19 five-year-old child. It's impossible for her to be in the
20 third grade. Now, you can do with that with what you want,
21 but in a jury trial, witnesses credibility is the key. In
22 this case, you can do whatever you want with what these
23 experts said, but the experts are hypothetical. This case
24 all gets down to the witnesses credibility. And if the
25 witness says something that's impossible, whether it's a

1 70-year-old man, a 35-year-old woman, or little child, you
2 have to consider that. But it's impossible for her to have
3 been in the third grade. So she's already said something
4 that's impossible. It's false. Now, whether she made a
5 mistake or whether she intended to deceive is something only
6 you can determine. And then at the five-minute mark she
7 confirms again because Ms. Pam goes over everything. Let me
8 go over what you've told me so far. And she goes you're in
9 the third grade. And she confirms yes, I'm in the third
10 grade. So here twice we've had the same statement. Okay.

11 And then she describes how she lives with her aunt and
12 the others including males in the household. And then, you
13 know, you'll see the rest of it. There's a lot of
14 information on the video. We go fast forward to the
15 14-minute mark when she's describing this unpleasant,
16 horrific act. She's dead certain, confident, that it
17 happened while Deborah and Detra (ph) went to church. I
18 mean, that's a big deal. I mean, she's didn't say it
19 could've happened; she's sure about that. It happened while
20 Deborah and Detra went to church. And then she says the
21 defendant, Oscar, grabbed her foot and dragged her down the
22 hall to the bedroom. She's used that. That's not our
23 evidence; that's theirs. The girl said she got dragged and
24 that's in the case. That's the evidence in the case. She
25 goes on to describe it. And she says in response to the

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1 repeated questioning, what I consider leading and improper
2 repeated questioning, badgering in some cases, she insists
3 her clothes were on, and they remained on. I mean, you'll
4 listen to it. Don't believe me; believe the video.

5 Now, we really get into the weeds with the facts
6 because at the 18-minute-50-second mark she starts talking
7 about Oscar's wee wee. And they asked the question, not me
8 or Oscar. The interviewer asked what color was it. This is
9 a girl whose color -- whose thing is colors. It's yellow.
10 His wee wee was yellow. And then she starts talking about
11 her mussy (ph) and her titties. And I apologize for the
12 language. I don't like saying these any more than you like
13 hearing them. And now I don't know about you, but I've
14 raised three kids and I would never let them use that
15 language around me. They would be punished. Apparently,
16 the psychologist or the doctor thinks there's some kind of
17 normalcy to that. But you have -- my point in bringing this
18 out is you have to wonder where does she get this language.
19 I don't think she got it at the AME Church in Holly Hill.

20 Again, at the 25-minute mark she insists that her
21 clothes remained on. And then her pants were on and up at
22 the 26-minute mark. And then the interviewer asked her did
23 Oscar violate any other place. And she says no. And then
24 after a little bit of thought, she said, oh yeah, on my
25 butt. She had to think about it. Did anything come out?

1 No. And that, as a side note, then why did we have all of
2 this discussion about urine versus ejaculation and all that?
3 Because the child never alleged anything came out. Did he
4 put anything on his wee wee? Unequivocally, no. Then why
5 do we have expert testimony about ejaculate? Again, at the
6 25-minute-45-second mark, she says this happened while they
7 were at church. It was light outside. And then at the
8 32-minute mark, she says they take me with them, meaning
9 Deborah and Detra. They take me with them to church, which
10 is entirely consistent with their testimony. She's always
11 in church. And then she mentions Jenia and Jacquez (ph) who
12 are two people who don't live in the house. So there's
13 another impossibility. 36-minute-mark: Did you ever tell
14 anyone? Unequivocally, no. I never told anyone. Okay.
15 Now, the live testimony was different in some ways.
16 When the judge did a competency test on this child, guess
17 what he used? The color test. She scored a hundred
18 percent. This girl knows her colors. So twice now with a
19 forensic interviewer and Judge Cothran, she has gotten A+,
20 100 percent, on each and every color she's been asked about.
21 Colors are her thing; right? And then something very
22 interesting happened that kind of sent a chill down my
23 spine. When the solicitor was asking [REDACTED]: Do you know
24 the difference between the truth and a lie? Oh yeah; yeah.
25 Well, [REDACTED], what happens when you tell a lie? She

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1 didn't say God would be displeased. She didn't say my mommy
2 would be mad. She said I go to jail. Who is teaching this
3 kid that she's going to jail? A seven-year-old, if she
4 doesn't get her story right. Who is putting that in her
5 mind? Talk about child abuse. Again, she describes Oscar's
6 wee wee as yellow. Now, we've got three now, both on the
7 video and from the witness stand live. That's consistent.
8 And consistency is credibility. She's describing it as
9 yellow.

10 Now, here we get some inconsistency because when she's
11 asked did you tell anybody, the child says, oh yeah, I told
12 Mimi and Tee Tee (ph), and they made Oscar apologize. You
13 won't hear that on the video. You'll hear something
14 different. But where does she get that? I mean, does that
15 even make any sense? That a registered nurse and a
16 Christian minister would not immediately react as they're
17 saying what they did to this information. The doesn't make
18 a bit of sense. And here's -- this is one that almost
19 knocked me out of my chair. What did you tell me? The
20 solicitor asking, when we met.. Why do people hurt children?
21 Now, I've been around a while. I've been in a few
22 courtrooms and I've tried a few cases. And I've heard some
23 lawyer about self-serving testimony, and I know it when I
24 see it, and that was some of it. And, coincidently, that's
25 the same statement that the solicitor used in her rather

1 dramatic opening. So was that a statement from the child or
2 was that a statement that was given to the child? Because
3 she didn't say it on video. You can consider that.

4 And then, finally, the solicitor rested on her direct
5 examination. And normally that means it's now my witness.
6 But then the coaching started. Now, I'm done with you
7 Keamanni, but now when Mr. Palmer gets up here make sure any
8 -- that's when I objected. You probably remember that. She
9 was being coached in open court. Now it was my turn to
10 cross examine her. And I guess the fear was I'm going to
11 get up there -- I was going to get up here and beat up on a
12 little girl, try to call her a liar as it was suggested in
13 the opening. You know, I don't know where somebody got the
14 idea that I try cases like that, but I'm not about that.
15 That's not -- as you have probably have seen throughout this
16 trial, I try to treat everyone with courtesy and respect.
17 And so I just asked her a couple of questions and then we
18 played the color game. But before we played the color game,
19 we had an interesting conversation. And the conversation
20 was: Hey, [REDACTED] have you ever been in this room before?
21 Oh, yeah. I've been here. Really? What were you doing
22 here? Well, I met with Ms. Ashley and Ms. Tammy and other
23 people from the solicitor's office. Oh, and Ms. Pam was
24 here too. Do you know who Ms. Pam is? She's the impartial
25 forensic interviewer who is here in court with the door

1 locked prepping this child to testify in the case. Coaching
2 the child. You can infer by her presence here that her only
3 purpose here was to coach this child. You may consider that
4 in your deliberations.

5 Okay. Now we get to the experts. And I'm not going to
6 take much longer, but I need to talk about the experts. The
7 experts in this case were eminently qualified, educated,
8 pleasant people by all standards, responsible citizens. I
9 have no issue with that at all. What I have issue with is
10 what they said and why they said it. Start with Dr.
11 Swiecicki. And you'll notice one thing I need to point out.
12 When both experts were on the stand and the solicitor asked
13 the hypothetical questions, the first answer wasn't yes or
14 no. It's the word so. So the question was in a
15 hypothetical, take a child like this, and the answer would
16 be so and then starts into this statistics and the
17 percentages and in studies, lots of studies. And if you
18 noticed the other witness, the other expert and the doctor,
19 had the same mannerisms. And she's so well-practiced that
20 when she testified it wasn't to me in response to my
21 questions. She was feeding you information in the jury box.
22 And Dr. Swiecicki turns out is not a active psychologist.
23 She's an executive director. She's part business woman,
24 part fundraiser and part political person. I mean, an
25 executive director of a place like Dee Norton. That's the

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1 person that poses with the big donor with the giant check.
2 That's what she does all day. She's not sitting in rooms
3 with kids and counseling kids. She's a business person.
4 She runs the organization. The organization that I've
5 supported in the past. I've done volunteer work. You've
6 heard that. This is not evidence. I'm just telling you.
7 But I did it when it was the Dee Norton Children's Center.
8 I'm not so wild about it now that it has become the advocacy
9 center. And I'll talk about that in a minute, okay.

10 So, obviously, she's a professional expert. But then
11 we learn a couple of interesting things about Dr. Swiecicki
12 that you can consider in determining what weight to give her
13 testimony. Although she says she's trained in forensic
14 interviewing -- and the forensic interview is the
15 centerpiece of their case. She's not trained in the method
16 they use in South Carolina. But even more astounding, in
17 her entire career, despite all her training and education,
18 she's only conducted one forensic interview. That's like me
19 saying I went to college, law school, and got a graduate
20 degree, LLM in trial advocacy. But I've only tried on case,
21 but I'm an expert. Or I went to culinary school at the
22 finest school in New York and got a degree in culinary arts.
23 But I've only made one omelette. I'm an expert chef. And
24 then we have Dr. Lamb. We didn't need Dr. Lamb. All we
25 needed was her report. Because all it says is there's no

1 findings. The examination is normal. But it also says --
2 she wasn't happy with that because she had to add something.
3 There's no findings. But then she says well, that's to be
4 expected because genital tissue, it heals fast. Well, the
5 problem I have with that is it presupposes there was an
6 injury when there's no evidence of it. And the child never
7 complained about being injured. Now they're trying to spin
8 it by saying at one point [REDACTED] felt sad. But, you know,
9 we've all raised kids. Kids can tell you when stuff hurts.
10 They get a bee sting, they cut their hand, they skin their
11 knee: Mommy, it hurts. I don't feel sad; it hurts. And
12 this girl is plenty smart enough to figure out how to tell
13 somebody what hurts.

14 Now, Dr. Lamb had a lot of studies. She brought a
15 whole bag of -- she's a professional expert as well. And
16 even though she has a medical degree, she's not a doctor.
17 Doctors heal people. They prescribe medicine. They heal
18 wounds. They have patients. She doesn't have any of that.
19 She conducts exams. But more importantly, even though she
20 told us repeatedly she stays in her lane, which means she
21 sticks to practicing medicine, a minute later she was
22 describing how she meets with law enforcement every month.
23 She drives around the state meeting with law enforcement
24 tracking court cases. And she even told us that she showed
25 up with studies about court convictions. What's a doctor

1 doing keeping track of court convictions? I'll tell you
2 what she's doing. She's keeping score. This isn't about
3 justice. This isn't about protecting a child. This is
4 about conviction. She and Dr. Swiecicki and the solicitor's
5 office and law enforcement are in the conviction business.
6 And they're both -- if you look at Dr. Lamb's report, she's
7 part of an advocacy group too. And they'll insist on using
8 that word. But let me tell you, I looked up advocacy in the
9 -- advocacy is something that lawyers do. Advocacy is
10 defined -- an advocate is defined by Websters as one who
11 pleads the cause of another before a tribunal or judicial
12 court. So they're all geared up for court. They're not
13 appearing here as impartial witnesses. Don't take my word
14 for it. Listen to what she said on cross-examination.

