ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID SCOTT BAGWELL,

APPELLANT

APPELLATE CASE NO 2017-001844

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	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No. 15-GS-39-0102
	)	
David Scott Bagwell,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within JURY TRIAL in the above-captioned matter was held August 28-30, 2017, before The Honorable Perry H. Gravely in Courtroom 4 of the Pickens County Courthouse in Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

Chris Jones, Assistant Solicitor
13TH CIRCUIT SOLICITOR'S OFFICE
...Appearing for State of South Carolina

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PICKENS COUNTY PUBLIC DEFENDER
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-None Entered -

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COURT REPORTER: I can't hear you, Your Honor.

THE COURT: That's okay.

(SIDEBAR CONCLUDED)

THE COURT: How many do we have left?

COURT REPORTER: Excused two, transferred three, protected one for surgery on Thursday and one for a dental appointment on Wednesday morning.

THE COURT: Okay. All right, ladies and gentlemen. We are trying to figure out our schedule this morning as far as trials go. So we're going to give y'all about a fifteen-minute break.

Be back in your seats at 10:30 and then we will start the process for our first trial. Fifteen minutes and be back in your seats at 10:30.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Ladies and gentlemen, we are able to start the trial of the State versus David Scott Bagwell.

I'm going to read you just very brief facts (sic) from the indictment. I always

make sure to say before I ever mention an indictment that an indictment does not mean that a person is guilty.

In fact, the Defendant has pled Not Guilty in this matter.

This is merely the formal paper that brings the charges before the court.

This is a matter that happened in Pickens County on August 28th, 2013 -- I'm sorry, between the dates of August 28th, 2013 and October 30th, 2013, regarding a sexual battery on a minor.

So I'm going to ask you very specific questions about this -- I guess that we need to put them under oath for this particular case.

(WHEREUPON JURY PANEL SWORN)

THE COURT: First of all, Mr. Bagwell, please stand.

DEFENDANT: (Complies).

THE COURT: Is anyone related by blood or marriage, have a close personal, professional or social relationship or business relationship with David Scott Bagwell? If so, please stand.

JUROR NUMBER 36: Your Honor, ---

THE COURT: Yes? First of all, state your name and your number.

JUROR NUMBER 36: My name is Jill Ellenburg, Juror Number 36.

THE COURT: Okay.

JUROR NUMBER 36: I know David Bagwell, and I -- I don't know if they were married or not, but his ex-wife. I think I know something about the child and I don't feel like I could be any part of it.

THE COURT: You are Jill Ellenburg; right?

JUROR NUMBER 36: Yes, sir.

THE COURT: And based on what you've indicated, do you believe that you could give a fair and impartial trial to both the State and the Defendant?

JUROR NUMBER 36: No.

THE COURT: Okay. Well, I will excuse you from this trial then. Thank you for responding. Just keep a seat there.

(JUROR NUMBER 36 EXCUSED)

THE COURT: All right, anyone else? (No response).

I would also ask that the attorneys stand and introduce themselves.

SOLICITOR JONES: My name is Chris Jones. I'm an assistant solicitor here in Pickens County.

JOHN DEJONG: I am John Dejong. I practice law here in Pickens County.

THE COURT: Is there anyone that is related by blood or marriage, who has any close, personal or social relationship with either of these attorneys? If so, please stand. Okay, there is no response.

Has anyone been represented by these attorneys or been involved in a matter where these attorneys were on the other side of a case which you were a party to? Yes, sir, your name and number?

JUROR NUMBER 84: Jay Lee, Juror 84.

THE COURT: Okay, Mr. Lee.

JUROR NUMBER 84: I was a former officer on the Liberty City Police Department and I had cases with John Dejong.

THE COURT: All right. The fact that you're a former police officer involved in cases with Mr. Dejong, do you think that you

could still be fair and impartial in the trial of this case?

JUROR NUMBER 84: I do.

THE COURT: Thank you. You can be seated.

Ladies and gentlemen, this is a list of possible witnesses in the case. Listen carefully and if you know any of these witnesses -- again, we're looking for the answer to the same question. If you're related by blood or marriage, if you have a close social or personal relationship or some business relationship with any of these witnesses stand, and then I will ask you further questions:

Jan Kelley, Pickens County Sheriff's Office

Minor Child

Toni Durnil

Pam Darby

Meghan Owens

Rebecca Mosely, with the Department of Social Services

Dr. Mary Fran Croswell

Shauna Galloway-Williams

Lindsie Keith

Nancy Vasburgh

Margaret Durnil

David S. Bagwell

Toni Bagwell

Sergeant Loni Nettles of the Colleton County Sheriff's Office

David Cantrell, Attorney in Easley

Meghan Owens Bagwell

If you know any of these individuals or if you are related by blood or marriage, please stand.

JUROR: I am related to Lindsie Keith.

THE COURT: Right and we have excused you from this trial but thank you for standing. I don't mean to cut off but that -- so, uh, -- your name and number?

JUROR NUMBER 14: William Blair, Number 14. I used to work with Jan Kelley.

THE COURT: And would the fact that you used to work with Officer Kelley, could you still be fair and impartial in the trial of this case if he were a witness?

JUROR NUMBER 14: I, uh, -- I think so.

THE COURT: Well, I can't take an I-think-so. Can you be fair and impartial?

JUROR NUMBER 14: No.

THE COURT: You don't think you can?

JUROR NUMBER 14: (Negative gesture).

THE COURT: And what kind of taxes do you work with?

JUROR NUMBER 14: I work Easley Baptist as security and on weekend I work taxes.

THE COURT: Well, if you don't think that you can be fair, then I'm going to have to excuse you from this case. Thank you, you can be seated.

(JUROR NUMBER 14 EXCUED)

THE COURT: We will start over here with you. Yes, sir?

JUROR NUMBER 74: Christian Jones, Juror Number 74. David Cantrell is my stepfather.

THE COURT: Okay. And is he -- I guess he is a witness in this?

JOHN DEJONG: I'm sorry, Your Honor?

THE COURT: David is going to be a witness in this case?

JOHN DEJONG: May we approach?

THE COURT: Yeah.

(OFF RECORD SIDEBAR)

THE COURT: Mr. Jones, if Mr. Cantrell is a witness, do you think that you can be fair and impartial?

JUROR NUMBER 74: No.

THE COURT: It would be kind of tough, I know. So we will excuse you.

(JUROR NUMBER 74 EXCUSED)

THE COURT: Yes?

JUROR NUMBER 40: Timothy Elrod, Juror Number 40. Mr. Cantrell has represented my son when they were in DJJ.

THE COURT: Do you think that because of your connection with Mr. Cantrell there that you could be fair and impartial if he were a witness in this case?

JUROR NUMBER 40: Yes, sir.

THE COURT: All right, I will allow you to stay on. Yes, your name and number?

JUROR NUMBER 85: Sherie Lesley, Juror Number 85.

THE COURT: Okay.

JUROR NUMBER 85: Candy Kelley is a personal friend, though we don't ever discuss any of the business that ---

THE COURT: So you are friends with Mr. Kelley's wife?

JUROR NUMBER 85: Yes, sir.

THE COURT: Do you think because of that relationship that you could be fair and impartial if Officer Kelley was a witness in this case?

JUROR NUMBER 85: I can.

THE COURT: All right. I will allow you to stay on the panel.

Ladies and gentlemen, I've got some questions here. Some of these questions are very personal in nature and some of these responses. If you need to respond, stand. If there is something that you want to talk about to me more privately, I would ask that you come up here. The attorneys and the court reporter will also have to be a part of that conversation. But I realize that the response to some of these questions may be a little bit more sensitive than you want to say before the panel. I will protect your answer as much as possible.

This question is not particularly sensitive, but is there any member of the

jury panel or a member of their immediate family associated with or related by blood or marriage to anyone who is employed by the Pickens County Sheriff's Office? If so, please stand. All right, no response.

Is any member of the jury panel a member of or contributes to any group or organization which promotes alleged victim rights or law enforcement; such as MADD, SADD or any other advocacy group which promotes the interests of law enforcement and/or victim rights. If so, please stand. No response.

I realize that you've only been given very brief information about this case but it's important for us to know as much information as we can if you know anything about this case. So has any member of the jury panel read any newspaper articles, whether hard copy or on computer, magazine articles, seen any news stories, whether hardcopy or on computer, heard any radio broadcasts, seen or read anything on social media on the computer such as FaceBook or Twitter, or blogs on the computer concerning

this defendant or this case; or if you have any information from any source alleging the facts of this case, please stand. All right, no response.

Has any member of the jury panel or member of their immediate family ever been a member of a law enforcement agency or worked for a law enforcement agency. Your name and number, the first lady here?

JUROR NUMBER 157: Anna Willis, 157. My grandfather retired from the Pickens County Sheriff's Office and retired from SLED.

THE COURT: What was his name?

JUROR NUMBER 157: Randall Stewart.

THE COURT: The fact of your relationship with your grandfather, could you still be fair and impartial in the trial of this case?

JUROR NUMBER 157: Yes.

THE COURT: Yes, ma'am?

JUROR NUMBER 142: Virginia Shelton, Number 142. My father was a retired law enforcement officer, a State trooper.

THE COURT: Here locally?

JUROR NUMBER 142: South Carolina State Trooper. When he retired he was out of Greenwood and Laurens County.

THE COURT: Do you think you could still be fair and impartial in this case?

JUROR NUMBER 142: (Affirmative nod), I would.

THE COURT: Thank you. I'm going to let you stay in. Yes?

JUROR NUMBER 84: Jay Lee, Number 84. As I stated earlier, I was with the Liberty City Police Department.

THE COURT: Do you think that you could still be fair and impartial in the trial of this case?

JUROR NUMBER 84: Yes.

THE COURT: Thank you. Anyone else? (No response).

Is any member of the jury panel a member of a political, religious, social, industrial, fraternal, law enforcement or other organization whose beliefs or teachings would prejudice him or her against either party in this case? If so, please stand. All right, no response.

Is any member of the jury panel aware of any physical, mental or emotional condition which would prevent them from giving the defendant and the State a fair and impartial trial in this matter? If so, please stand. All right, no response.

Does any member of the jury panel or member of their immediate family, now or in the past, ever worked for any organization, agency or business which investigated and/or counseled victims, or victim's families, who have been sexually molested. If so, please stand. All right, your name and number?

JUROR NUMBER 129: Jessica Rivera, Number 129.

THE COURT: And how do you respond to that question?

JUROR NUMBER 129: I am a nurse, work with the SANE nurses and take care of that type of patient.

THE COURT: What hospital do you work for?

JUROR NUMBER 129: Baptist Easley. I'm in primary care.

THE COURT: The fact of that role, do

you feel that you can still be fair and impartial in the trial of this case?

JUROR NUMBER 129: Yes.

THE COURT: I will allow you to stay on the panel.