15 Remember, the first thing I did was come up here and
16 throw her a softball. And my softball was a question that
17 anybody, expert, lay person, average intelligence, anybody
18 would know. I asked Dr. Lamb: Would you agree with me that
19 two human beings can have sexual contact without injury? I
20 didn't say anything about children. I didn't say about
21 adults, about use of force. That was my simple question.
22 Instead of answering it, she said, so, and she turned to you
23 and said, "In cases of injury," and started spouting her
24 statistics. And if you remember, I had to stop her and say,
25 now, Dr. Lamb, you don't -- let me rephrase it a little bit

1 to make sure you understand the question. Can two human
2 beings engage in sexual conduct -- contact without one
3 injuring the other? That's a question we all know the
4 answer to because it happens. It's a human thing. And she
5 said no. She actually said no. What does that tell you?
6 It tells you she's probably not listening carefully to my
7 question. But I think what it tells you is she is
8 programmed to never ever agree with the defense on anything.
9 And what that in turn tells you is she's not an impartial
10 expert. And Dr. Swiecicki, likewise, in response to my
11 questioning, "Dr. Swiecicki, you've been qualified in court
12 a number of times. How many times from the defense? Well,
13 I've never been asked." Defense lawyer won't even ask her
14 because they know she's not going to help them regardless of
15 the facts of the case. That's not an impartial expert.

16 These experts were here for a reason that is not proper
17 for this court. And what I'm talking about is an inference
18 versus assumption. If you infer -- and that may be a word
19 that you hear from Judge Cothran. You're allowed to infer
20 facts from other facts. An inference is something that is
21 inferred especially in conclusion or opinion that is formed
22 because of known facts or evidence. It's based on a fact in
23 the case. Well, when you ask a witness a hypothetical
24 question, you're not basing it on facts in the case. That's
25 the purpose of a hypothetical. It's not based on any facts

1 in this case. Let me pose a hypothetical, then you get into
2 the world of assumptions, which are not proper in your
3 deliberations because assumptions are dangerous and they
4 lead to the wrong conclusion. An assumption is defined as a
5 thing that is just accepted without proof. So inferences,
6 yes; assumptions, no. Both these highly educated, pleasant
7 people, their purpose here was to try and persuade you to
8 assume things that aren't based on facts on the evidence or
9 evidence in the case.

10 You can't prove a case with assumptions, innuendos, and
11 reverse logic. It's like 95 percent of child abuse cases --
12 and they never really define what that is. Is that cases
13 that go to court? Is that cases that they create a file on?
14 Okay. But let's go with the 95 percent, don't have physical
15 signs. But you can't use that to say, well, because this
16 case had no physical signs then it's in that 95 percent.
17 That's reverse logic. And I tried to bring that out..

18 And then we have Demetria, the child's mother, who was
19 not called on the State's case. But I called her. I wanted
20 to know what she had say. And here's what she had to say:
21 I lied to the court about [REDACTED]'s father in the child
22 support case. I convinced him that he was the father so he
23 would sign the certificate so I could go to DSS and get
24 child support. That's not exactly how it works. You apply
25 for public benefits; DSS files a case to try to recover what

1 they paid her. And then at some point the young man came up
2 and said, wait a minute, I need to be sure, as he's entitled
3 to. The Court ordered genetic testing, and you'll have the
4 court order. He's not the father. And the court order says
5 the case is dismissed. He's excluded as a father. And then
6 it says all outstanding bench warrants are rescinded. This
7 guy had bench warrants out because of her statement to the
8 Court; her false statement. So we know she lied to the
9 Court. And she'll use the Court to try to get what she
10 wants. Then we learned that she's not above accusing these
11 ladies, one of whom is a registered nurse and the other who
12 is a Christian minister, of kidnapping her daughter when she
13 knew exactly where the child was. She knew exactly who to
14 call and where to go. And they even offered to bring her up
15 to be with her daughter. Instead she runs to the Holly Hill
16 Police Department and said these people kidnapped my child.
17 And, you know, the cops have to react. So that was a false
18 statement to authorities to get what she wants. And now the
19 child is with her. What better way to ensure that this
20 child will never go back and never be part of that church
21 family, which is sad, but she'll never have to bring her or
22 let her go again because of this allegation. Now you can do
23 with that with what you want, but I don't know how you can
24 ignore that evidence. How can you ignore that? And that
25 evidence, especially the kidnapping, was completely

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1 corroborated by the witnesses I put up who weren't in here
2 during that testimony. They were outside. They didn't have
3 no idea what she said. It was completely, perfectly
4 corroborated.

5 I'm almost done, folks. Now, you're going to watch the
6 video. I've gone over what I think are important points.
7 Obviously, there is some other important information on
8 there. You have an unenviable job here. You got to weigh
9 the credibility of the little girl because regardless of
10 what the experts say, it gets down to whether or not you
11 believe the child. And in doing so, I would suggest you
12 consider a few things. Was she consistent? She's capable
13 of consistency. She gets all the colors right. Now, I
14 played the color game with her. That was my
15 cross-examination. We kind of had fun with it. She called
16 that the judge flag. She said the fringe was yellow. She
17 said there were yellow and blue and brown things in the
18 carpet. The desk was brown. She was clear on all that
19 stuff. I wonder if I had walked over to Oscar and said what
20 color is Oscar? Think she would have said yellow? I don't
21 know. You can infer what she might have said from what she
22 did say. But one thing she said for sure is that his wee
23 wee was yellow. She said that with confidence, with the
24 consistency she's described the colors in this case. She
25 has said that.

1 Well, when the State's case was over, I asked the judge
2 if I could do something. Can I show the jury what color
3 Oscar really is down there? And I apologize ahead of time.
4 This is not pleasant. But this is the case of what it is: a
5 jury trial, a serious business. It's not always fun.
6 Hardly ever fun. And sometimes it's downright
7 uncomfortable. But you got to look at this evidence because
8 this is the core of -- this goes right to the State's case
9 and it goes right to the State's defense. We went back and
10 photographed him with a private investigator with both
11 attorneys present. And the judge was, you know, he allowed
12 that. The private investigator went to get the photos
13 developed and this is what we have. He's not yellow. No
14 reasonable interpretation of this could be yellow. He's not
15 yellow folks. One thing the child said with consistency:
16 It was yellow. He's not yellow. So Oscar is here today to
17 tell you, he's not going to tell you anything, but by
18 pleading not guilty he saying I didn't do this. I don't
19 know anything about it. Something may have happened to this
20 child that I love, but it wasn't me. He's not yellow.

21 One more thing I got to say to you. This doesn't have
22 anything to do with the evidence. It has to do with how you
23 deliberate this case. Let me just suggest something that I
24 used to use with my kids. When my kids were growing up
25 trying to figure out things, I used to tell them a good way

1 to figure out reality is to use your imagination. I taught
2 them how to visualize. Because in my life, I've been able
3 to visualize some goals. And in a roundabout way, they came
4 true. Not exactly how I visualized them, but they came true
5 in a way that met my expectations. And I would say, you
6 know, if you want something in life, you visualize it. And
7 then once you have a clear picture in your mind's eye of
8 what it is, then you can figure out how to get there. Well,
9 I'm going to ask you to do this. Use your imagination for a
10 moment -- perfectly acceptable -- and visualize that this
11 trial is over, this week is over, and you've listened to the
12 evidence and the arguments, you went back in the jury room
13 and you found the defendant guilty. Okay. That's the
14 premise. And from there, visualize as the weeks go by and
15 the months and the years go by, and you're doing things that
16 you like. You're with your family. You go to the movies.
17 Play golf. Go fishing. Picnics, whatever. And something
18 about your surroundings or your interaction with people, it
19 triggers something that makes you remember this case. And
20 at that moment, at that point in time, think about, try to
21 visualize what your thoughts will be. And once you have a
22 clear visualization of those thoughts and your recollection
23 in this case, look in your mind's eye even if you have to
24 close your eyes and put those thoughts into words. The
25 words that are swimming around in your head is what you

1 remember about this case. And then you take those words and
2 you put them on a screen, organizer. See if one of those
3 words might be doubt. Thank you very much.

4 AST. SOL. CORNWELL: Daddy got on top of me. He did
5 it. He put his wee wee in mussy. It moved inside. I know
6 he did because he moved his body. It made me sad. Those
7 are the statements you heard from a five-, six-year-old
8 little girl, what she told her forensic interviewer exactly
9 what that defendant did to her. And if he felt bad
10 listening to what she said when she described the pain of
11 the sexual acts that that man did to her. Were you
12 disgusted? Were you heartbroken? You have a right to be.
13 She told you it happened more than once. When you came in
14 for jury duty, you didn't know that this is what you were
15 going to hear. No one should have to hear a five-, six-,
16 maybe seven-year-old little girl talk about things going
17 into her mussy. Things going into her coochie. But you
18 did. I'm pretty sure that when you came in here for jury
19 duty on Tuesday morning, none of you came in here thinking
20 you were about to hear a child rape case. Nobody wants to
21 hear that. Nobody wants to acknowledge that these things
22 can actually happen outside of TVs and movies and the
23 entertainment industry. But as bad as it made you feel
24 listening to it, as disgusted and discouraged as you may
25 have been when you watched that interview and you listened

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1 to that child testify and tell you what happened to her,
2 imagine how five-year-old [REDACTED] felt going
3 through it and living through it at her age.

4 At the beginning of this trial Mr. Palmer told you this
5 case was about facts not emotion. He didn't want you to
6 base your decision on sympathy or empathy for a little girl.
7 And I agree with Mr. Palmer. This case is about facts. But
8 with those facts, there is always going to be emotions. He
9 talks about going ruling with your head. Well, we rule
10 every decision in our life with both your head and your
11 heart. Your heart is your conscience and it drives you. It
12 helps you make the decisions. And your head tells you the
13 rational, logical explanation for those decisions and if you
14 should listen to your heart or if you should listen to
15 something else. But no matter what you do in life, there is
16 going to be emotion.