Again, this is one of those questions that I will be glad to take up up here, if needed. Has any member of the jury panel or member of their immediate family been the victim of a sexual assault or molestation. If so, please stand. Your name and number?

JUROR NUMBER 98: I'm fine. Marjorie Moon, Number 98. My son was sexually abused by my ex-husband, who is currently serving time in prison.

THE COURT: Due to that fact, do you feel you could still be fair and impartial in this case?

JUROR NUMBER 98: I feel I can.

THE COURT: Is there anyone else who needs to come up for anything like that? No response.

At the end of this matter, I will also give an opportunity if you would like to come up and address the court.

Is there any member of the jury panel, their spouse, or any member of their immediate family now employed by, or ever been employed by, the South Carolina Department of Social Services, Pickens County or any other county in South Carolina? If so, please stand. All right, no response.

Has any juror or member of their immediate family ever been a complainant to law information or other agency with reference to sexual assault or molestation? If so, please stand. Okay, no response.

Is any member of the jury panel or a member of their immediate family related by blood or marriage to anyone employed by the Solicitor's Office for the 13th Judicial Circuit. If so, please stand. All right, no response.

Does any member of the jury panel currently work for or volunteer or have worked for or volunteered in the past for the South Carolina Lay Guardian *ad litem* program? All right, no response.

JUROR NUMBER 141: I'm sorry.

THE COURT: Yes?

JUROR NUMBER 141: I have not but my husband is a guardian *ad litem*.

THE COURT: Your name and number?

JUROR NUMBER 141: Michelle Shaw.

THE COURT: You say that your husband is a volunteer guardian *ad litem*?

JUROR NUMBER 141: Yes, he is.

THE COURT: Based on that fact, could you still be fair and impartial in this matter?

JUROR NUMBER 141: I believe so. He doesn't discuss any of that with me.

THE COURT: But you could still be fair and impartial and hear the facts of this case?

JUROR NUMBER 141: Yes, sir.

THE COURT: Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? All right, no response.

Is any member of the jury panel aware of any bias or prejudice towards either the State or the defendant in this case? If so, please stand. All right, no response.

Is there any member of the jury panel --

do you know of any reason whatsoever that you could not give a fair and impartial trial to both the State and the Defendant in this matter? If so, please stand. (No response).

Is there any juror that would like to respond to any of the questions that I have asked to this point but would like to do so up here at the front? If so, please stand. Yes, ma'am, your name and number?

JUROR NUMBER 29: Mitzi Dawkins.

SIDEBAR:

THE COURT: Yes, ma'am?

COURT REPORTER: Number 29, Your Honor.

THE COURT: Yes, ma'am?

JUROR NUMBER 29: I had a family member that was involved in something like this once.

THE COURT: Do you think that you could be fair and impartial in ---

JUROR NUMBER 29: I have to say not.

THE COURT: All right, we will excuse me. Thank you.

(SIDEBAR CONCLUDED)

THE COURT: We have excused Ms. Dawkins

from the trial of this case.

(JUROR NUMBER 29 EXCUSED)

THE COURT: All right. Any additional questions from the State?

SOLICITOR JONES: None from the State.

THE COURT: Any additional questions from the Defendant?

JOHN DEJONG: No additional questions on behalf of Mr. Bagwell, Your Honor.

THE COURT: Then we will create our list.

JOHN DEJONG: Just to clarify the strikes, Your Honor, five and ten?

THE COURT: Five for the State, ten for the Defense, and we will have two alternates.

Ladies and Gentlemen that is the extent of the questions that we need to ask you. What the Clerk will do now is to come up with a list that we will striking from. So we will be with you in just a minute.

(CLERK DISTRIBUTES LIST FOR REVIEW)

THE COURT: Is the State ready?

SOLICITOR JONES: Yes, Your Honor.

THE COURT: Is the defense ready?

JOHN DEJONG: Ready for the defense,

SOLICITOR JONES: Please present Mr. Nicholson.

CLERK: And the Defense?

JOHN DEJONG: Please swear the juror.

CLERK: Please come forward and take a seat in the jury box.

(JUROR NUMBER 105 SEATED AS ALTERNATE #2)

CLERK: The jury is seated, Your Honor.

(JURY SEATED @ 11:30 A.M.)

THE COURT: Any objections or exceptions to the selection process, on behalf of the State?

SOLICITOR JONES: None from the State, Your Honor.

THE COURT: Anything from the Defense?

JOHN DEJONG: Nothing as to the selection process.

THE COURT: All right, I've got two panels here. Let me talk to this panel first. At this time y'all have been selected for this case but we've got some matters that we have to go over before we can start the trial of this case. So not only are we going to take an early lunch break but we're going to give you a longer one.

I ask that y'all be back in your jury room upstairs, and the bailiff will be giving you instructions on where to return. We will be trying this case on the third floor.

So we have quite a bit to go over and then for the staff here to take a lunch break as well. So be back in your jury room, on the third floor, at 2:00 o'clock.

Let me just kind of tell you now, and every time that we take a break I'll give you about four different warnings:

It is not permissible -- I know that you don't know anything about the case but it's not permissible to discuss the case in any way, shape or form, amongst yourselves or with anyone else.

It is not permissible for you to do any type of research about the parties, about the law, anything like that whatsoever.

You're not to pay attention to any social media, to any news coverage -- I am not aware of news coverage -- or anything like that.

And, finally, if you're contacted by anybody other than someone from the Clerk's office, let the bailiff know and they will

get that information to me.

Have a very nice lunch. We'll see you back at 2:00 o'clock.

(JURY OUT @ 11:36 a.m.)

(JURY PANEL DISMISSED FOR DAY)

(MOVED TO COURTROOM NUMBER 4)

(IN CHAMBERS MEEETING - NOT ON RECORD)

(DEFENDANT PRESENT)

THE COURT: I believe the defense has a Motion, or a couple of Motions?

JOHN DEJONG: I do, Your Honor, and I think that Mr. Jones has some as well. I'd like to make one before we get too far down the road.

THE COURT: All right.

JOHN DEJONG: At this point in time, Your Honor, I would respectfully move for a mistrial in this case. That Motion is based on pretty much the very opening remarks to the jury panel on this case that was made by Your Honor.

I mean no disrespect. But as I recall what Your Honor said to the jury was, 'I would like to give you a brief statement of the facts of this case…'-- I take issue with

the court making a statement as to facts in the case.

My position is that there are no facts that have been presented in this case as of this point in time. There are certainly allegations.

And, again, Your Honor, I think -- again with no disrespect intended to the Court, -- but for you as the judge, wearing a black robe, telling the jury that you wanted to give them a brief statement of facts as to this case is highly prejudicial to my client.

I don't think that it can be cured by a curative instruction. The bell has been rung. Now, to try to unring that bell, I would submit to the court, is an impossibility.

They heard Your Honor say a "brief of statement of facts." As I recall, you did not read the indictment after having made that statement. It was kind of a pick-and-choose, if you will, out of the indictment. I think that you gave some dates and what I'd consider allegations, but certainly were not facts of the case, Your Honor.

Having said that, I think it is highly prejudical. It was in the presence of the entire jury panel, not just a few or not just in the presence of the jury we have just selected but in the presence of the entire venire. Based on that, Your Honor, I would respectfully move for a mistrial.

THE COURT: Well, I think that I also said that I was -- I don't know how I -- I referred to the indictment and said that these were merely charges and that they could find him guilty or not guilty.

I think in the context of the way that it was presented, and also I usually talk about that in kind of my opening charge to the jury. I will stress that. I believe that a further curative instruction could eliminate any problems. I respectfully deny your Motion.

JOHN DEJONG: And I'm not arguing with Your Honor but just so that the record is clear, certainly there is not a curative instruction that I am coming up with or one that I am agreeing to, Your Honor.

THE COURT: No, I understand.

JOHN DEJONG: So even though you may do, I just want to make sure that my Motion is on the record. I don't know that I need to remake my Motion but ---

THE COURT: I understand your position and there is no offense taken, but I deny your Motion.

JOHN DEJONG: Thank you, Your Honor.

THE COURT: All right. I believe that you had also indicated at the roster meeting that there was a Motion for continuance.

JOHN DEJONG: Your Honor, in light of what has transpired, and Mr. Jones shared with me about that witness being here, that I said that I could not find. I have a subpoena prepared and I am going to talk to law enforcement when we break for lunch, Your Honor, to see if they will serve that subpoena for me.

I don't think that the Solicitor's office will let me break the doors down to serve that witness, Your Honor, but I will talk to law enforcement.

THE COURT: All right.

JOHN DEJONG: Informally I said that

there would be a Motion for continuance but, just for the record, I am not making that Motion for a continuance at this point in time.

THE COURT: Anything else?

JOHN DEJONG: Yes, sir, two more things actually. Since you've asked, I will go first. They kind of tie in with a couple of Motions that Mr. Jones has filed.

I understand the Code section, Your Honor, on the admissibility of what we now commonly refer to as forensic videos. I think that the court still serves as the gatekeeper as far as those being introduced. I believe that there are three or four different criteria, though I can't remember them off the top of my head right now.

The problem that I've got with this video, Your Honor, ---

THE COURT: What is the statue?

JOHN DEJONG: I would have to look it up.

SOLICITOR JONES: 17-23-175.

THE COURT: (Upon review), all right.

JOHN DEJONG: Thank you, Your Honor. The problem that I have in this case -- and I

don't think Your Honor has had the privilege of viewing the video yet. We talked about that briefly before going on the record in this case.

The interviewer in this case, every time the young person being interviewed responds to one of her questions, she repeats the question. Well, I have a problem with that because I think that is nothing more than a subtle way of attempting to bolster the alleged victim's testimony in this case. She doesn't do it once, she does it repeatedly throughout the interview.

Not only that, Your Honor, but during the course of the interview the young person will say something and interviewer repeats it and then maybe three minutes, or five minutes later the interviewer against repeats what the young person says; not as a question, just as a statement. Then comes back and tries to form -- in the frame of a question; which, in my opinion, Your Honor, makes it a tremendously leading situation. She does that repeatedly, the interviewer does. She does that repeatedly throughout the

interview.

Based on those two arguments, Your Honor, I would respectfully request that the court not allow the forensic interview video to come into evidence.

THE COURT: It is my understanding that would be presented in the morning?

SOLICITOR JONES: Yes, Your Honor. I believe ---

THE COURT: So I'll have the opportunity to review this ---

SOLICITOR JONES: Yes, Your Honor. I think this Motion may be a little bit premature.

THE COURT: Well, I'd asked him to go ahead and tell me what he ---

SOLICITOR JONES: I'd ask that Your Honor watch the video.

THE COURT: Right.

SOLICITOR JONES: But, yes, the interviewer is from Orangeburg. She is coming up tomorrow and she's be available to testify tomorrow morning. I do have the video available for Your Honor to watch whenever you so choose.