17 The facts in this case are clear. They are logical.
18 They are rational. The facts in this case show you that a
19 five-year-old, six-year-old, seven-year-old little girl
20 described to the forensic interviewer and later to you the
21 heinous acts that that man did to her. Those facts are
22 clear. And when you were listening to evidence, I asked you
23 to do one thing. I asked you to ask yourself how would a
24 little girl, a five-year-old, a six-year-old, a
25 seven-year-old, know about the sexual acts in the detail

1 that she knew them if it didn't happen to her? She
2 wouldn't. You know she's telling the truth. You know that
3 the only way that she knows these things is because she
4 experienced them. Those are logical, rational facts. And
5 if you know that she's telling the truth because she was
6 able to give details about the specific acts that happened
7 to her as a five-year-old child, then you also know that
8 she's telling the truth about what he did to her. Because
9 she also gave specific details on that. She told you Daddy
10 put it into her. She identified Daddy as Oscar. And I
11 while I was trying my best to block her view from him so she
12 wouldn't have to see -- (coughing) -- the man who did these
13 horrible things to her. She let me know I didn't do a very
14 good job because she even said it: It's the man sitting
15 behind you. She gave you details about where it happened.
16 It happened at Daddy and Tee Tee's house in the bedroom
17 where Daddy and Tee Tee sleep. She was even able to tell
18 you what side of the bed they sleep on. Daddy sleeps on
19 this side; Tee Tee sleeps on this side next to the window.
20 It happened in Holly Hill. Well, we know that the only
21 people that she would stay with in Holly Hill was that man
22 and his wife. The only men in her life in Holly Hill during
23 that time was him. So you know what happened to her and you
24 know who did it to her. You know where it happened. That's
25 not emotion. That's not facing things because you're

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1 feeling sympathetic for a precocious little seven-year-old.
2 Those are logical, rational facts. What those logical,
3 rational facts tell you is that that defendant, Oscar Small,
4 committed these heinous acts against that little girl.

5 Now, at the beginning of this trial you were told the
6 defendant was charged criminal sexual conduct with a minor
7 and exposing of HIV. You were told that the State had the
8 burden of proving this case beyond a reasonable doubt. And
9 I talked to you about that when I told you that I will do
10 just that. And I agree. That is 100 percent my burden.
11 That defendant doesn't have to say a word. And you cannot
12 consider that back in your jury room. But what you can
13 consider is testimony with the video and the evidence that
14 you did see. You heard from Destiny Roberts. And we talked
15 about credibility. What motive did Destiny Roberts have to
16 come in here and lie to you? What motive did Destiny
17 Roberts have to make this up, to lie about what happened to
18 her niece? [REDACTED] lived with her since she was born. She
19 told you that. [REDACTED] told you that. Even Detra told you
20 that. [REDACTED] never lived with Detra and Oscar. She went
21 and visited with them. She stayed on holidays and weekends.
22 She would stay a lot during the week before she started
23 school. But she never actually lived with them. She's
24 always lived with Destiny and she's lived with her mother
25 and she's lived with her grandmother. And, yes, she lived

1 with her two uncles and she lived with her step-grandfather
2 in Orangeburg, not in Holly Hill. And she's never made any
3 allegations against any of those men because those men
4 didn't hurt her.

5 You heard Destiny tell you that she got a break when
6 [REDACTED] would go to Holly Hill. That's one less child in
7 her house. And they had a very full house. She told you
8 [REDACTED] loved going to Holly Hill. She didn't have to get
9 in her car and drive [REDACTED] to Holly Hill. Detra and
10 Deborah would come and pick her up. So it wasn't a burden.
11 She has no motive to make this up because she's tired of
12 driving the kid to Holly Hill. She told you that Deborah
13 and Detra and Oscar treated her niece like a princess. They
14 bought her toys. They bought her clothes. They took her on
15 vacations. There was less financial strain on her because
16 of the fact that Deborah and Detra and Oscar were in
17 [REDACTED]'s life. So it's not like they're out for any sort
18 of financial gain. She had the financial gain already.

19 But let's talk about what she has had to do since this
20 disclosure happened. She's had to talk to at least two
21 different law enforcement agencies. She's had to take
22 [REDACTED] to multiple interviews. She had to drive all the
23 way to Columbia to get a medical exam done on [REDACTED]. She
24 had to come to multiple court hearings before this case even
25 came to trial. She also had to come to multiple things with

1 me. She had to get on this stand. She had to testify and
2 be subjected to cross-examination and people calling her a
3 liar and saying that she's not being consistent and she's
4 being combative and all sudden she doesn't remember. And
5 then while she didn't have to, you've seen that she's also
6 stayed in court this entire week. Because she wants to see
7 justice done for her niece. She's not even getting any
8 financial benefit through this. Mr. Palmer asked the expert
9 about coaching and why people would coach someone to say
10 these things. And he asked about financial benefits and
11 retribution. Well, what financial benefit has she gotten
12 through this? It's been more like a financial detriment.
13 She's had to take time away from her family. She's had to
14 spend gas money. She's had to take time away from her job
15 to come up here and to support her niece. There was no
16 financial gain from that. There's no financial benefit.
17 And what retribution was there against the defendant? She
18 told you she didn't have a relationship with the defendant.
19 She didn't know him. She didn't deal with him. She didn't
20 even call the police on him. The school is who called the
21 police. So there's no retribution. So what motive, what
22 reasoning, would she have to make these things up and to lie
23 about them? She wouldn't.

24 So let's talk about some of the things that she did
25 tell you. She told you that [REDACTED] loved going to Holly

1 Hill. Always wanted to go until around the summer before
2 she started kindergarten -- stopped wanting to go to Holly
3 Hill. She also told you that she started wetting the bed
4 and her pants. She was acting inappropriately with her
5 cousins. And she would start kind of pulling her hair when
6 she got nervous or scared. She doesn't say this happened
7 all at once. And she's not a trained expert. So she
8 doesn't know that these are really red flags at any point.
9 But she did tell you that when she saw her daughter saying
10 things and trying to act out sexual acts with her cousin,
11 that concerned her. She separated the kids immediately.
12 And then when [REDACTED]'s mom called, they talked about it.
13 And that's when she told you that upon talking about it,
14 [REDACTED] finally disclosed that she was sexually assaulted
15 in Holly Hill at Daddy at Tee Tee's house. She told you --
16 she was honest -- she didn't call the police immediately.
17 She was overwhelmed. She was scared. She didn't have legal
18 custody during that time of Keamanni. And she was also
19 uneducated in what to do with these things or resources she
20 had. You heard the experts say that only about 11 percent
21 of all caregivers immediately call law enforcement. Her
22 reaction is not unusual. She told you that [REDACTED] was
23 acting out in the same sexual way with kids at her school in
24 her kindergarten class. And, of course, that alarmed school
25 officials because they are trained to know these things.

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1 And so they called her up there and they told her what was
2 happening. And what did she tell you happened? She broke
3 down. She became emotional. And she told the school
4 exactly what [REDACTED] had disclosed to her. And the school
5 called the police. And when the police came up to talk to
6 her about what happened, she fully cooperated.

7 You heard Chief Detter talk about he was able to get
8 information on a roundabout location. Not an exact address
9 because she didn't have the exact. She didn't have to drive
10 out to Holly Hill very often. But she knew about where it
11 was. And she also gave him the names. And Chief Detter was
12 able to confirm that a description of where he lived was
13 accurate, and that he did live in Holly Hill. She told you
14 that the only men in [REDACTED]'s life were her two brothers,
15 a stepfather, and Oscar, and we mentioned Teddy in Holly
16 Hill. And Teddy was Detra's husband. She told you that she
17 nor Demetria have ever watched this forensic video before
18 coming into that courtroom and testifying for you on
19 Tuesday. The first time that she or Demetria saw the
20 forensic video was in this courtroom with you on Tuesday
21 afternoon. You saw that Demetria had to leave about half
22 way through it. She couldn't take it.

23 So when we talk about [REDACTED] and the things
24 that [REDACTED] -- so let's talk about her credibility. What
25 motive she had to lie? And one of the things I want to

1 personally talk about is this whole allegation of where she
2 said she was in the third grade and that's impossible so
3 clearly she's just making things up. Kindergartener. She
4 had just turned six years old -- I don't know what -- she's
5 not intentionally lying or confirming impossible information
6 because she's making things up. She was asked what grade
7 she's in. She said I'm in third grade. That's not --
8 that's not lying. That's not motive. It's a little girl.
9 She told you she loved going to Holly Hill. She loved her
10 Mimi and her Tee Tee. She even told you that before this
11 happened, she loved Oscar. She told you about getting toys
12 and clothes. This house, she had her very own bedroom. It
13 was colorful. It had toys and clothes. And it even had a
14 TV in it. Didn't have that in Orangeburg. She told you
15 about going to church and singing in the choir and going on
16 vacation. You heard a lot of testimony from Detra and
17 Deborah, and you even heard from the pastor, all kinds of
18 details about their church involvement. Nobody has denied
19 she was involved in the church and that she enjoyed being in
20 church. But what happened after she disclosed? Now she
21 doesn't get to see Mimi or Tee Tee anymore. She doesn't get
22 any toys. She doesn't get new clothes. She doesn't get to
23 go to vacations. She doesn't get to go to church over in
24 Holly Hill anymore, which is the thing that she loved to do.
25 She suffered those negative consequences since disclosing

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1 this incident.

2 She's had to talk about what happened to her over and
3 over and over again. And if you're uncomfortable talking
4 about your sexual experiences with another person as an
5 adult, imagine how awkward that can be as a child when
6 you're told don't say those words, don't talk about that,
7 and then all of a sudden you're asked to tell perfect
8 strangers about your private parts and another people's
9 private parts. She had to go to a doctor and get blood
10 drawn. What child likes getting shots and blood drawn? And
11 then she had to come and testify in front of a bunch of
12 strangers about what happened to her. And what did she tell
13 you? I want to go back to Holly Hill, but not if Oscar is
14 there. What motive doe she have to lie or make this stuff
15 up she's the one suffering here? She's lost out on all of
16 the things that she used to enjoy doing that she's done
17 since she was born because of what that man did to her. We
18 told you about that she stopped wanting to go to Holly Hill.
19 And I asked her, I said, "Well, why did you all of sudden
20 want to stop going to Holly Hill?" She told you exactly
21 why. She said because of what he was doing. I said, "Well,
22 what was he doing to you?" He got on top of me. She told
23 you he got on top more than once. That he was watching TV
24 and he called her into his bedroom. She told you she didn't
25 want to go. So he carried her into the room. She didn't

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1 want to go because she knew what was going to happen. And
2 this whole notion of what she's telling you can't be true
3 because she said she got dragged by her foot and you have
4 the floor. Well, you also heard the experts talk to you
5 about how, you know, children can -- things can run
6 together. Things can blur together. And they're also
7 fairly exact when they answer some of their questions. So
8 there is a great possibility she's fighting with him. She
9 doesn't want to go back there. And he grabs her by the foot
10 and he drags her over, picks her up, and carries her to the
11 bedroom. Because she doesn't have abrasions on her from
12 whatever tacks are showing on the floor, that doesn't mean
13 anything.