But a brief response to the defense counsel's argument, you'd have to watch the video for yourself to see but essentially the interviewer clarifies what the victims says after the interviewer asks the questions. So it is not leading, she is repeating the answer of the child to clarify that she understands the child correctly. She's talking to a nine-year-old on the video.

A leading question or leading evidence would be if the interviewer began the conversation with information that the child had not said previously.

Again, you're going to watch the video for yourself. I don't believe that it is leading. It does comply with 17-23-175. The statement was given in response to questioning during an investigative interview. The interview was audio and visually recorded. The child will testify at trial, be present for the examination and cross-examination. Of course you can watch the video for yourself to determine if there were any leading questions. The interviewer will be here to testify tomorrow, to discuss her

qualifications and specific training.

The other aspects are just something you have to decide after you've had a chance to watch the video: whether or not it has internal coherence or contains a detailed account.

THE COURT: All right. It's my understanding that because of our scheduling today that we're going to quit a little bit early today, and I'll use that as an opportunity to review the video. Then if you have specific parts you want me to review at that time regarding the forensic interview. So I'll hold this Motion in abeyance until I've had a chance to review the video.

JOHN DEJONG: So my understanding is that Your Honor is taking that ---

THE COURT: --- under advisement.

JOHN DEJONG: Thank you. Finally, Your Honor, I have asked -- by way of Motion, and I have the Motion if Your Honor would like to see it, to basically allow testimony that would normally not be allowed under Section 16-3-659.1, which is commonly referred to as the rape shield statute.

Mr. Jones, do you mind if I hand that up to the judge, (tendering).

Just very briefly, Your Honor, I am not asking that we cut out of the rape shield in any way to try to impugn the character of the alleged victim in this case. A little history, Your Honor, back in 2009-2010, this alleged victim was -- I guess we would have to say victim now, because the perpetrator in that case was convicted. But she has been a victim before this case and, as a result of that, I would submit to the Court that I should be allowed to go into that to some degree simply as to credibility, also as to prior sexual knowledge, Your Honor.

I would submit that she had been through the forensic interviewing process before. She has been interviewed, interviewed, and re-interviewed. I think as a result that I should be allowed to go into that. I would not care if Mr. Jones wants some sort of quasi-protective charge from Your Honor on that. That could get a little tricky, I will be the first to admit. But it is certainly not to try to impugn her character, more to

her prior sexual knowledge and to the fact that she has been through this system before. Number one.

Number two, Your Honor, you will notice that I have one Sergeant Lonnie Nettles on the witness list, from the Colleton County Sheriff's Office. On December 30th, 2013, the mother of the alleged victim went to the Colleton County Sheriff's Office and reported that the alleged victim in this case had been inappropriately touched by my client, Mr. Bagwell.

As a result, I will say that that investigation did not get very far. I would readily admit that I don't know that the alleged victim in this case was ever interviewed by Colleton County. I don't think that she was. I don't think that there was ever a forensic interview done, because it was not necessary.

I want to say that the report was made to Colleton County Sheriff's Office on December 30th, 2013. Within a matter of days, Your Honor, the mother of the alleged victim in this case, and she was also the alleged

victim in that case, went back to the Colleton County Sheriff's Office and, in essence, said the alleged victim in this case had lied about the inappropriate touching. She had reported the inappropriate touching, as I understand, the Colleton County report, because she was angry -- "she" being the alleged victim in this case -- with Mr. Bagwell because, as a matter of disciplining, he had taken away her X-Box or whatever kids play with nowadays. But she was mad at him for that reason and she made -- well, there is no way around it, she made a false accusation at that point in time.

I think, Your Honor, that I should certainly be allowed to go into that with the alleged victim in this case on cross-examination. I don't know, obviously, what her response is going to be. I don't know if I am going to have to try to get in prior inconsistent statements. But be that as it may, I think I should be allowed to get into that area as to the December 30th, 2013 allegations and the prior abuse.

I would point out that interestingly

enough, Your Honor, Your Honor actually mentioned this to the jury, the alleged offense dates of what allegedly transpired here in Pickens County was August 28th of 2013 to October 30th of 2013. Those allegations, if you use the end date, were less or right at sixty days prior to the time that the false allegations were made. So for that reason, Your Honor, along with other reasons stated, I think that I should be allowed to go into that.

THE COURT: Mr. Jones?

SOLICITOR JONES: Your Honor, I think that he is talking about two different things. First I'd like to limit our discussions to separate those.

First, I'd like to talk about the 2009 allegations where the victim alleged abuse. That case went to trial and the defendant was convicted.

I made a Motion and defense counsel has a Motion to ensure compliance with South Carolina Code 16-3-695, which is commonly called the rape shield statute.

There are two cases, Your Honor, that I

found that I think highlight our case: *State v. Grovenstein* and *State v. Williams*. In State v. Grovenstein, *what* ---

THE COURT: What is the cite on *Grovenstien*?

SOLICITOR JONES: It's 340 S.C. 210 -- (sic)

THE COURT: Three-four?

SOLICITOR JONES: Three-four-zero. 340 S.C. 210.

THE COURT: Okay.

SOLICITOR JONES: And *Williams* is 409 S.C. 455. *State v. Grovenstein* is a case where the Court actually let in prior sexual abuse. In that case the victims were accusing the defendant of inserting objects into their anal cavity, specifically rolled up pieces of paper. What the defense at trial wanted to get is that previously those victims were accused of doing exactly the same thing. Those victims/children were accused of inserting objects into another child's anal cavity. The court found that because the activity, the sexual abuse was the exact same and because what the children

would have to recount as witnesses -- it was not the typical case where the child would have to talk about the details of themselves, but the cases that they would have to talk about were ones where they were the actual perpetrators. The Court found that that prior sexual abuse could come in.

However, *State v. Williams* is a newer case, 2014, and they discussed *Grovenstein*. In *State v. Williams*, the court found that the prior sexual abuse could not come in. It differentiated *Williams* with *Grovenstein*. It said that in the *Williams* case the sexual abuse occurred -- let's see, that the sexual abuse was not similar to the case that the defense counsel wanted to bring in because the prior abuse was oral sex and the alleged abuse was digital penetration the evidence would confuse the jury, confuse the issues.

Most importantly in Grovenstein, the State made the argument 'how else...' -- the solicitor said in closing, "How else would this child know about sexual abuse if it wasn't for this particular event?" So the court reasoned that it was not fair for the

State to make that implication, because the children had been accused themselves of the exact same sexual activity/abuse. So it was probative value outweighed by the prejudicial effect.

This case is more like *State v. Williams* where the prior sexual abuse is not exactly the same, where the victim is going to have to recount herself being sexually abused. That is exactly why the rape shield statute was enacted, to prevent a child victim, or any sexual abuse victim, from having to get on the stand and recount -- defend themselves, essentially -- in detail about a prior sexual abuse.

For those reasons I think the prior abuse involving -- the defendant in that case, the perpetrator, his name was Bobby McCann. The allegations against Bobby McCann, I think should not be admitted into evidence in this case, Your Honor.

THE COURT: And then the second part?

SOLICITOR JONES: As far as the child recanting?

THE COURT: Yes.

SOLICITOR JONES: Your Honor, I don't really think that falls under the rape shield, so I would not argue that that is something that I could keep out, Your Honor. I understand that is admissible.

THE COURT: Let me make sure that I've got the facts straight. These are not statements that the child made. These are statements that the mother made. Is that correct?

JOHN DEJONG: Are you talking about the Colleton County incident?

THE COURT: Right.

JOHN DEJONG: I understand that the child reported to the mother or grandmother that she had been inappropriately touched and the mother, as I understand, called the county; then took the child to the Sheriff's Office and reported it. They initiated a report, followed up on it. Then shortly after that, the mother came back and said, 'no, don't proceed.'

We are looking at that in sort of a vacuum. I don't want to get too far afield. There were a lot of issues going on in this

family. That's part of the reason that I am asking -- again, I am not trying to impugn the character of the alleged victim in this case. That's what *Grovenstein*, it specifically says that.

And, I'm sorry. I want to answer Your Honor's question. I don't want to get too far afield.

THE COURT: Yeah.

JOHN DEJONG: I don't know if I did answer your question.

THE COURT: Well, I guess my question is, are we talking about a retraction of a statement by a mother or the actual victim. We don't know if the victim recanted her statement or not from what you're telling me.

SOLICITOR JONES: Your Honor, I think that something the defense counsel can -- when the victim testifies can ask, 'Have you ever recanted' or 'have you said that this never happened?'

THE COURT: Well, and ---

SOLICITOR JONES: Then if he wants to try to impeach her with the previous statement, then -- it depends on whether he

has the statement or not.

JOHN DEJONG: I don't disagree with that, necessarily. I think -- but -- since you agree that it is not covered by the rape shield, then I don't think that there is anything preventing me from going into that.

But I would certainly be interested in knowing what allegation she made on December 30th, 2013, or prior thereto; what she told her mother, both at the time that she made the allegation(s) of the inappropriate touching and then later on when she told her mother, when she said that it was not true.

THE COURT: I guess we will have to address that at -- what I'd like to do is read these to cases and mull over the cases over lunchtime.

JOHN DEJONG: If I could just respond rather briefly.

THE COURT: Yes.

JOHN DEJONG: On the *Williams* case, I realize that Court distinguishes *State v Williams* from *Grovenstein*. However, I think that they distinguished is more on that the allegations were vastly different. If you

read the trial transcript of the alleged victims testimony in the *McCann* case, a lot of the indications that she gave in the McCann trial are very similar to the allegations in this case; not so much the place, the places were different. The allegations in this case were that it happened within the home, in a bedroom. In the McCann case, -- but in terms of the touching itself, the touching of private parts, in the McCann case the "yellow stuff" came out Mr. McCann, and in this case it was "white stuff." I think that there are a lot of similarities in the allegations between the two cases. Again, not necessarily as to location but certainly as to the allegations themselves.

I do have a copy of the trial transcript that I got late Friday afternoon, which I will be happy to share with the solicitor. I'll be happy to share it with Your Honor.

THE COURT: That is -- you've got a trial transcript on, I guess, the Bobby McCann matter?

JOHN DEJONG: Yes, sir.

THE COURT: All right.

SOLICITOR JONES: Your Honor, I have the two cases that I can hand up to you. I think *Grovenstein*, I just want to emphasize that the court really found the defense can bring in the prior sexual knowledge as a rebuttal to the State's implication of 'how else could this child know about these' -- know about sexual abuse or know about sex in general but for this defendant? So at that point it was a matter of fairness to the defense to allow them to bring up the prior knowledge of the children and the exact act, not just -- the children weren't just saying that they were touched or sexually abused generally, it was a very specific act of rolling up paper and inserting it into the annual cavity of the children, that those children had been accused of doing previously. So I think *Grovenstein* is an extremely unique case and the case goes to great lengths to say that this type of conduct does not necessarily always come in, that *Grovenstein* is a very unique situation.