14 She told you that when they got in the room, he took his
15 clothes off. He took his clothes off in his and Tee Tee's
16 room. She said first her clothes were on and then he took
17 her clothes off. Mr. Palmer wants you to watch the video
18 and see in the video all the times where she said my clothes
19 were on when this happened. My pants were up. My pants
20 were up. And they were when he took her back there. And
21 you heard the expert tell you about how they can't exactly
22 answer that. So when the experts asked her for -- I'm
23 sorry, not the experts. When interviewer is asking her,
24 "Well, were your clothes on or off when this happened?" It
25 was a five-year-old. Her clothes were on when it happened.

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1 Clothes were on. Dragged her in the room. And he did this
2 to her. She told you what she saw was kind of hard. She
3 saw his wee wee. And she told you his wee wee is yellow.
4 And all of sudden that becomes the case, the yellow wee wee.
5 I feel like I'm almost in the second version of OJ Simpson
6 trial where instead of if the glove doesn't fit you must
7 acquit, now we're saying if the penis isn't yellow that's
8 not your fellow. It's a ridiculous notion.

9 She told you that Mimi and Tee Tee weren't home. They
10 were at church. And, of course, we had all the testimony
11 about church and how she always goes to church. And if
12 somebody's going to church, she wants to go to church with
13 them. Every Sunday, she would go to church. For one, no
14 one ever said this happened on Sunday. You've got, as
15 Mr. Palmer has pointed out, an ordained minister, people
16 very involved with the church. They're not necessarily
17 going to church just on Sundays. They're going to church on
18 other days. The other consideration is that she's five. So
19 when Mimi and Tee Tee leave the house, and she goes with
20 them when they leave the house, they go to church. So her
21 assumption is that they leave the house, they're going to
22 church. She's not thinking about exactly where they are.
23 She just knows that they're not home, so they must be at
24 church.

25 She told you it felt bad, that it made her feel sad.

1 She didn't want him to do that. She told you that it was
2 hard that he told her not to tell. And in that video she
3 did say, no, I didn't tell anybody. Well, we know she told
4 people. She told her mom. She told her aunt. And then
5 she's told you. She also told Mimi and Tee Tee. That's not
6 her making things up. The experts told you details come out
7 more and more as we talk. She said I told Mimi and Tee Tee
8 and they made Oscar apologize to me. [REDACTED] seen that
9 before. She told and there was a reaction. And that was
10 the conclusion. And as a child, that is the natural course
11 of events. You hit another child, you get in trouble. They
12 tell on you, and you're made to apologize. Done. She also
13 told you that she has never seen him do this to anybody else
14 and nobody else has ever done this to her. There is no
15 allegation of anybody else doing this but that man right
16 there.

17 And then we had the cross-examination. And Mr. Palmer
18 got to get up and ask her all kinds of questions. He asked
19 her about the colors in the room, on the wall, on the door,
20 on the TV, and the flag. But what he didn't do is ask her
21 about different people skin colors. He made a big deal of
22 the wall being white and that also around the door being
23 white. And he said, you know, and both of these are white.
24 And she said yes. Because in her mind, they're both white.
25 But he didn't ask about skin tone. And then he even told

1 you just a few minutes ago I wonder what she would've said
2 if I asked her what color Mr. Small is. He didn't have to
3 wonder. He could have asked her. But the reason he didn't
4 ask her is because he is afraid of the answer. Because if
5 she says yellow, well, that blows his whole argument out of
6 the water.

7 He asked about church again. He asked about meeting
8 with me three times knowing she was coming to court. And in
9 his argument he told you about her being coached and
10 prepared to testify. Did I bring her in this courtroom?
11 Absolutely. Do I bring 30-year-old women into courtroom
12 when I'm talking to him? Do I bring 27-year-old men into
13 this courtroom when I'm explaining to them? I am never
14 going to deny preparing my witnesses for trial because trial
15 is a scary and nerve-racking thing for any person. I would
16 never just throw somebody up on the stand without preparing
17 them for what to expect. And he asked her a question:
18 Well, when you were in this courtroom, who all did you talk to?
19 Who asked you questions? And she told you Ms. Ashley. She
20 pointed to Mr. Bill. She told you Ms. Tammy was up here and
21 another lady. And he said, did you talk to anyone else?
22 And she said yeah; the lady at the yellow house. Did you
23 talk to anyone else about this? Yes. She talked to the
24 lady at the yellow house about this. It doesn't mean that
25 the lady at the yellow house was here in the courtroom

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1 prepping her for testimony.

2 What else happened in cross-examination? And this is
3 the most important thing that happened in cross-examination.
4 He never asked [REDACTED] a single question about what
5 happened to her, about the sexual assault, or about who did
6 this to her. He told you in his opening statement about all
7 the problems that he was going to point out to you with this
8 forensic interview. And when he had the opportunity to ask
9 [REDACTED] what she meant by this. What did she say when she
10 meant this? He didn't do it. Why? Because he would rather
11 argue his own assumptions that actually get to the facts;
12 those logical, rational facts. Because as he told you,
13 facts are stubborn things. The truth doesn't change. And
14 if he were to ask her about them, and she could explain to
15 him, then what's the argument?

16 In his closing argument he talked about taking a
17 picture. Talked to you about the heartbreaking things I
18 have to hear in interviewing [REDACTED]. No doubt, those are
19 difficult. And then I have to go back and we had to take
20 the -- now you're going to have to look at the picture. And
21 nobody wants to do that. The argument is, well, it's not
22 yellow. It's not yellow so she can't be telling the truth.
23 My client couldn't have done what he did, what she's saying
24 he did. On the alternative, if she is telling the truth
25 about what happened, he doesn't have a yellow wee wee. So

1 whoever sexually assaulted her had a yellow wee wee; it
2 wasn't him. Those are his words. Either it didn't happen,
3 or it did happen, but it wasn't his client because the wee
4 wee wasn't yellow. Well, there are a few things I can say
5 to that. One, there is no allegation that she ever
6 performed any type of oral sex on him; that he ever made her
7 put her mouth on him. She wasn't face-to-face with this.
8 She told you he vaginally assaulted her. He put his wee wee
9 in her mussy. No, he didn't talk about skin tones and skin
10 colors. But as we know, everybody has difference skin tones
11 and skin colors. If you're female, you even know that the
12 descriptions are sometimes, you know, have yellow in their
13 tone, have green in their tone, or red in their tone. They
14 give you certain makeup to even out skin tone colors or
15 things like that. And as a child, you may think that his
16 light skin tone color has a yellowish complexion depending
17 on how you perceive people. So when she told you what
18 happened and what color it was and what it looked like, she
19 doesn't necessarily have to be 100 percent accurate on the
20 fact that his penis is somewhat darker in color than his
21 actual skin tone. She just knows she saw the front of him
22 and he's got a yellowish complexion; it was yellow. That's
23 one explanation. I've got another one for you.

24 We know that the expert said that sometimes they
25 confuse details and issues, sometimes they don't remember

1 things and they do. We also know that a five-year-old
2 little girl doesn't necessarily know what a grown man's
3 penis should look like or what any penis should look like as
4 a five-year-old little girl. You also heard Detra and
5 Deborah, or Detra talk about that they use condoms. What
6 color is a flesh-tone condom? Does it have a yellowish
7 appearance? Did that make it yellow? I would offer to you
8 that it could. Yes. And that doesn't mean that he had used
9 a condom every time. We know that he did this multiple
10 times. She told you that it happened more than once. Maybe
11 the times that she's talking about in the forensic interview
12 and on the stand here when we asked her tell me about one
13 time; tell me about the last time. Perhaps that time he
14 did. Maybe he did. But if you're trying to base your
15 conviction, your decision, on whether or not his penis was
16 yellow, you have to think about it from where that little
17 girl is sitting and what that little girl was seeing and
18 thinking about.

19 Talk about Demetria Roberts. What motive did Demetria
20 Roberts have to get on the stand and to lie to you about
21 what happened? She told you that Deborah and Detra and
22 Oscar treated her child like a princess. They emotionally
23 supported her. They financially supported her. And they
24 helped in raising her when she couldn't. You had heard
25 already about the struggles that she's going through. So if

1 this case wasn't hard enough on her already, what was the
2 point of putting her on the stand and asking her all these
3 questions about nothing that had to do with this case? She
4 wasn't even in Orangeburg when this was happening. All she
5 knows is that she called to check in on her daughter, which
6 she did often and every night. And on the night in August
7 when she called she was told horrible things from her
8 daughter's mouth that the defendant, a man that she
9 entrusted her daughter's protection with, had done to her.
10 She told you that she suffers from bipolar, schizophrenia,
11 and ADHD. She's already dealing with the emotional stress
12 of what happened to her daughter when she wasn't there. The
13 only reason they put her on the stand was to try to make her
14 out to be a liar, to make her out to be manipulative, and to
15 make her out to have some sort of motive in doing all this.
16 But what motive is that? The reason that they wanted to do
17 that was so that they could tell you that she's a liar, that
18 she made this up. She forced her daughter to say this so
19 that she could get attention, she could get something out of
20 it. Of what, we don't know. But the reality is they're
21 just trying to use her to distract you from those logical,
22 rational facts that the defendant committed these crimes.

23 Detra Small is Oscar's wife, and she's in a difficult
24 position. Nobody wants to believe that somebody that
25 they've been in a relationship with for ten years, married

1 to for five, could do these horrible things to a little girl
2 that they both love. They didn't have children of their
3 own. And she told you they looked at [REDACTED] as if she was
4 their own child. And what person wants to believe that
5 their spouse, their loved one, the person that they imagined
6 being the father of their children, could prey on a young
7 child like that? Nobody wants to believe that. She talked
8 to you about several things that will cause you to maybe
9 hesitate to act on her credibility. She talked to you all
10 about the New York trip. She told you that they didn't
11 bring Keamanni back when they were asked by Demetria. She
12 told you that. She also told you that when Orangeburg
13 County Sheriff's Office called up to New York, they told
14 them that certain date that they would be back. Told the
15 Sheriff's office that. And then what did she say? Oh, but
16 we didn't bring -- about another week later. Demetria had a
17 right to be nervous. All of sudden her child, who she
18 willingly let go to New York with people that she considered
19 family at that point, not bringing her child back to her.
20 What parent doesn't start to get nervous about that? She
21 didn't press charges. She didn't, you know, put them in
22 jail or anything like. In fact, they told you a month later
23 let the child go back with them. But there is that
24 instinct, that concern, that mother intuition that says, why
25 are they not bringing my child back?

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1 She also told you that she was irritated that they
2 wouldn't let [REDACTED] miss school and go to Atlanta with
3 them. She wanted to [REDACTED] to call her mom. The only
4 people that have a motive, people in custody, and not being
5 truthful about this is the defendant's family. They want
6 custody. They want her. They want her back. So of course
7 they're going to be mad that this happened. Of course
8 they're not going to tell anybody that she's disclosed to
9 them a horrible thing that's been happening to her at the
10 hands of the defendant. Because if they do that then they
11 know that what has happened would have happened. That she'd
12 be taken away from them.

13 She told you that [REDACTED] never lived with her but
14 that she was there frequently. And this is particularly
15 important. She told you she was there frequently between
16 May and August 15 of 2015, which was the last time they saw
17 her. Not that she was just there on the weekends, not just
18 on Saturdays and Sundays when they were doing church things.
19 She was there frequently. But she wanted to tell you that
20 she never ever, ever left [REDACTED] alone with Oscar. How
21 realistic is that? You're never going to leave a child at
22 home alone with the man that you want to be her father
23 figure? She talked about going inside the house and how
24 long it would take. She told you at first, oh, it would
25 take five minutes for me to pull my car around, get parked

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1 in the back of the house, come in the door, there's alarm at
2 the front door. There's an alarm when I go to the laundry
3 room. I have to go through a patio door in the den. And
4 she said about five minutes. Then she was like, no; too
5 long. Three minutes. No, no, wait. Seconds. Because she
6 knew that if took too long that it would support that Oscar
7 could have been back in the bedroom with [REDACTED] doing
8 exactly what [REDACTED] told you he did. She told you that
9 [REDACTED] never told her what Oscar did to her. Yet, she
10 also told you that as soon as Demetria found out about this,
11 she called raving; ranting and raving about what her husband
12 did to her child. And then she said I didn't want to talk
13 to her about it because she wasn't being respectful. And it
14 kind of struck me as funny. I know that's not the right
15 word. But I don't know about you, but If I find out that
16 somebody has sexually assaulted my child, I think the last
17 thing that I'm going to be thinking of doing is being
18 respectful to the person who was living in that house. But
19 she also told you something else that's a little off. She
20 said but even after she called me up about this disclosure,
21 I offered to go to church and talk to the pastor with the
22 whole family about it. What you didn't know what was
23 happening, and somebody called you ranting and raving, why
24 would your solution to -- let's get counsel by the church
25 then. Not let's call the police, not take him over, let's

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1 talk one-on-one. Let's bring the child and this man that's
2 accused of doing things in front of her and let's work it
3 out with the church.

4 It's hard to believe that someone you love committed
5 these heinous acts. It's easier to deny and blame others
6 than accept the truth. But I think Demetria knows exactly
7 what -- I have minutes for Deborah Robinson. And I have
8 minutes from her in quotations and I have the upmost respect
9 for people of God. I'm a christian. I believe in God. But
10 I also know that some of the things that Ms. Robinson has
11 done in her life, I have no patience for. I do not think
12 that you should treat others that way. Digs, snide
13 comments, remarks, I don't believe that's very christian. I
14 also know that because of people like her, she is the reason
15 that so many rape cases go unreported. And what she did is
16 part of the reason why it is so hard to get a conviction in
17 rape cases. Because of the fact that there are so many
18 people like her that will just make up allegations against a
19 man to get what they want. She's a proven and admitted
20 liar. We talked again about the kidnap issue in New York.
21 And she also told you about an IRS fraud issue, you know.
22 But of course every time, that's not on her either, you
23 know. It's not her fault that she lied about sexual
24 assault. It's also not her fault that there was some kidnap
25 charges and the word on the street was that she was

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1 kidnapped. And it's not her fault that she was accused of
2 IRS fraud. And even though she didn't do it, she could have
3 done it. She could have filed for it. How? She even told
4 you [REDACTED] didn't live with her. One would know where
5 [REDACTED] lived. It wasn't with Detra and Oscar. So how is
6 she going to say that I could have filed for it? It's the
7 snide kind of it's never her.

8 She also had the audacity to make digs at Demetria and
9 call her a liar and manipulative. Demetria was not -- she
10 was a 19-year-old teenager who got pregnant. She didn't
11 even know the father. She didn't lie about it. She got up
12 here and told you about it. What was the point of that?
13 And she's gonna say that Demetria is a liar and
14 manipulative and tries to use the courts to her advantage.
15 I mean, the only one in this courtroom who has ever filed a
16 false report against somebody else is her? The only one
17 that was trying to use the court to get back at somebody is
18 her? She did give you a couple of things. One, she told
19 you she refused to talk to me. But she also watched the
20 forensic interview. Her and Demetria watched the forensic
21 interview and prepared themselves for what they needed to
22 say, how they needed to testify as to the events. Wouldn't
23 come and talk to me about it. But they watched the forensic
24 interview. Something that Demetria and Destiny never seen.
25 She also admitted that there were times that [REDACTED] would

1 be left at home alone with Oscar. And she also told you she
2 didn't raise Keamanni to lie. She lies. She told [REDACTED]
3 not to.

4 We'll talk about the experts and I'm not going to go
5 too much into that. You remember their testimony. They
6 were experts in social abuse. They told you that forensic
7 interviewers are allowed to testify in South Carolina about
8 the details of the interview, they can't be experts. They
9 told you about the 24-hour time period. Statistically,
10 95 percent of all exams are normal. And they gave you
11 various common reasons why. One that there was a common
12 misconception about -- that the abuse often doesn't cause
13 injury because the vaginal and rectums ability to stretch.
14 And then they also told you that interval of time between
15 abuse and exam often allows injuries to heal. Mr. Palmer
16 wants to get up and talk about why throw her a softball
17 question. You know, can two people have sex without injury
18 occurring? And she said no. Because the fact of the matter
19 is that penetration is considered -- I mean, that's an --
20 there's a penetration. Doesn't mean that it's a injury
21 that's going to be sustained or anything like that. But
22 there is an intrusion in the body every time you have sex.
23 And as a doctor, that's what she has to explain to you is,
24 yes, there's an injury, there's an intrusion every time
25 people have sex. Doesn't mean that there is going to be a

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1 physical finding of an injury.

2 We talked about behavioral characteristics: peer,
3 familiar places and persons, bedwetting, sexualized
4 behavior. The red flags that would cause the decisions for
5 disclosure. The disclosure of the process. And we talked
6 about the forensic interviews and the factors that you need
7 to consider when looking at the interview. We also talked
8 about recanting statements and they told you that by not
9 recanting a statement, despite suffering multiple negative
10 consequences, does give credibility to the statement.
11 Eleven percent of caregivers call law enforcement.
12 Prepubescent children don't hold STDs. And HIV is rarely
13 transmitted through sex. So just because [REDACTED] does not
14 have HIV does not prove that he did not have sex with her.
15 There are multiple reasons why. It's low transmittal. He
16 was already getting treated, which makes it almost
17 non-transmittal. And there's the possibility he wore a
18 condom, and that would be no transmittal. He wants you to
19 believe that these child advocacy centers are here, they're
20 advocacy centers now. They're, you know, it's a scoreboard.
21 And they're just trying to get convictions on the
22 scoreboard. And somehow I've been lumped into this
23 conspiracy with the solicitor's office, and I've, you know,
24 trained people testify in ways to prepare things. No.
25 People don't rubber stamp. Nobody is looking, hoping that

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1 kids are abused. Thirty-three percent of cases reviewed are
2 all found to be inconsistent. And my job, just like
3 Mr. Palmer's job, is ask you to search for the truth.
4 You've seen in the newspapers. The solicitor's office
5 dismisses just as many cases as we prosecute. It's not my
6 job to get convictions. It is my job to prosecute a crime
7 where a crime has occurred and ask you the jury to make a
8 finding of fact as to whether or not there is probable
9 cause; if it's your belief beyond a reasonable doubt that
10 that crime occurred. My job isn't convictions. My job is
11 to get to the truth. And in this case, the truth is that
12 that defendant raped a five-year-old little girl multiple
13 times. And they gave you their expert opinion that this
14 case is consistent with sexual abuse.

15 And we talked about reasonable doubt. And perhaps Mr.
16 Palmer is right that reasonable doubt is not most likely. I
17 think a better term is it's what most probably occurred.
18 Probable cause beyond a reasonable doubt. It is a doubt
19 that would cause a person to hesitate to act. However, if
20 proof beyond a reasonable doubt leaves you firmly convinced
21 that the defendant is guilty of these crimes, then we've met
22 our burden of proof, and you must find him guilty. You
23 don't have to find guilt beyond all doubt. And, again, if
24 you came into this courtroom knowing nothing about the case
25 that you sit here now thinking that the defendant did this,

1 then that's proof beyond a reasonable doubt and you should
2 find him guilty. Mr. Palmer at the beginning of this trial
3 when he talked about emotion and not considering
4 sympathies and child things, he told you that I was
5 desperate. I was desperate for a conviction. Maybe he's
6 right. If being desperate means that I want to take a
7 sexual predator who raped a five-year-old little girl
8 multiple times on multiple occasions, while knowing he had
9 HIV, off the streets makes me desperate, then he is
10 absolutely right. I am desperate for conviction to take
11 that predator off the streets so that he never hurts another
12 child again. And if being desperate means that you have to
13 stand up and protect a little girl who has faced obstacle
14 after obstacle in her young life and demand justice for the
15 things that that little girl had to go through by making
16 sure that that defendant can never hurt anybody ever again,
17 then I sincerely hope that you as jurors are also desperate
18 in this case.