Your Honor, if I may approach, I'll ---

THE COURT: Do you have *Williams* and *Grovenstein*?

SOLICITOR JONES: Yes, sir, (tendering).

THE COURT: Thank you. Let me look at these and I will let you all know when we get back from lunch, before we start. All right, anything else pretrial?

JOHN DEJONG: I can't think of anything at the moment. I don't know what I will think of over lunch. That's all that I can think of right now.

THE COURT: All right. Anything else from the State?

SOLICITOR JONES: No, sir, Your Honor.

THE COURT: I'll look at this.

On the Motion for a mistrial, I ruled on that.

The Motion for a continuance, I ruled.

The Motion relating to the forensic interview and videotape, I took that under advisement and will revisit that after I've reviewed the video. I'll let you all know in the morning, which will give you sufficient time to prepare accordingly.

Then the Motions regarding the rape shield and retractions previously, I will review these matters and let you all know after lunch.

SOLICITOR JONES: Thank you, Your Honor.

THE COURT: We will be at-ease until just a few minutes before 2:00, in case we need to discuss any other issues.

(LUNCH RECESS)

(DEFENDANT PRESENT)

THE COURT: All right, back on the record here in the State v. Bagwell.

The only thing, really, that I was going to let y'all know after lunch was -- it's a little unusual to figure out exactly how -- I know that Mr. Dejong had filed a Motion to allow -- basically saying that that evidence did fall within the rape shield statute, and I guess yours was a Motion to, like, suppress the same information, that it wasn't within.

My problem right now is that I don't know that I have a sufficient grasp of the actual extent of the testimony. So I'm going to deny your Motion to allow the testimony, but with the understanding that I want to review

that as we get into it further.

JOHN DEJONG: Just so that I am clear, as to both, Your Honor?

THE COURT: Yes, as to both.

SOLICITOR JONES: Your Honor, ---

THE COURT: I think that one of them you said wasn't within the ---

SOLICITOR JONES: Well, and the fact that she recanted ---

THE COURT: Yeah.

SOLICITOR JONES: I do believe that defense counsel is allowed to ask the victim 'have you ever recanted this?' I believe he is allowed to ask that.

THE COURT: Right, he indicated that on the previous ---

SOLICITOR JONES: But I do want to be clear that as to the prior sexual abuse, does this mean -- that as I called the child witness, is defense counsel going to be able to ask her, 'In 2009, is it true that you alleged someone else sexually abused you as well?' Or how are we going to ---

THE COURT: I deny his ability to do that.

SOLICITOR JONES: Oh, okay. Okay.

JOHN DEJONG: Well, now I'm more confused than I was. Am I still being denied on both, after the Solicitor has made his statement to the court?

I thought he said that he thought that I could go into it? The recantation?

THE COURT: The recantation, (affirmative nod). Well, ---

SOLICITOR JONES: Sorry, I thought you were saying that you'd hold it in abeyance until you get more information.

THE COURT: I tell you -- I want to review the video. I know you said that but I've just got -- I need to review the video.

SOLICITOR JONES: Well, the video does not ---

THE COURT: I know, but I've got to have a better idea.

JOHN DEJONG: That puts me in a real bind, Your Honor. I'm not trying to be disrespectful. But if she testifies ---

THE COURT: That is what I am saying, I am going to look at the video before I make a ruling. You said that you could call her in

the morning, if needed.

SOLICITOR JONES: If that's what Your Honor wants ---

THE COURT: All right, that's what I need to do. I want to review the video. I want to go carefully through these landmines.

Are we ready for the jury? Anything from the -- anything before we bring the jury in, from the State?

SOLICITOR JONES: Nothing from the State?

THE COURT: From the ---

JOHN DEJONG: Ready for the Defense.

THE COURT: All right, bring the jury in.

(JURY IN @ 2:09 P.M.)

THE COURT: All right, ladies and gentlemen. I hope that everybody had a good lunch. We are now ready to begin the trial of this case. First off, I am going to ask Mr. Welborn, who is our Clerk of Court, to swear you in.

(WHEREUPON JURY SWORN)

THE COURT: All right. First I want to give you some preliminary information, sort

of some ground rules and then you will hear from the attorneys.

First of all, as we get into this case, I want to -- as indicated, this is a criminal matter. The defendant comes to this case with a presumption of innocence, which is completely appropriate because he has pled not guilty to these charges.

That puts the burden of proof on the State. They must prove to you each element of the charge beyond a reasonable doubt.

At the conclusion of the trial I will give you the law that applies to this case and the various elements that you must consider. Again, I just remind you that the burden is on the State to prove their case beyond a reasonable doubt.

I always like to tell jurors a little bit about who all is in the courtroom because I know you may not be familiar with the court personnel:

Mr. Welborn is the Clerk of Court for Pickens County. He is the person in charge of all the records, not only for this trial but for all matters before the court, both

civil and criminal.

Seated to my right is our court reporter, Ms. Garrison. She is taking down all of the evidence, making a verbatim record of what is said. She keeps up with the evidence. She provides a record, and that is what makes this a court of record.

To my left is my law clerk who assists with research, and he will help me throughout this trial.

The most important forks for y'all are the bailiffs, these gentlemen with the blazers on and a badge. The reason they are the most important to you is because they are the ones that look after you throughout the trial. They are also the ones that if you have any questions, you may present those to them. If you do have a question which is something that they need to bring to the court's attention, they will and then I can respond.

Once you take a break, you'll pick a foreperson and it's up to the -- it is the foreperson's duty to communicate, write any notes about things you need or questions that

you have. The foreman will present those notes to the bailiff, who will present them to us.

Your role as jurors is to pay very close attention to all the evidence that is presented. Evidence will be in basically two forms, it will be by way of witnesses that you will hear on the witness stand and also evidence that comes in via documents or statements, written or video statements. There are various kinds of exhibits or evidence that you will have before you.

You are only to consider evidence that is presented in this courtroom, which has been properly admitted as evidence. As I indicated before, it is not proper for you to do type of your own research as to the law, the location or parties or anything like that. When you begin deliberating on the evidence in this case, after the law has been presented, you are only to consider that evidence which has been presented in this courtroom. That is very, very important.

Now, we have different roles in this trial. You are the sole judge of the facts.

If there anything that I've said throughout this trial, it -- the law does not allow me to have an opinion as to the facts or state any facts in the case. Anything up to this point is merely allegations. We had a reference to an indictment. An indictment has been presented to the court and the defendant has pled not guilty to those allegations and, therefore, the burden is on the State to prove each and every element of the charge beyond a reasonable doubt.

If I make any statement or make any inference that would cause you to think that I may have an opinion on the facts, or state anything that you think I present as a fact, please disregard that. That is not -- it's your place to determine what the facts are.

Anything referenced in the indictment, again those are merely allegations. An indictment is also something that you're not to consider in any way when you begin deliberations because the indictment is merely the paper that brings -- just like an arrest warrant -- the charges. An indictment merely brings a case before this court and is

not to be considered evidence in any way.

I am going to ask that you not take notes because I think a lot of times when jurors take notes that they sometimes are not paying attention to witnesses as closely as they need to. A lot of what you're going to be determining is the credibility of the witnesses. That is something that you have to do by observation.

Then I think sometimes jurors when they get back in the jury room -- you know, some people are better note takers than others. So I ask that you not take notes during the trial of the case.

Just to give you a little idea about the procedure of the trial, we start off with opening statements by the attorneys. These opening statements are not evidence, but merely a summary that the attorneys will be presenting about the case.

After opening statements, then it will be the evidentiary stage where evidence will be presented.

After all the evidence is presented, then we will have closing arguments by the

attorneys.

Then I will charge you on the law, which is the law that applies to this particular case.

It is my understanding that this case will last into Wednesday. So for planning purposes, that's what is expected.

Now let me tell you a little bit about the timing. Usually we try to take breaks every hour to an hour and a half. That's what we shoot for. Sometimes it may be shorter than that, sometimes longer. A lot of that sometimes depends on where we are with a witness. We may have a short witness and then we get into a longer witness and that, by necessity, means we might go a bit longer without a recess. But if anybody needs to take a break at any point, just let the bailiffs know. We realize that this is an inconvenience to you, so if you need to take a break just indicate to the bailiff or to me and we will take a break as soon as we possibly can.

The same as far as when we take breaks for lunch. We try to shoot as close to 12:00

or 12:30 as we can, but again that kind of depends on where we are in the trial.

As well, when we close and open for the day a lot of times we have to work around witnesses, especially witnesses who may be coming out of town. That's one of the reasons I tell you right up front that today may be a shorter day is because some of the witness issues that we have. We try to work with the witnesses as much as possible.

That's kind of the ground rules as far as timing. I wish that I could have something a little bit more specific but you never know until you get into a trial how it is going to play out.

As I mentioned to you previously, and I will tell you this every time that you take a break, it is not appropriate to discuss the case amongst yourselves or with anybody else, such as when you go home in the evenings. The reason for that is that you need to keep an open mind until all the evidence has been presented and you've received the law. You need to keep an open mind until everything is properly before you.

Then when you begin deliberations, you may discuss the case among the twelve of you, the regular jurors.

You know, if you run into -- this courthouse is a bit smaller than some. We all use the same elevator. If you run into one of the attorney, so if you happen to be in an elevator or bump into one of the attorneys in the hallway and they do not speak to you, please don't think that they are being rude. They've been instructed not to speak to you, so please keep that in mind should you run into them of a morning.

Again, I don't expect any media coverage for this, I am not aware of any media coverage -- TV, radio, newspaper or social media. It would not be proper for you to consider anything that you might see on media. In fact, if you should see anything or hear anything, please turn it off, disregard it, pay no attention to it whatsoever because it is not evidence admitted in this courtroom. Again, don't do any of your own individual research.

Also when you take a break -- and I don't

expect anybody to be contacting you or anything like that, but if you're contacted by anyone other than the clerk's office, please let me know and -- get all the information that you can and pass it along to the bailiffs, who will let me know.

One of the things again that you need to know, that is important to your deliberations is that there are no rules that you need to apply. You use your common sense as twelve jurors. You'll be weighing all the evidence that you deem appropriate. Part of that is determining the credibility of each of the witnesses, based on your own experience, based on your own knowledge and based on what weight that you feel is appropriate.

So those are kinda of my opening remarks and at this time I will let you hear from the attorneys, who will give you their opening statement. Mr. Jones.

SOLICITOR JONES: Thank you, Your Honor, may it please the court, Mr. Dejong, Mr. Bagwell.

Minor Child lived on Cleo Chapman Highway in Pickens in 2013. She lived there

with her mother, her brother, and David Bagwell. At the time, David Bagwell was her stepfather.

Now, MINOR CHILD and her family moved around a lot. They lived in Branchville in Orangeburg, in a town called Smoaks near Walterboro, and for a time they lived in Florida as well.