19 Because in a day and time and age where superhero
20 movies are coming back in style and comic book heroes are
21 superman, batman, spiderman or wonder woman, are prevalent
22 in society today again, you also have the opportunity to be
23 a superhero. You might not have the wooden stake, the
24 golden bullet, the jumping tall buildings and the
25 visibility, but you can be a little girl's superhero and

1 make sure that the monster that did the heinous acts to her
2 that we had listened to never hurts her again. And you can
3 be a superhero to every other child in this county, in this
4 state, in this nation by making sure that he never has the
5 opportunity to hurt any of them either. And the way that
6 you use your superpower is one word and that word is guilty.
7 Because the defendant is guilty of criminal sexual conduct
8 with a minor. He engaged in a sexual battery with the
9 victim and the victim was less than 11 years of age. The
10 testimony has proven that. And the State has proven each
11 and every one of those elements. He is guilty of exposing
12 another to HIV. Told you he had it. No denying that. Has
13 to forcibly engage in sexual intercourse. And you heard
14 Keamanni testify that she didn't want to be back there; she
15 didn't want him to do those things. Even if she did, she is
16 under 14. She can't legally consent to those things. And
17 he knew about it. Be this little girl's superhero. Scott
18 doesn't want -- I'm sorry. Mr. Palmer doesn't want you to
19 rule on this case based on emotions. He wants you to rule
20 on logic and facts. But all of sudden he wants you to bring
21 back emotion once you've ruled on it and feel guilty for
22 finding this man guilty of his crimes. That he can't go
23 play golf or be out hanging out with his family on the
24 weekends. You know what he also can't do if you find him
25 guilty? He can't rape anymore five-year-olds. Use your

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1 superpower. Stand firm in your convictions. Have the
2 courage to come out and let him know that you are never
3 going to let him do this to her again. Find him guilty of
4 criminal sexual conduct with a minor and guilty of exposing
5 another to HIV.

6 THE COURT: Ladies and gentlemen, we are going to take
7 a ten or 15-minute break. I'll come back out and charge you
8 on the law. Don't start discussing this case yet.

9 (The jury exits the courtroom at 11:53 a.m..)

10 THE COURT: All right. We'll be in recess ten or 15
11 minutes.

12 (A brief recess is taken at 11:53 a.m. The proceedings
13 resume at 12:12 p.m.)

14 (The jury enters the courtroom at 12:12 p.m.)

15 JURY CHARGE

16 THE COURT: Ladies and gentlemen, if you'd give me your
17 attention, I'm going to explain to you the law that you will
18 apply in this case. And under our constitution and code of
19 laws, only the jury can make a finding of the facts of the
20 case. I am not allowed to have an opinion about the facts.
21 So if I've said anything or done anything in trial that you
22 think I have an opinion about the facts, you are to
23 disregard that because you and only you must determine the
24 weight of the evidence presented in this trial and render a
25 verdict based solely on that evidence. The same

1 constitution and code of laws that makes you the exclusive
2 judge of the facts makes me that exclusive judge of the law.
3 So if you have some ideas of what you think the law is or
4 what the law should be and it differs from what I now tell
5 you the law is, under your oath you are to disregard your
6 ideas and accept the law and apply it exactly as I give it
7 to you.

8 That fact that this defendant was arrested and charged
9 and indicted in this case is not evidence in this case and
10 cannot be considered by you as evidence of guilt in this
11 case, nor does it create any presumption or inference of
12 guilt. The indictment is simply a formal written instrument
13 which contains the charges against this defendant and serves
14 as a formal document by which this case is processed through
15 the court system. To this indictment, the defendant has
16 entered a plea of not guilty. And that plea casts the
17 burden on the State of South Carolina to prove each and
18 every element of that indictment beyond a reasonable doubt.
19 A person charged with committing a criminal offense in South
20 Carolina is never required to prove himself or herself
21 innocent. And I instruct you and emphasize to you the fact
22 that defendant did not testify in this case is not a factor
23 to be considered by you in any way during deliberations. And
24 in your consideration on the question of guilt or innocence
25 of the defendant, it must not be considered by you in any

1 manner whatsoever. The defendant has the constitutional
2 right to remain silent. And the assertion of that right
3 must not be considered by you in your deliberations. I
4 repeat, under your oath you are to draw no conclusions
5 whatsoever from the fact that the defendant in this case did
6 not testify. The fact that this defendant did not testify
7 should not even be discussed in the jury room. The burden
8 of proof, as I stated to you, is on the State. The
9 defendant is not required to prove himself or herself
10 innocent. The burden remains on the State to prove guilt
11 beyond a reasonable doubt. It is an important rule of law
12 in this country that the defendant in a criminal trial will
13 always be presumed innocent for the crime for which he or
14 she is indicted unless or until that guilt has been proven
15 by evidence that satisfies you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is not a mere legal
18 theory. It is not just a legal phrase. It is a substantial
19 constitutional right which every defendant is entitled. The
20 presumption of innocence accompanies the defendant from the
21 time he is charged throughout the trial until you reach a
22 verdict of guilt based upon evidence that satisfies you of
23 that guilt beyond a reasonable doubt. A reasonable doubt is
24 a doubt which makes an honest, sincere, conscientious juror
25 in search of the truth hesitate to act. Proof beyond a

1 reasonable doubt must therefore be proved by such a
2 convincing character that a reasonable person would not
3 hesitate to allow and act upon it, the most important of his
4 or her own affairs. Proof beyond a reasonable doubt can
5 also be described as proof that leaves you firmly convinced
6 of the defendant's guilt. Now, there are very few things in
7 the world that we know with absolute certainty. In a
8 criminal case, the law does not require proof that overcomes
9 every possible doubt. If based on your consideration of the
10 evidence you are firmly convinced that the defendant is
11 guilty of the crime charged, you must find him guilty. If,
12 on the other hand, you think there's a real possibility he
13 is not guilty, you must give him the benefit of that doubt
14 and find him not guilty.

15 In determining what facts in a case you, must
16 necessarily -- in determining the facts of the case, you
17 must necessarily pass upon the credibility, which simply
18 means the believability of the witnesses and the value or
19 weight to be given to their testimony. You alone must
20 decide the force and effect of the truth of that testimony.
21 In making these decisions, there are many things that you
22 may and should consider such as the manner or appearance of
23 the witness on the stand sometimes referred to as the
24 demeanor of the witness. Was the witness forthright or
25 hesitant? Was the witness's testimony consistent or did it

1 contain discrepancies? What was the ability of the witness
2 to know the facts about which he or she testified? Did the
3 witness have a reason or cause to be biased or prejudiced in
4 favor of the testimony he or she gave? Was the testimony of
5 a witness corroborated from a stronger -- or by other
6 evidence or the testimony, or was it made weaker by such
7 other evidence or testimony?

8 Now, the rules of evidence do not ordinarily permit a
9 witness to testify to opinions or conclusions. An exception
10 to this rule is for a witness we call an expert witness. A
11 witness who by education and experience has become an expert
12 in some art, science, profession, or calling. They state an
13 opinion as to relevant and material matters in which the
14 witness claims to be an expert. They may also state a
15 reason for that opinion. You should consider an expert
16 opinion received in evidence in this case like any other
17 evidence. Give it the weight you think it deserves. If you
18 decide that the opinion of an expert is not based on
19 sufficient education and experience, or if you conclude that
20 the reasons given in support of the opinion, are not sound
21 or that the opinion is outweighed by other evidence, you may
22 disregard the opinion in its entirety. And expert witness's
23 testimony is to be given no greater weight than that of any
24 other witness simply because the witness is as an expert.
25 And further, you are not required to accept an expert's

1 opinion even though it is not contradicted. As jurors, you
2 have a right to believe a small portion of a witness's
3 testimony and disregard the larger or vice versa. You may
4 believe all of the witness's testimony or none. You may
5 believe the testimony of a single witness against that of
6 any or the other way around.

7 Now, generally there are two types of evidence
8 presented during a trial: direct evidence and circumstantial
9 evidence. Direct evidence directly proves the existence of
10 fact; it does not require deduction. Circumstantial
11 evidence is proof of a chain of facts and circumstances
12 indicating the existence of a fact. Crimes may be proven by
13 circumstantial evidence, and the law makes no distinction
14 between the weight or value to be given to direct or
15 circumstantial evidence. However, to the extent the State
16 relies on circumstantial evidence, all the circumstances
17 must be consistent with each other and when taken together
18 form conclusive to the guilt of the accused beyond a
19 reasonable doubt. If these circumstances merely portray the
20 defendant's behavior as suspicious, the proof fails. The
21 State has the burden of proving the defendant guilty beyond
22 a reasonable doubt. This burden rests upon the State
23 regardless of whether the State relies on direct,
24 circumstantial evidence, or a combination of the two.

25 Now, criminal intent is also a necessary element that

1 you must consider in the statements that prove beyond a
2 reasonable doubt. Criminal intent is always a matter the
3 must be determined by the jury and the circumstances
4 surrounding the situation. There's no way to prove intent
5 to a mathematical certainty. There is no way medical
6 science can dissect a person's brain and determine what he
7 or she had in mind. So the law states criminal intent may
8 be inferred from circumstances shown to have existed both
9 before and after the fact. This is how you, the jury, make
10 a determination of whether or not the element requiring
11 intent was present. Criminal intent is a state of mind that
12 operates jointly with an act or omission in the commission
13 of a crime. Criminal intent is a mental state of conscious
14 wrongdoing. So it is up to you, the jury, to determine what
15 the defendant intended to do based on the circumstances
16 shown to have existed. And I tell you the State must prove
17 criminal intent beyond a reasonable doubt just as the State
18 must prove every element beyond a reasonable doubt.

19 The defendant in this case is charged with first degree
20 criminal sexual conduct with a minor. The State must prove
21 beyond a reasonable doubt that the defendant engaged in a
22 sexual battery with the victim. A sexual battery is sexual
23 intercourse, cunnilingus, fellatio, anal intercourse, or any
24 intrusion, however slight, in any part of a person's body or
25 any object into the genitalia or anal openings of another

1 person's body except when the intrusion is accomplished for
2 medically recognized treatment or diagnostic purposes. The
3 State must prove beyond a reasonable doubt that the victim
4 was less than 11 years of age at the time of the sexual
5 battery. Consent, willingness, indifference, or ignorance
6 on the part of the minor, if any, as to what was taking
7 place does not in any way affect the charge of criminal
8 sexual conduct with a minor because an unmarried woman under
9 the age of 14 cannot legally consent to sexual intercourse.
10 The defendant is also charged with exposing others to HIV.
11 South Carolina Code of Laws states that it is unlawful for a
12 person who knows that he is infected with HIV to forcefully
13 engage in sexual intercourse, vaginal, anal or oral, without
14 consent of the other person.

15 A stipulation is the agreement, omission or a
16 confession made in judicial proceedings by the parties
17 therefore -- to their attorneys. Stipulations are binding
18 on those who make them. A stipulation is an agreement and
19 an understanding. The Court and jury must accept
20 stipulations as binding upon the parties. If counsel for
21 the parties have stipulated to any fact or if any fact has
22 been admitted by counsel, you will regard that fact as being
23 conclusively proven as a party or parties are making the
24 stipulation or an omission.

25 Now, when an expert is called by either the State or

1 the defendant, he or she is expected to be paid, and he or
2 she is expected to paid for their services. You should not
3 take into consideration the fact that the witness is paid
4 unless there is some evidence and circumstances appearing
5 from the evidence that would fully and reasonably convince
6 you that the testimony of the witness had been influenced
7 because of the sum of which he or she was paid to testify.