When they were living in Branchville, DSS came to her home, to MINOR CHILD s home, spoke to MINOR CHILD and MINOR CHILD told the DSS worker that David Bagwell sexually abused her. From there an investigation ensued and Mr. Bagwell was arrested.

Child sexual abuse is truly unique. There are a lot of unique aspects that differentiate sexual abuse from other crimes.

Typically you might have surveillance video of a crime taking place or fingerprints or a third-party witness that saw the crime take place. But sexual abuse occurs behind closed doors with just a child, typically, and the perpetrator.

Children are vulnerable for several reasons. One, they are smaller and weaker

than adults; which makes them easy targets.

Their cognitive abilities are not fully developed, meaning that they cannot think through problems logically or use judgment. Oftentimes they simply lack the vocabulary to tell someone in authority what happens.

All of those things can cause child sexual abuse to be a unique crime. Because of the uniqueness, the State uses an expert in child sexual abuse to tell you and explain things to you that are not common knowledge.

Here the defendant is charged with criminal sexual conduct with a minor in the first degree. I want to go over the elements of that, which I must prove beyond a reasonable doubt.

I have to show that the defendant committed a sexual battery on the victim and that at the time the victim was under the age of eleven years old.

The statute goes on to define sexual battery as sexual intercourse, anal intercourse, cunnilingus, fellatio, or any intrusion, however slight, of a person's body into the genital or anal opening of another

person's body. That sounds really big and complicated and at the end of the trial the judge is going to go over it with you in detail. In my closing, I'm going to go over it with you as well. But just keep that in mind as I introduce the evidence.

You're going to hear from several people throughout the trial. MINOR CHILD, the victim that I mentioned, is going to testify and she's going to tell you exactly what happened.

J.B. Kelley, who was the detective on the case, will testify and he will tell you how he got involved with this.

Rebecca Mosely is the DSS agent that I mentioned. She works in Branchville, South Carolina, and she is going to tell you about when she visited the home, why she visited the home and when she spoke with MINOR CHIL

Pam Darby will also testify and tell you about the time that she spoke to MINOR CHILD about the sexual abuse.

Dr. Croswell is going to testify about the physical examination that she conducted on MINOR CHIL. She also will explain a few

aspects of child sexual abuse.

Finally, Shauna Galloway Williams will testify. Ms. Galloway-Williams will tell you aspects of child sexual abuse that are uncommonly known.

Finally, I want you to remember something throughout the trial. Child sexual abuse crimes are unique because they require a general knowledge of child sexual abuse to really understand them. Please keep that in mind as the victim testifies and as you hear the evidence.

Thank you for your time. I look forward to receiving your verdict.

THE COURT: Mr. Dejong.

JOHN DEJONG: Thank you, Your Honor, may it please the Court; Mister Prosecutor, Ladies and Gentlemen of the jury.

Ladies and gentlemen, five or ten minutes ago our esteemed Clerk administered to you an oath. I am going to ask you throughout this trial, all the way through your deliberations, to remember that oath. That oath -- I don't think you need to be reminded, but I'm going to share it with you anyway, says

that you will well and truly try this issue on the law and the evidence presented to you.

His Honor gave you some brief information this morning about the case. The solicitor has now talked to you about the law on criminal sexual conduct on a minor -- horrible allegations. However, that's not why I ask you to remember your oath. Allegations like this can cloud your judgment by passion, by prejudice, by bias. I ask each of you to lay aside any passion, prejudice or bias that you might have, for no other reason than just because of the very nature of the allegations. Bias, prejudice and passion can cloud your judgment in arriving at an ultimate decision in this case, and to allow that to happen would be a violation of your oath. Again, I ask you to remember that oath and lay aside everything else.

In this case, ladies and gentlemen, you have no friends to reward, no enemies to punish. We're here as the triers of the facts and I believe His Honor said -- there is a fan back here that roars and my hearing

isn't always true, I don't always hear everything, but he told you that you're the trier of the facts. You're not -- you are only here ultimately to determine whether or not the State has carried its burden of proof beyond a reasonable doubt.

Now, you may have already heard from the solicitor, the prosecutor the use of the word "victim." There are no victims in the case, there is no guilty party in this case until and unless you find the State has carried its burden of proof beyond a reasonable doubt.

In saying that, let me share with you that I don't know at this point in time who will testify in this case, I don't know what they may allege against Mr. Bagwell. But I share with you right now, ladies and gentlemen, that Mr. Bagwell has nothing to come into this courtroom today to prove to you.

Why? Because of one very fundamental principle in our judicial system, as we dig into the realm of the criminal justice system. What is that right? That right is known as the right of presumption of

innocence. Mr. Bagwell comes into this courtroom today and under that very substantial right that he has in our system, he is presumed to be innocent. The fact that he was arrested for these charges, the fact that he was indicted by the Pickens County grand jury for these charges is a means to -- and but for the fact that in this digital age we have to maintain some paper trail, we could tear up the arrest warrant, we could tear up the indictment, because all of that is meaningless to you as the trier of facts at this point in time.

Sometimes that presumption of innocence is likened to a cloak of righteousness. As a bit of explanation what goes on with that, I will give you mine. Look over there at Mr. Bagwell. He would have something on like a robe, that presumption of innocence, wrapped around him from the top of his head to the soles of his feet and everything inbetween. That, ladies and gentlemen, is the presumption of innocence. That presumption of innocence does not leave after the first witness's testimony, nor the second witness's

testimony or however many witnesses testify, that presumption of innocence does not leave Mr. Bagwell. It is still there. He is still wrapped in that cling wrap from the top of his head to the soles of his feet. It does not leave when we do, ultimately, closing arguments in this case. In fact, it does not leave when His Honor charges you on the law at the end of this case. It does not leave, ladies and gentlemen, unless you find that the State has stripped that cling wrap totally off of him and proven their case beyond a reasonable doubt. That is what you are here for, to hold the State to their burden of proof and determine if the State can prove their case beyond a reasonable doubt.

You have no friends to reward, no enemies to punish. So I ask you to remember that.

Reasonable doubt. Proof beyond a reasonable doubt is the burden that the State has to meet. I'm not going to talk a lot about reasonable doubt now but we can address that a little more when we get to the close of the case. That is the burden of proof.

Ladies and gentlemen, tomorrow, right here, the State -- the State -- with all of its power and all of its resources versus David Bagwell, they have the burden of proving to you that they can prove these allegations beyond a reasonable doubt.

I believe that a great statesman once said that our rights are not sacred unless we guarantee them. Our judicial system is the cornerstone of ensuring that our rights as citizens are preserved.

On behalf of Mr. Bagwell, I thank you so very much for being here. This is his day in court. It's a beautiful day outside. There are thousand and a one more places that each and every one of you would rather be at this point in time.

I give credit to the great late Winston Churchill, though people have taken issue that it was he who one time said that jury duty is the highest service that you can render to the service of your country in peacetime. We can paraphrase Mr. Churchill just a little bit and say that jury service is the greatest service you can provide for

your community, your country as noncombatants. Why? Because, ladies and gentlemen, if you were not sitting in the jury box this afternoon, August 28th, 2017, there would be no need for me, no need for His Honor to be here. Why? Because you are the foundation of our entire judicial system. Without you, we couldn't function. The entire system would collapse. So, yes, thank you. Thank you for your attention. I know that you will be attentive throughout this trial and will hold the State to its burden of proving all elements of the crime charged against Mr. Bagwell beyond a reasonable doubt. At this time, he still has the cling wrap on him. Please bring back a verdict of Not Guilty. Thank you so very much.

THE COURT: Mr. Jones, you may call your first witness.

SOLICITOR JONES: The State calls Officer Jan Kelley.

(WITNESS TAKES STAND)

JAN B. KELLEY, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Mr. Kelley, where do you work?

A. Pickens County Sheriff's Office.

Q. In 2014, what was your position?

A. Lieutenant over the Special Victims Unit.

Q. What were your responsibilities in that position?

A. I would investigate all allegations of sexual assaults against adults and children.

Q. Do you respond first to the scene or do you follow up or -- can you elaborate on your responsibilities?

A. Well, if it was something that had just occurred, I'd usually be notified and respond to the scene.

Oftentimes it's delayed reporting and there is not a scene to respond to. You have to initiate your investigation from where you best can.

Q. Were you involved in the investigation of David Bagwell?

A. (Affirmative nod), I was.

Q. Tell the jury how you became involved, please?

A. Our office received a call. Officer Elisah Chapman is the desk officer and he received a call from Rebecca Mosely, who worked for the Orangeburg County Department of Social Services. She made a report to our office through Officer Chapman that the victim, MINOR CHILD, was in counseling and that she had revealed that she had been ---

JOHN DEJONG: I would object to what she said. He can say what he did as a result of the call, but I am going to object to anything else as hearsay.

THE COURT: Sustained.

SOLICITOR JONES: Okay.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. So the Sheriff's Office got a call from Orangeburg DSS, is that correct?

A. That's correct.

Q. Okay. So at the time that you found out about the investigation or the allegations, where was MINOR CHILD living?

A. Orangeburg County, South Carolina.

Q. According to the allegations, where did the assault take place?

A. [redacted] Cleo Chapman Highway in Pickens County, South Carolina. They reported that it occurred in 2013, between August and September of 2013.

SOLICITOR JONES: May I approach the witness, Your Honor?

THE COURT: Yes.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Showing you State's Exhibit 1, would you take a look at that for me, please, sir?

A. (Complies).

Q. Do you recognize that?

A. Yes. That's ---

Q. What is it?

A. That is [redacted] Cleo Chapman Highway where the alleged sexual offense occurred.

Q. Is that a true and accurate depiction of that residence?

A. It is.

SOLICITOR JONES: Your Honor, State would move State's Exhibit 1 into evidence.

JOHN DEJONG: No objection.

THE COURT: Did you say State's Exhibit 1?

SOLICITOR JONES: Yes, sir.

THE COURT: State's Exhibit 1 is so entered without objection.

(SO ENTERED AS STATE'S EXHIBIT 1)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Mr. Kelley, what date was the Pickens County Sheriff's Office informed or contacted about this case?

A. May 19th, 2014.

Q. What day did you start working on the case?

A. I got the report on May 20th, I believe.

Q. And you may have already mentioned this, but who was your point of contact?

A. Rebecca Mosely with the Orangeburg County Department of Social Services.

Q. And who made the allegations?

A. MINOR CHILD is the child. She was around eight years old at the time that she had made the allegations that she had been sexually abused by David Bagwell, who was her

stepfather.

Q. Did MINOR CHILD participate in what is called a forensic interview?

A. Yes, I was ---

Q. And was that interview video and audio recorded?

A. Yes, it was.

Q. Do you know the date that MINOR CHILD participated in that interview?

A. I believe the date of the forensic interview was conducted was June 5th, 2014, at the ---

Q. Where did that take place?

A. --- Edisto Children's Clinic in Edisto.

Q. Where is the Edisto Children's Clinic?

A. Down in Orangeburg.

Q. Okay.

A. I had requested, after I got the report I talked to Ms. Mosely and asked her about the forensic interview. She said that she would be scheduling one ---

JOHN DEJONG: Objection, Your Honor.

THE COURT: Sustained.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Did you have the opportunity to watch those video recordings?

A. I did.

Q. What date did you first make contact with the victim's mother?

A. June 20th, 2014, I believe it was.

Q. Was that the first time that you tried to contact her?

A. No. The first time I tried -- the phone number that I was given on the report when it was recorded, when given to Officer Chapman, was an incorrect number. I tried locating her at several different residences through contacting and talking back and forth to Orangeburg, previous residences that she may be at. I was finally able to locate her at Mile Creek County Park, here in Pickens County, on the lake, with the children.

Q. What date was that?

A. June 20th, 2014.

Q. So about how long did it take you to contact the child and mother?

A. Well, from May the 20th until June

the 20th, as far as being able to locate and finally find her. She lived in Orangeburg at the beginning but they had moved back, because I was trying to find out where I could go in Orangeburg. Then I received a call saying they were no longer living in Orangeburg, that they have moved back to Pickens County somewhere.

Q. And when you made contact with the mother, was David Bagwell still living there?

A. No, he was still living in Branchville.

Q. What was your purpose of meeting with Toni and MINOR CHILD ?

A. I needed to gather information as to the facts alleged as to who had sexually assaulted the child.

Q. How did you determine the dates of the sexual abuse?

A. Based on reviewing the records that I was provided by the forensic interviewer and also the medical examination dates that were given. That is how I determined the time period in which the sexual assault occurred, as far as watching the child when

she did the forensic and reading the medical records from the medical doctor, Dr. Croswell.

Q. And what were the dates that you determined the sexual abuse occurred?

A. Between June and September, 2013. There were alleged numerous occasions that it occurred.

Q. Did you try to contact David Bagwell?

A. I did. The number that I was given for him was not good either. Then I think when -- when they finally brought him into detention, through the detention officers, but, uh, -- I was unable to talk with him.

Q. Did you ever leave messages for him to call you back?

A. The first number that I was given for him, I did, which was in Branchville. But I never got a response from him.

Q. What was MINOR CHIL's date of birth?

A. MINOR CHILD's date of birth?

Q. (Affirmative nod).

A. She was eight years old, so -- give me one moment. [redacted], 2004.

Q. And what is David Bagwell's date of birth?

A. 10-29-1981.

Q. Thank you.

SOLICITOR JONES: No further questions.

THE COURT: Cross-examination?

JOHN DEJONG: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. So, Mr. Kelley, in this case were there only allegations as to MINOR CHILD?

SOLICITOR JONES: Objection, Your Honor. Completely irrelevant.

JOHN DEJONG: I don't think it is, Your Honor.

THE COURT: Y'all approach.

(OFF RECORD BENCH CONFERENCE)

THE COURT: I am going to sustain the objection.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. So you started your investigation on -- or you got the report on May 20th, right? 2014?

A. That is when the report was assigned out to me, I believe it was.

Q. Okay. And then -- well, you never went to Orangeburg, I gather. Right?

A. No, I did not. I was trying to make arrangements to go there and I was informed that they had moved back to Pickens County.

Q. And from what I gather, you never spoke to Mr. Bagwell?

A. No, I did not. Through detention, once he was brought in -- but I was informed that he didn't wish to speak to me.

Q. Right. And so -- I'm trying to figure out. You said that your job is to gather information. I am not asking you what anybody said, but what information did you gather?

A. The information that I gathered from reviewing the medical reports and the forensic interviews as to the sexual assault that happened to MINOR CHILD ---

Q. Other than that ---

A. --- to MINOR CHILD. I'm sorry.

Q. I'm sorry, I didn't mean to interrupt you. Other than that, you didn't

gather anything.

A. Are you saying ---

Q. Any forensic evidence?

A. As I previously stated, the time element in which the offense occurred, it previously -- it was delayed reporting.

Q. Well, what's been introduced as State's Exhibit 1, did you ever go out to that residence?

A. I did.

Q. Did you find anything unusual about that residence?

A. There was someone else living there from ---

Q. Did you go inside?

A. --- from what I could tell on the mailbox.

Q. Did you go inside that residence?

A. I did not.

Q. Did you ever interview the alleged victim in the case?

A. No, because in cases like this, with a child that young, you don't want to keep recreating the traumatic experience that they went through. That's why we rely on forensic

interviews and medical reports, because they are very detailed.

Q. The -- give me the dates again if you would, please, sir?

A. The date of the forensic interview?

Q. No, the dates of when this alleged assaults supposedly took place?

A. Basically the information provided to me was between the dates of June and September, 2013; in that time span.

Q. All right.

A. And that is the time span that also that Toni Durnil, the mother of the child, indicated that they lived ---

JOHN DEJONG: Your Honor, I am going to move to strike that. That was not responsive to my question.

SOLICITOR JONES: He's asked him the dates.

THE COURT: I am going to overrule.

JOHN DEJONG: One moment, please. Nothing further.

THE COURT: Redirect?

SOLICITOR JONES: Nothing further, Your Honor.

THE COURT: You may step down.

(WITNESS STEPS DOWN)

THE COURT: All right, ladies and gentlemen. I think that I need to talk to the attorneys about a matter before we move forward, so I am going to ask that you go back to the jury room.

Do not discuss the case. I will ask that you go ahead and select a foreperson from the original twelve. The Alternates cannot be -- y'all are not qualified. You play an important role in this and I don't want to diminish that, but the foreperson's role is to merely communicate with the court if needed and to lead discussions once you begin deliberations. You don't get a pay raise. You can put it on your resume. Just select one from the first twelve and give me a note with the name of the person you select.

We will be with you shortly.

(JURY OUT @ 2:52 P.M.)

THE COURT: I definitely want to review the forensic interview before we go any further on this.

JOHN DEJONG: Sir?

THE COURT: I said I want to see -- do I need to get a little horn?

JOHN DEJONG: I'd appreciate it.

THE COURT: I definitely want to review the video before we go any further. I think there are two issues here, and I think we might have gotten them confused with the jury.

There's a 2009 incident where this victim, through her mother, made an allegation to the Colleton County -- no, no.

JOHN DEJONG: That was the one the defendant was convicted on. That was the Bobby McCann case.

The other allegations were in December of 2010.

THE COURT: That was Colleton County?

JOHN DEJONG: Yes, sir.

THE COURT: Okay, that's where I got Colleton County.

JOHN DEJONG: Yes, sir.

THE COURT: And then ---

SOLICITOR JONES: Your Honor, in December of 2013 the victim made these allegations, then a week later she recanted.

Then six months later is when the DSS agent came to the house and she disclosed to the DSS agent, then this investigation took place.

THE COURT: All right.

SOLICITOR JONES: That was my point about that I don't think the recantation has anything -- it's not a different sexual abuse, it's the same sexual abuse.

THE COURT: All right. I was thinking it was a different matter.

SOLICITOR JONES: That was my confusion as to what defense counsel was making the argument -- I mean, if you want to keep that out, that's fine with me.

THE COURT: Well, I want to make sure that I am clear on this before me -- what's exactly what. I thought that it was a totally different incident here.

SOLICITOR JONES: No, the ---

THE COURT: The 2009, which is totally unrelated to this, ---

SOLICITOR JONES: Yes, sir.

THE COURT: --- against Bobby McCann.

SOLICITOR JONES: Yes, sir.

THE COURT: I think he was convicted of that?

SOLICITOR JONES: That's correct, and the child testified that he went -- he went to trial and the child testified.

THE COURT: Then I definitely need to review this. Okay? I was confused as to -- okay. I think I want to review that before we continue this. It's almost 3:00 o'clock now, I don't know that we could -- how long is this?

SOLICITOR JONES: It's about an hour and a half.

THE COURT: That would be tough to do that and have any additional testimony for them to know -- okay, so I am going to review this and -- I think we're just going to start back in the morning.

Has this -- I know that it has been marked. Is this the original, unredacted one?

SOLICITOR JONES: Yes, sir, and we're not going to have a redacted version, just the original. I have the minutes and second markers where defense counsel and I have

agreed that those portions need to be redacted?

THE COURT: All right. Do y'all have another copy of this video?

JOHN DEJONG: I've got mine, Judge.

SOLICITOR JONES: Yes, sir, we do have other copies as well.

THE COURT: All right.

SOLICITOR JONES: And, Your Honor, I am going to go ahead and put on the record the portions that defense counsel and I have agreed to be redacted.

THE COURT: All right, and that is written on there?

SOLICITOR JONES: Yes, sir, there is a stickie note:

22 minutes, 19 seconds to 25 minutes, 33 seconds.

33 minutes, 28 seconds to 36 minutes, 28 seconds.

54 minutes, 20 seconds to 54 minutes, 55 seconds.

THE COURT: All right. The times you are indicating, are those on whatever player you are doing it on or is that actually on

the video itself?

SOLICITOR JONES: It's not on the video itself, so it's on the player.

THE COURT: Okay. I know that some videos actually have the time ---

SOLICITOR JONES: No, sir, there is no times on the actually video, so it would just be the player, so:

22 minutes, 19 seconds to 25 minutes, 33 seconds.

33 minutes, 28 seconds to 36 minutes, 28 seconds.

54 minutes, 20 seconds to 54 minutes, 55 seconds.

THE COURT: And I understand -- based on your previous, do you object to the video?

JOHN DEJONG: I still object, but I concur ---

THE COURT: But you consent to those portions being ---

JOHN DEJONG: I concur with the solicitor that that is what we agreed to take out but I still object to ---

THE COURT: Right.

JOHN DEJONG: --- the entire video.

THE COURT: Without waiving your right to object?

JOHN DEJONG: Yes.

THE COURT: Okay. Like I said, I'd like to review this before we got further.

SOLICITOR JONES: Your Honor, to satisfy the issue of the prior sexual abuse being admissible, it might be necessary that we have the victim proffer testimony outside the presence of the jury.

THE COURT: You want to do that this afternoon?

SOLICITOR JONES: Well, we've already told the victim to leave, but that is available to us.

THE COURT: All right. Okay. Let me have the video. I'll just bring the jury out and tell them that we will start back in the morning at 9:00.

JOHN DEJONG: 9:30 works a lot better, but 9:00 is fine.

THE COURT: You're here at 7:00.

JOHN DEJONG: Your Honor, I hesitate to bring this up because you haven't, nor has the Solicitor, but sometimes I get into an

argument with law enforcement. That is, obviously the jury has been sworn. Mr. Bagwell does not have a bond any longer but I am going to ask you not to take him into custody. He has kept every appointment with me that I've asked him to. He's never failed to appear for court and I think if he were going to run -- this case is what? Three years old? I think he would be speaking Spanish by now if he was going to run.