8 Now, ladies and gentlemen, you're not persons or
9 advocates for the State of South Carolina or this defendant.
10 You don't serve as jurors to award your friends or punish
11 your enemies. That system of justice just simply would not
12 be tolerated. You have been selected by both the State and
13 this defendant to be fair and impartial. It is your duty by
14 your joint deliberation to determine the facts in this case
15 based on the evidence that's been presented to you and reach
16 a verdict in this case. When you have determined and
17 applied that law that I have given to you and arrive at a
18 verdict in this case, you would've accomplished your
19 responsibilities and your duties to this Court.

20 Now, Mr. Foreman, I've had my law clerk type up a
21 possible verdict form in this case. And it's simply the
22 caption of the case, "The State of South Carolina versus
23 Oscar James Small, Jr: We, the jury, unanimously find the
24 defendant guilty of criminal sexual conduct with a minor in
25 the first degree or not guilty." And number two is, "We

1 unanimously find the defendant guilty of exposing another to
2 HIV or not guilty." The order that I put these in you
3 should draw no conclusion to whatsoever. I just had to just
4 put them in some order. When you reach this verdict, it
5 must be unanimous. All 12 of you must agree on this verdict
6 before you authorize and check the block and sign your name
7 and date it at the bottom. And when you reach the verdict,
8 if you will knock on the door, I'll bring you back out and
9 receive that verdict.

10 Now, I've got to go over some things with these
11 attorneys to see if I've left anything out. If I've left
12 out part of my charge, I'll bring you back out and charge
13 you further on the law. If I've covered everything that
14 they think I need to cover, I will send this verdict form
15 along with the evidence back to the jury room. When you get
16 that evidence and the verdict form, that will be your
17 indication to begin your deliberations. And while you're
18 deliberating about this case, if for any reason somebody
19 needs to leave, either go to the restroom or whatever,
20 you've got to stop talking about the case. And you can only
21 talk about it when all 12 of you are present in the jury
22 room. And like I said, when you reach the verdict, it must
23 be a unanimous verdict, then knock on the door. I'll bring
24 you back out and receive the verdict. If you have a
25 question, you have to write that question down on a piece of

1 paper and give it to the bailiff. I can tell you right now
2 I can only answer questions of law. If you have a question
3 of fact on the evidence, I can't answer that. You've heard
4 the facts. You've heard the evidence. So I can't answer
5 any factual questions. I can only explain the law to you
6 further if you have a legal question, okay. If you'll go
7 back to the jury room, I'll either bring you back out in a
8 minute, or I'll send the documents into you, okay.

9 (The jury exits the courtroom at 12:27 p.m.)

10 THE COURT: All right. Any exceptions on behalf of the
11 State?

12 AST. SOL. CORNWELL: No, Your Honor.

13 THE COURT: Behalf of the defense?

14 MR. PALMER: No, Your Honor.

15 THE COURT: All right. If y'all will get the evidence
16 together along with the verdict form. And be sure, since
17 I've had three court reporters in this, y'all better be sure
18 the evidence is there. Because if it's not, I'm not gonna
19 let my court reporter take the blame.

20 (The evidence and verdict form are brought to the jury
21 room, and deliberations began at 12:30 p.m. The
22 proceedings resumed at 2:30 p.m.)

23 THE COURT: I got a question from the jury. They want
24 to see the DVD, and they want to hear the testimony of the
25 victim. Now, the problem is that was Hilda's.

1 AST. SOL. CORNWELL: We have that, Your Honor.

2 THE COURT: You've got it?

3 AST. SOL. CORNWELL: She sent it to the Victims'

4 Advocate, Ms. Craven, in case this issue came up.

5 MS. CRAVEN: I have it.

6 THE COURT: You got it?

7 MS. CRAVEN: Yes, sir. She sent it to me just for this
8 very reason just in case.

9 THE COURT: You got it with you right now?

10 MS. CRAVEN: I have it on my computer that I can bring
11 up.

12 THE COURT: All right. How about get that and give it
13 to the court reporter and see if we can figure that out.

14 MS. CRAVEN: Yes, sir. Okay.

15 THE COURT: Now, I guess I need bring them in here.
16 The easiest thing would be to let them listen to the tape
17 first while we try to get this other one up. Does that suit
18 y'all?

19 AST. SOL. CORNWELL: Yes, sir.

20 THE COURT: Now, what do we need to do have them to
21 play the CD or DVD or whatever it is?

22 AST. SOL. CORNWELL: This computer is the one that has
23 the program that won't skip.

24 THE COURT: Whatever we need to do to make it play
25 better.

1 AST. SOL. CORNWELL: I can get it pretty much set up
2 and then all they'll have to do is pop it in and it should
3 come up.

4 THE COURT: Do you want me to bring them out and tell
5 them that or just simply send that back to them? What do
6 y'all want to do?

7 AST. SOL. CORNWELL: We can send it back.

8 THE COURT: All right. We'll send that back. And in
9 the meantime, we'll try to get this testimony up, and if
10 they want to hear the testimony after they hear this.

11 AST. SOL. CORNWELL: If Ms. D will actually get me the
12 DVD, I'll go ahead and set it up where all they have to do
13 is press play.

14 THE COURT: Okay.

15 (Brief pause.)

16 THE COURT: All right. I guess we'll just be at ease
17 until -- how long is that?

18 AST. SOL. CORNWELL: Forty-five minutes.

19 THE COURT: Okay. Anyway, while y'all are working on
20 that, I'll go back in chambers.

21 (Court's Exhibit No. 1, Jury Question, was marked for
22 identification.)

23 (The proceedings are at ease at 2:36 p.m. and resume at
24 3:53 p.m. The jury enters the courtroom at 3:53 p.m.)

25 THE COURT: Mr. Foreman, it's my understanding that

1 y'all want to hear the testimony of the child?

2 FOREPERSON: Yes, Your Honor.

3 THE COURT: You want to hear the entire thing or part
4 of it?

5 FOREPERSON: The entire thing, sir.

6 THE COURT: Okay. We are going to play it over this
7 computer. If it's not loud enough or if you can't hear it,
8 somebody just raise their hand and we'll try to correct
9 that, okay?.

10 FOREPERSON: Yes.

11 (At 3:54 p.m. the testimony of the victim, [REDACTED]
12 [REDACTED], is played back for the jury. The playback of
13 the testimony ends at 4:35 p.m.)

14 THE COURT: If y'all need anything else, let us know.
15 (The jury exits the courtroom at 4:35 p.m. and
16 continues with deliberations.)

17 THE COURT: Okay. We'll be in recess until we hear
18 something else.

19 (The proceedings were at recess from 4:36 p.m. until
20 5:15 p.m.)

21 JURY VERDICT

22 THE COURT: I understand we have a verdict?

23 BAILIFF: Yes, Your Honor.

24 THE COURT: Okay. Where is the defendant?

25 MR. PALMER: They're getting him, Your Honor.

1 (Brief pause.)

2 THE COURT: Okay. Bring me the jury, please, ma'am.

3 BAILIFF: Yes, Your Honor.

4 THE COURT: I want to thank both attorneys. Y'all did
5 a very good job in this trial, and I enjoyed trying the case
6 with you. I don't know what the verdict is going to be, but
7 y'all both represented your clients well. Thank you.

8 MR. PALMER: Thank you, Your Honor, and likewise.

9 AST. SOL. CORNWELL: Thank you, Your Honor.

10 (The jury enters the courtroom at 5:16 p.m.)

11 THE COURT: Mr. Foreman, I understood you reached a
12 verdict?

13 FOREPERSON: We have, Your Honor.

14 THE COURT: Is it unanimous?

15 FOREPERSON: Yes, sir.

16 THE COURT: Okay. Would you pass it up, please, sir.

17 BAILIFF: Your Honor, may I approach?

18 THE COURT: Yes, ma'am. Okay. Do you want to publish
19 the verdict or you -- okay. You may publish the verdict.

20 THE CLERK: I bring to the Court's attention to
21 indictment number 2016-GS-38-0204, and 2016-GS-38-0205, the
22 State versus Mr. Oscar James Small, Jr., we the jury
23 unanimously find the defendant guilty of criminal sexual
24 conduct with a minor, first degree. We the jury unanimously
25 find the defendant guilty of exposing another to HIV virus.

1 THE COURT: Anything from the defendant on this
2 verdict?

3 MR. PALMER: Your Honor, I would ask that Your Honor
4 poll the jury.

5 THE COURT: Madam Clerk, if you will poll the jury.

6 THE CLERK: Mr. Samuel Kichen. Please stand. Was this
7 your verdict and is it still your verdict?

8 JUROR: Yes, ma'am.

9 THE CLERK: Thank you. Mr. Clary Robinson.

10 JUROR: Misses.

11 THE CLERK: I'm sorry. Was this your verdict and is it
12 still your verdict?

13 JUROR: It is.

14 THE CLERK: Thank you. Ms. Rosebud Pendarvis. Was
15 this your verdict and is it still your verdict?

16 JUROR: Yes, ma'am.

17 THE CLERK: Adrian Houser. Was this your verdict and
18 is it still your verdict?

19 JUROR: Yes, ma'am.

20 THE CLERK: Eboni Ritter. Was this your verdict and is
21 it still your verdict?

22 JUROR: Yes, ma'am.

23 THE CLERK: Mack Stillinger, Jr. Was this your verdict
24 and is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: Sable Banks. Was this your verdict and is
2 it still your verdict?

3 JUROR: Yes, ma'am.

4 THE CLERK: Mazzelle Carter. Was this your verdict and
5 is it still your verdict?

6 JUROR: Yes, it is.

7 THE CLERK: Thank you. Timothy Schriver. Was this
8 your verdict and is it still your verdict?

9 JUROR: Yes, ma'am.

10 THE CLERK: Thank you. Megan Jackson. Was this your
11 verdict and is it still your verdict?

12 JUROR: Yes, ma'am.

13 THE CLERK: Susan Fulmer. Was this your verdict and is
14 it still your verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Dwayne Gressette. Was this your verdict
17 and is it still your verdict?

18 JUROR: Yes, ma'am.

19 THE COURT: Did everybody's name get called?

20 (No response.)

21 AST. SOL. CORNWELL: Your Honor, I believe under the
22 statue for the criminal sexual conduct with a minor it is
23 now at the point where we would ask the jury to make a
24 finding.

25 THE COURT: Yeah. And I will have my law clerk print

1 that right now.