THE COURT: Well, these are pretty serious allegations and a pretty serious sentence, so I'm going to deny your request.

JOHN DEJONG: Thank you, Your Honor.

THE COURT: I am going to bring the jury back out just briefly. Anything before we bring the jury in?

SOLICITOR JONES: No, sir.

COURT REPORTER: If you need to hear the victim, do we want to do that first thing in the morning before the jury reports?

THE COURT: Yes. Good idea. Yes, do we need to proffer the testimony first thing in the morning?

SOLICITOR JONES: We can, Your Honor.

That way you will have watched the video and you'll have her testimony to tell you about the prior -- in reading those cases, I think it matters exactly what the prior sexual abuse was.

THE COURT: With that being the case, -- how long do you think that would take?

SOLICITOR JONES: Again, Your Honor, I don't anticipate her testimony being lengthy. She is fairly reserved.

THE COURT: How about if we allow thirty minutes for the proffer?

SOLICITOR JONES: I think so, Your Honor.

THE COURT: I'll have us come back at 9:00 o'clock and then have the jury report back at 9:30.

Juror Number 45, Edward Field is the foreman.

COURT REPORTER: Court's Exhibit 1.

(SO ENTERED AS COURT'S EXHIBIT 1)

(JURY IN @ 3:02 P.M.)

THE COURT: I understand that Mr. Field has been selected as the foreman of the jury. So thank you for serving in that capacity.

Ladies and gentlemen, there are some matters that we still need to go over, things that I need to work on this afternoon. Unfortunately sometimes this happens on Mondays.

So even though it is only 3:00 o'clock, we're going to have to let y'all go home.

We will start back at 9:30 in the morning, so make sure that you are in your jury room at 9:30, ready to go.

Again, don't discuss the case with anybody in the family or your friends, or amongst yourselves. Don't do any investigation. Don't pay any attention to any media. If anybody should contact you, please let the bailiff know.

Other than that, have a good evening. We will see you in the morning at 9:30. Thank you.

(JURY OUT @ 3:10 P.M.)

THE COURT: All right, anything before we adjourn? From the State?

SOLICITOR JONES: Nothing from the State, Your Honor.

JOHN DEJONG: Nothing on behalf of Mr.

Bagwell.

THE COURT: All right. We will see everybody in the morning at 9:00 o'clock.

(DEFENDANT INTO CUSTODY)

(TRANSCRIPT CONTINUED NEXT PAGE)

AUGUST 29, 2017 9:00 a.m.

(DEFENDANT PRESENT)

THE COURT: I need to put on the record that apparently Juror Number 117 has indicated that her husband broke his ankle and is having some issue there. She did come in but we may have to -- that is a situation that we'll have to address some point, we'll just have to wait and see how it goes.

Just for scheduling purposes, Mr. Jones, have you heard anything from your witnesses. Are they on the way? Are they for the afternoon?

SOLICITOR JONES: My afternoon witnesses are Shauna Galloway and Dr. Croswell.

The two individuals coming from Orangeburg, I called them this morning and did not get an answer. However, I talked to them yesterday and they said, 'Yes, we are going to leave about 7:30.' I just asked my paralegal to go call them again.

THE COURT: Okay. I guess that we can address -- I think the only thing that we

have pending at this time -- the video, State's Exhibit 2, to make a ruling on that we'd have to have the forensic lady here, so that's still holding up -- I mean, we are still waiting to make a decision on that.

The other thing is the Motion to allow evidence and testimony pursuant to Mr. Dejong's Motion -- I'll be glad to hear you on your Motion.

Now that I have reviewed the video, I think that I am clear. We have two incidents that you want to cross-examine on. One is the prior incident in 2008 with Mr. McCann and the second one deals with a retraction made December 2013 in Colleton County.

JOHN DEJONG: That is correct, Your Honor.

THE COURT: Let's talk about the first one, the prior abuse dealing with Mr. McCann. What were the general allegations? You can correct me -- do you know anything about the previous one, with Mr. McCann? I know that you said that you have a transcript.

JOHN DEJONG: I can run down and get it if Your Honor ---

THE COURT: Well, what is the general allegations on that one?

JOHN DEJONG: The general allegations, Your Honor, as I recall, were that he -- that the child's grandmother was living with or that Mr. McCann was her boyfriend. The child was in that home a great deal. There was vaginal touching. I don't really recall any anal touching. That he took her behind several stores, a Dollar Store, Dollar General Store being one of them where the fondling -- I don't know if there was any penile penetration that was alleged.

Now you're asking me, and I really -- I don't want to mislead the court.

THE COURT: I guess what I'm really -- what was the extent of any kind of cross-examination that you would be doing?

JOHN DEJONG: I'm sorry, Your Honor?

THE COURT: What is the extent of any kind of cross-examination, I guess is the question.

JOHN DEJONG: My cross-examination, I don't want to retry that case. The extent of my cross-examination would be that there was

an incident back in 2009, that she testified, that she went through a forensic interview, which I believe that she did, though I am not a hundred percent sure, and that throughout all that she learned a lot of things, basically about the system, basically how to send somebody to jail.

But the center of where I'm going is, if you watched the video, and I'm not trying to run astray here but if you watched the video, there were a lot of things going on in this household; allegations of domestic violence and all of that stuff. My thing is that -- with regard to that, she knew how to get David Bagwell out of the house.

She had this prior knowledge. She had prior sexual knowledge based on everything that she went through in the McCann case.

That same thing -- the recantation, I think that's what we are going to call it, was the same thing there. Even then she said -- and Your Honor was not privy to that report but when she initially, roughly on December 30th, 2013, went to her mother and said that David been touching her -- I'm not

sure what those allegations were, that is not in the report. But the point of that is that then later on she says, 'No, that didn't happen. I was mad at David because he took our X-box away.' I think it was an X-Box or whatever the children play with.

THE COURT: Mr. Jones, what do you have to say about that?

SOLICITOR JONES: Your Honor, as to the 2009 incident, it's my understanding -- and I do think *Williams* and *Grovenstein*, that in both cases the Courts based their decisions in large part on what type of abuse occurred in each instance.

In this particular case -- or in those cases I think that it is clear that the court wants to admit that evidence, to admit that prior sexual abuse, that the abuse needs to be very, very similar. In *Grovenstein* it was, down to the detail of what type of object was inserted into the anal cavity, that type of closeness in similarity.

But I think in this particular case the prior sexual abuse was by a maternal grandmother's boyfriend. It was digital

penetration on a playground, on a swing set and, uh, at one point the child was sitting in his lap and there was digital penetration.

What the child alleges here is that the defendant held her down, tied her down to a bed and essentially performed oral sex on the child. I think that she also said that he attempted to put his penis inside the child.

I think that there is a difference in the sexual abuse. What the defense is trying to do is to say, 'hey, this kid's willy-nilly accusing people of sexual abuse' when in fact the sexual abuse was different. She gave details on both cases. Because it is different, I believe that it should not be admitted to evidence.

THE COURT: I realize that they make a reported distinction on the facts, but I read *Grovenstein* much more generally, especially when they through and it cites all the cases from basically around the country.

In fact, I highlighted one section that cites to a South Carolina case, *Finley Lane*. It says, (reading): *"In light of other cases, we hold that evidence of a child*

victim's prior sexual experience is relevant to demonstrate that the defendant is not necessarily the source of the victim's ability to testify about alleged sexual conduct."

I know that this is in light of the rape statute -- the rape shield statute -- but, uh, -- and I think -- and I mentioned this to you back in our conference, in general I think the rape shield statute's purpose is not for a victim with previous experience like this. It's for somebody that is more sexually active.

I think in light -- again, in reading *Williams*, I believe that *Williams* -- it looks like to me that the Court of Appeals is trying very seriously to make a distinction so -- because they don't like that factual pattern.

But I think under *Grovenstein*, I think -- especially with the limited kind of cross-examination that he's talking about, I think that -- and then I get to the point of where I've got to weigh the prejudice versus probative. I believe that can be the -- if

there is any to the State, that that could be an appropriate charge. I will allow him to cross-examine on that issue.

SOLICITOR JONES: Your Honor, I have a follow up to that.

THE COURT: Yeah.

SOLICITOR JONES: If you are going to allow the prior sexual abuse as far as Bobby McCann, I think in reading *Grovenstein* that a final point that *Grovenstein* made is that it is important to note that -- that the court, after they say that they are going to let this in, to let the prior sexual abuse in, the court goes to great length to say this is not in all cases, you still have to the 403 analysis of prejudicial effect versus probative value. It goes on to say, (reading): *"Furthermore, initially we know that this is not a typical case in which a child victim would have to recount in detail incidents where he was subjected to sexual abuse. Instead this case involves allegations of where the victim had previously been the perpetrators of the sexual abuse."*

So in this particular case, the child victim had to get on the stand and say, 'yes, I did accuse someone else of sexually abusing me.' As I said previously, the defense counsel is going to try to imply to the jury that this child accused people willy-nilly. Given that, I think it is important as a follow-up question for her to be able to say, 'Yes, I did accuse him; yes, I did testify; yes, he was convicted of that sexual abuse.'

THE COURT: All right.

JOHN DEJONG: I don't have any problem with that.

THE COURT: I agree with him, that he has to go into that. That still gives both of you the arguments that you need in closing.

JOHN DEJONG: Of course, I don't know how this young person is going to testify but -- I understand what you're saying about cross-examination, but are you going to allow me to put up any independent evidence of that?

THE COURT: We'll cross that bridge when we get there.

JOHN DEJONG: Okay. Very good.

SOLICITOR JONES: How specific are you going to allow defense counsel to get with the prior sexual abuse?

THE COURT: I mean, it sounds like he doesn't have a lot of details on it anyway. I was going by the fact that he couldn't give any specifics.

JOHN DEJONG: I don't want to retry the Bobby McCann case. I want the systemic part of what she went through in the Bobby McCann case, not what happened.

THE COURT: Okay. Is there an issue on the recanting?

SOLICITOR JONES: That's ---

THE COURT: I think that covers Bobby McCann. What about the other?

SOLICITOR JONES: My issue on the recantation is that we have this report from Colleton County, and I believe that Mr. Dejong has sent a subpoena to one of the officers involved in that case. I think -- I haven't had an opportunity to speak with the officer(s). I called them, they have not returned my calls. What I want to know -- the information that they put in the report,

I think that is the mother telling the officers the allegations, and that it is the mother telling the officers, 'hey, my child can't..' -- so I think that there is an issue of, one, hearsay. I think that he can ask the victim, 'hey, have you ever recanted?' Depending on what she says, I don't think any extrinsic evidence can be used to prove that particular point.

THE COURT: I think I tend to agree with that. You can ask her about that but you're stuck with her answer, I think. I don't know that you can apply any collateral source.

JOHN DEJONG: Your Honor, I don't mean to interrupt you but I've been told -- I'm being told that she actually talked to the officer. If she talked to the officer and recanted and denied that she did, I think that is a prior inconsistent statement.