2 AST. SOL. CORNWELL: Thank you.

3 THE COURT: Ladies and gentlemen, this particular time
4 is a bit unique. Once you've reached a verdict in this case
5 of guilt, now I need you to go back to the jury room and
6 decide whether the sexual battery that occurred in this case
7 was sexual intercourse. And so I'm going to send you back
8 to make that determination whether sexual intercourse or not
9 sexual intercourse. And I defined sexual battery for you
10 earlier. I need you to make that finding, okay. And so if
11 you'll go back there, I'll send you this paperwork.

12 (The jury exits the courtroom at 5:21 p.m. and the
13 proceedings were at ease. The jury enters the
14 courtroom at 5:47 p.m.)

15 THE COURT: Mr. Foreman, I probably didn't explain what
16 you all are doing very well to you. You have already found
17 that that sexual battery occurred by finding him guilty or a
18 finding of a sexual battery in this case or you couldn't
19 have found him guilty of criminal sexual conduct with a
20 minor. And simply what I need you to find, and I'll read
21 the statute to you exactly: The type of conduct that
22 constituted a sexual battery that you've already determined
23 was present. Did it involve sexual -- did it involve sexual
24 or anal intercourse by a person or intrusion by an object.
25 So that's what I need you to determine whether the sexual

1 battery that you've determined already to be true, did it
2 involve sexual course, anal intercourse, or an intrusion
3 with an object? And so that's what I need you to decide
4 whether -- it's a yes or no scenario. It's not another
5 verdict form. You already made the determination that
6 sexual battery occurred. The law just requires that you
7 find what type of sexual battery, okay? It that clear?
8 Maybe you all understood that the in the first place. I
9 just want to be sure, okay. So if you'll go back there and
10 let us know, I'd appreciate it.

11 (The jury exits the courtroom at 5:49 p.m.)

12 THE COURT: Ms. Cornwell?

13 AST. SOL. CORNWELL: I was just going to say that they
14 didn't have to define which one it was just guess that one
15 of those ---

16 THE COURT: Right. Yes or no. You don't have to
17 define which one it is.

18 (The proceedings are at ease at 5:49 p.m. and resumes
19 at 5:59 p.m. The jury enters the courtroom at 5:59
20 p.m.)

21 THE COURT: Okay. Have you answered the question?

22 FOREPERSON: We're ready.

23 THE COURT: Okay. Can you pass it up, please.

24 BAILIFF: Your Honor, may I approach?

25 THE COURT: Yes, ma'am. And we the jury unanimously

1 find that the conduct that constitutes sexual battery
2 involving sexual or anal intercourse, the answer is yes. Is
3 that correct?

4 FOREPERSON: Yes, sir.

5 THE COURT: Okay. I want to thank y'all for your
6 service. It's been a long week. I appreciate it. I've
7 been telling you all week you couldn't talk about this case.
8 Now you can talk about it to anybody you want to. You don't
9 have to if you don't want to. You don't have to do this
10 again for three years. The clerk's office is going to send
11 you a check for your services this week. It won't come
12 close to paying you, but I want to tell you how much I
13 appreciate your service. If you need a work excuse, I think
14 they will provide that to you as well. You have a nice
15 weekend. Thank you so much. And you're welcome to leave or
16 you're welcome to stay. It's up to you.

17 (The jury is excused and exits the courtroom at 6:01
18 p.m.)

19 THE COURT: Okay. Y'all ready to proceed?

20 MR. PALMER: Yes, sir.

21 AST. SOL. CORNWELL: We are, Your Honor. Your Honor,
22 you've heard all the evidence, testimony, and the facts in
23 the case. There's nothing I can add to that. I can tell
24 you that this has been very hard on the family. You know,
25 [REDACTED] is doing well. They indicated to me that she had

1 stopped doing some of the sexualized behavior between the, I
2 guess, year and a half or so that it took for us to try this
3 case. Unfortunately, now that it's been brought up, she is
4 exhibiting some things again. So they're going to have to
5 look for counseling. So there are, obviously, some ongoing
6 issues that are going to continue to be ongoing on as far as
7 the effect on the family.

8 As far as the defendant's prior record, we do think
9 that that plays into it. He's got a significant prior
10 record. It goes back to the 80s. And I will tell Your
11 Honor that this is not the first time that he's had a sexual
12 assault allegation against him. In 1982 he was arrested and
13 charged with sexual assault in Florida. That involved a --
14 he was one of four people arrested. The lady -- it was in a
15 hotel. The lady said that she was raped by all four men at
16 gunpoint. There were two witnesses that stated that they
17 had heard her crying for help. They gave statements. The
18 police went to the hotel room at that time, found all four
19 men, consistent with their statement, in there as well as
20 the gun. Unfortunately, in the early '80s, this victim
21 gave an incorrect name as to the two witnesses. They stated
22 later that the reason they gave the incorrect name is
23 because they were afraid they would get in trouble for
24 prostitution, and the case was dropped, however. So there
25 is no conviction in that. But I do feel that that is

1 pertinent for the Court to know that there has been another
2 allegation against this defendant as far as a sexual
3 assault.

4 As far as the convictions on his record, this defendant
5 has one of the largest rap sheets that I've gotten. It's
6 about 60 pages. Now, granted, that's a Florida rap sheet
7 and they're a little bit longer. However, it is still a
8 significant rap sheet. He's got an '86, he was convicted of
9 grand larceny, forgery, burglary, and larceny. In 1990 he
10 was charged and convicted of disorderly conduct and larceny.
11 In 1992 he was convicted of drug possession. In 1993 he was
12 convicted of larceny, resisting arrest, possession of
13 cocaine. '94, he was convicted of possession of cocaine,
14 possession of paraphernalia, carrying a concealed weapon,
15 burglary, possession of burglary tools, and grand larceny.
16 In '95 he had a possession of cocaine, possession of
17 paraphernalia. In '96 he had a disorderly conduct, an
18 obstruction of justice, a possession of cocaine, a prowling
19 loitering, and a probation violation. In 1997 he had a
20 possession of cocaine, possession of paraphernalia,
21 resisting arrest, and obstruction of justice. In 1998 he
22 had a possession of cocaine, a probation revocation, another
23 possession of cocaine, possession of paraphernalia, and a
24 concealed weapon. In 2001 he had a possession of cocaine,
25 four counts of possession of paraphernalia, a DUS, and a

1 probation violation. In 2006 he had a possession of
2 cocaine. All of those charges are from Florida, Your Honor.

3 In South Carolina he had a conviction in 2004 for
4 forgery. He also has a conviction in 2010. And these were
5 all, apparently, four separate dates of malicious injury to
6 personal property greater than \$5,000, receiving stolen
7 goods, burglary in the third degree, second offense. And,
8 Your Honor, in 2011 he was convicted of DUI.

9 Given the facts of this case, the fact that the young
10 girl in this case was a trusted -- the family trusted him
11 with her care. She was five years old, and he exposed her
12 to HIV. The State feels that the only appropriate sentence
13 in light of all of this would be life on the CSC charge.
14 The State also feels that it would be appropriate on the
15 exposing another to HIV virus for that sentence to be a
16 maximum sentence of ten years. And while it is in
17 discretion of Your Honor, obviously we would also state that
18 we feel that consecutive sentences would be appropriate
19 given his prior record and facts of the case.

20 THE COURT: Okay. Thank you. Yes, sir?

21 MR. PALMER: Thank you, Your Honor. May it please the
22 Court? Your Honor, my client acknowledges his extensive
23 record. However, we would ask, simply ask, the Court to
24 note that if you look at the history of his record, it's
25 clearly drug-related. And he has an explanation for that.

1 Your Honor, my client, when he was younger, was married with
2 a young family. His wife divorced him, and soon thereafter
3 was involved in a motor vehicle accident which resulted in
4 the death of his daughter. His daughter and his son and the
5 ex -- estranged wife. Yeah, estranged wife. And then your
6 other son perished in an accident?

7 DEFENDANT: My son died seven months later.

8 MR. PALMER: Oh, his son died several months later.
9 After that, his life went downhill. He was in the Army
10 stationed in Alaska. He got addicted to drugs. He
11 struggled with drugs and PTSD since then. That's basically
12 led to his repeated crimes; were all basically drug-seeking
13 activity. Not much else we can say, Your Honor. We would
14 simply ask that you take that into consideration. When he
15 married Ms. Small, who testified in court this week, his
16 life changed. He became a man of the church. And I don't
17 believe that he -- in recent years, he's gotten into any
18 trouble whatsoever. We would ask Your Honor that if Ms.
19 Small cares to address the Court, she'd be given an
20 opportunity. No? She wishes not to so . . .

21 THE COURT: Okay. And how old is he now?

22 MR. PALMER: Fifty-seven, Your Honor.

23 THE COURT: Okay. (Brief pause.) I have taken in
24 consideration the facts in this case as well as your record
25 and as well as your age and considered, you know, your age

1 in this sentence for criminal sexual conduct with a minor in
2 the first degree. The sentence of the Court, you're
3 committed to the State Department of Corrections for a term
4 of 25 years giving you credit for whatever time you've
5 served toward that. Exposing another to the HIV virus, the
6 sentence of the Court is ten years to run consecutive to the
7 criminal sexual conduct case. You know, and for the most
8 part, this is probably a life sentence for you based on your
9 age. But I've given you biggest benefit of that that I
10 could. Thank you.

11 AST. SOL. CORNWELL: Thank you, Your Honor.

12 MR. PALMER: Thank you, Your Honor.

13 (The proceeding concluded at 6:10 p.m.)

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15 (End of Record)

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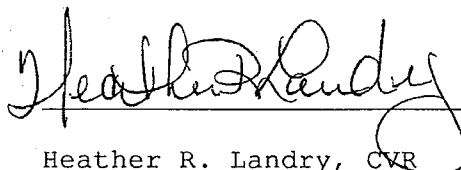
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON) CERTIFICATE OF REPORTER
)

I, HEATHER R. LANDRY, Official Court Reporter for the
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hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
trial of the captioned case, in the Court of General
Sessions for Orangeburg County, South Carolina, on the 27th
day(s) of July 2017.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

November 28, 2017


Heather R. Landry, CVR
Official Court Reporter

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Court of General Sessions

The Honorable R. Ferrell Cothran, Jr. Circuit Court Judge

Appellate Case No. 2017-001669

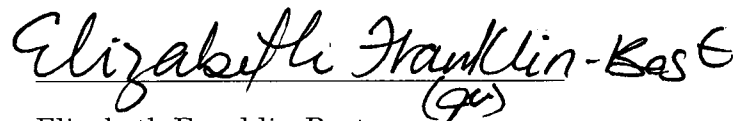
Oscar James Small, Jr.....Appellant,

v.

State of South Carolina.....Respondent.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
SCACR.



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