SOLICITOR JONES: But how is he going to prove that she talked to the officer?

JOHN DEJONG: Well, I reckon the officer can testify to whether he talked to her or not.

SOLICITOR JONES: But at this point, in questioning the witness, the only thing that he would be able to get into is 'did you recant' ---

THE COURT: Right. I think with this witness -- I mean, if you don't have any statement from her that she has signed, that she has read, recorded, -- I think with this witness that you can ask her that, but I am not going to allow -- that you can put anything in through this witness.

If we have to address in your case where you try to put in an additional something, I will review that at that time.

In other words, you're stuck with her answer for now. I am not going to let you put the report ---

JOHN DEJONG: I might ask her if she remembers talking to the officer.

THE COURT: I think that's appropriate.

JOHN DEJONG: If I am going to argue, I have to argue prior inconsistent statements, I think that I have to at least lay the foundation.

THE COURT: Right, and I just need to

determine if that is collateral or not.

Anything else?

JOHN DEJONG: I have one thing, Your Honor. I meant to do it yesterday and that's why I was bobbing up and down like an apple. Just for the record, Your Honor, I want to renew my Motion for a mistrial.

THE COURT: Okay.

JOHN DEJONG: Based on your opening remarks to the jury, you did tell them that the indictment was merely allegations, but my point being -- going back to the very beginning, you did not read the indictment, you just said something along the lines of "a brief statement of facts" and then you kinda highlighted some things out of the indictment. So for the record, I renew my Motion.

THE COURT: I respectfully deny your Motion. I am not sure that rises to the level of a mistrial, and I am sure that the subsequent instructions would have cleared any issues about that up then.

How are we doing on time? Are we ready to go? Do we have all the jurors?

BAILIFF: Yes, sir.

THE COURT: Are we ready to roll?

SOLICITOR JONES: Yes, sir, Your Honor.

THE COURT: All right. The jury is ready, so we can start right on -- are you ready?

JOHN DEJONG: I'm just curious. Are you going to address the issue with Ms. Patterson (Juror Number 117).

THE COURT: Yes, let me go talk to her. I'll just step out and ask her what her situation is.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: I talked to Ms. Patterson. She said that she meant to tell us yesterday -- she is the lady that stood up and said 'I am a caregiver' but she didn't come back up afterwards. I just spoke with her and she is really frantic because her husband needs to see a doctor today. He broke his leg and they are unable to operate on it. She's got her father or his father possibly coming from Seneca to look after him because he can't get out of bed. She seems real distracted. She

said that she is willing, that she doesn't want to cause any trouble, that was her words. Do you have an problem if I excuse her and seat one of the alternates? We have two alternates. Any objection to that?

SOLICITOR JONES: I'll go with your discretion, Your Honor.

THE COURT: This lady is pretty frantic. All she is going to be doing is to be worrying about -- she couldn't get the doctor and ---

JOHN DEJONG: In all candor, as I said off the record a few minutes ago, I don't want a distracted juror sitting there. So no objection from the defense, Your Honor.

THE COURT: All right, I'm going to go ahead and release her. We will draw from the among the alternates.

(JUROR NUMBER 117 EXCUSED)

THE COURT: And Mr. Welborn had her draw from the names for her replacement. Juror Number 105, Scott Nicholson. Okay, Mr. Nicholson will be moved to the jury panel. Bring in the jury.

SOLICITOR JONES: Your Honor, I don't

know how long MINOR CHILD 's testimony will be but we might have a slight delay in the Orangeburg people getting here, just to let you know.

THE COURT: All right. Any objection to the selection process to our alternate process, from the State?

SOLICITOR JONES: No, sir

THE COURT: From the defense?

JOHN DEJONG: None on behalf of Mr. Bagwell, Your Honor.

THE COURT: You (bailiff) may tell Mr. Nicholson that he has been promoted. Please bring in the jury if they are ready.

(JURY IN @ 9:40 A.M.)

THE COURT: All right, ladies and gentlemen. I just want to kind of let you know what's been happening. I talked to Ms. Patterson. She had a lot going on this morning with her husband, so we felt like it was appropriate to have her excused. Therefore, Mr. Nicholson you are not longer an alternate. You've been promoted to a regular juror. Thank you for your service.

(JUROR NUMBER 105 SEATED AS ALTERNATE)

THE COURT: We will now continue with the State's case. Mr. Jones, please call your next witness.

SOLICITOR JONES: Thank you, Your Honor. The State calls MINOR CHILD

(WITNESS TAKES STAND)

MINOR CHILD having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Speak up for me, MINOR CHILD. MINOR CHILD, what is your birthday?

A. [redacted], 2004.

Q. That makes you how old now?

A. Twelve.

Q. What grade are you in?

A. Seventh.

Q. The seventh grade?

A. (Affirmative nod).

Q. Who do you live with now?

A. My mom.

Q. What is her name?

A. Toni.

Q. Have you ever lived on Cleo Chapman

Highway?

A. Yes, sir.

Q. Let me show you something ---

SOLICITOR JONES: May I approach the witness, Your Honor?

THE COURT: Yes, sir.

SOLICITOR JONES: Mr. Dejong (showing photograph to counsel).

JOHN DEJONG: No objection.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Do you recognize that?

A. Yes, sir.

Q. Did you ever live there?

A. (Affirmative nod).

Q. Is that the house on # Cleo Chapman Highway?

A. (Affirmative nod).

COURT REPORTER: You need to answer out loud. Was that a "yes"?

WITNESS: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. When you lived in this house, who lived there with you?

A. My mom, my brother, me and David.
Q. David who?
A. Bagwell.
Q. David Bagwell?
A. (Affirmative nod).
Q. Did you live on Cleo Chapman Highway, in that particular house, in 2013?
A. Yes, sir.
Q. When you lived in that house, were you sexually abused?
A. Yes, sir.
Q. Who sexually abused you?
A. David Bagwell.
Q. Can you tell the jury -- and I know that this is difficult -- can you tell the jury, describe what he did to you when you said that he sexually abused you.
A. In detail?
Q. No, no, just as much as you can, tell the jury what happened.
A. He put his hands on me, in parts that he wasn't supposed to.
Q. Okay. Did -- he touched you with his hands?
A. (Affirmative nod).

Q. Did he touch you with anything else?
A. (Affirmative nod).
Q. Did he ever put his mouth on you?
A. (Affirmative nod).
COURT REPORTER: Please answer out loud. Was that a "yes"?
WITNESS: Yes, ma'am.
DIRECT EXAMINATION CONTINUED
BY SOLICITOR JONES:
Q. Did David Bagwell put his mouth on your vagina?
A. Yes.
Q. And when he did that, did he do anything in particular? Where were you in the house?
A. In his bedroom.
Q. His bedroom?
A. (Affirmative nod).
Q. Were in his bedroom were you?
A. On the bed.
Q. On the bed?
A. (Affirmative nod).
Q. Was there anything different about the bed? Can you describe the bed? What was it sitting on?

A. It was sitting on the cement blocks with ropes.

Q. It was siting on cinderblocks?

A. Uh-huh, (affirmative nod).

Q. Okay. What did -- when you say a rope, what -- why do you bring up the rope?

A. Because it was tied to the cinder blocks.

Q. Okay. What was normally on the rope?

A. (No verbal response).

Q. Was the rope used for anything?

A. One was used for the dog's leash.

Q. One was used for the dog's leash?

A. (Affirmative nod).

Q. Do you remember what color that was?

A. I think it was red.

Q. You think it was red?

A. (No verbal response).

Q. But maybe you don't remember?

A. (No verbal response).

Q. It's fine if you don't.

A. (Negative gesture).

Q. And what did he do with the ropes

and the leash when you were on the bed?

A. He tied my hands to it.

Q. He tied your hands with the rope and the leash?

A. Um-humm, (affirmative nod).

Q. Is that a "yes"?

A. Yes.

Q. Do you remember if David ever made you touch him?

A. Not that I remember.

Q. Not that you remember?

A. (Negative gesture).

Q. Okay. After David touched you, did he ever say anything to you that you remember?

A. Not to tell anyone.

Q. He said not to tell anyone?

A. (Affirmative nod).

Q. Did he say what he would do if you did tell anyone?

A. Kill my family.

Q. He said that he would kill your family?

A. (Affirmative nod).

Q. Did he say that one time or more

than one time?

A. More than once.

Q. Did you believe him?

A. Yes, sir.

Q. When he sexually abused you and tied you up, where was your mother?

A. She was at work.

Q. Do you remember what time of day that it occurred, that the sexual abuse occurred?

A. After school but before mom got off.

Q. After school but before your mom got off?

A. (Affirmative nod).

Q. Do you know what pornography is?

A. It's, uh, bad videos that's R-rated and stuff.

Q. Okay. Did David ever show you pornography?

A. Once.

Q. Once?

A. (Affirmative nod).

Q. So after you told the police about this, about David sexually abusing you, did you go anywhere to live?

A. After it all happened, (affirmative nod).

Q. After it all happened?

A. To Tomassee.

Q. Tomassee?

A. (Affirmative nod).

Q. What is Tomassee?

A. It's kind of like a foster care but it's a home where kids live in houses.

Q. Did your mother live with you there?

A. No.

Q. How long did you stay at Tomassee?

A. For two years.

Q. Has anyone ever told you what to say in regards to David Bagwell touching you?

A. No, sir. Does that mean not to say it or to say it?

Q. Well, either one. Did anybody ever tell you not to say?

A. Yes, sir.

Q. Who did that?

A. David.

Q. Did anybody ever tell you what to say? In other words, did anybody ever tell you to say that David Bagwell touched you?

A. No, sir.

Q. Do you remember when you lived in Orangeburg, or was it called Branchville?

A. (Affirmative nod), Branchville.

Q. Branchville. And do you remember when you lived in town called Smoaks near Walterboro?

A. I don't know the names of places.

Q. You don't know the names of places?

A. (Negative gesture).

Q. That's fine. Before the incident happened with David Bagwell, before that, around 2009 or so, did someone else touch you as well?

A. It was before that. His name was Bobby.

Q. You think that it was before 2009?

A. Yeah.

Q. And his name was Bobby?

A. (Affirmative nod).

Q. But it was -- you can't remember his last name?

A. (Negative gesture).

Q. Did you tell the police about that too?

A. Yes.
Q. Was Bobby arrested?
A. Yes, sir.
Q. Did you testify about that as well, come in here and do what you're doing today?
A. Yes, sir.
Q. Was Bobby found guilty or not guilty?
A. Guilty.
SOLICITOR JONES: Beg the court's indulgence.
THE COURT: Yes, sir.
DIRECT EXAMINATION CONTINUED
BY SOLICITOR JONES:
Q. When we were talking about David, how many times would you say that David touched you, sexually abused you?
A. (No verbal response).
Q. One time or more than one time?
A. More than once.
Q. More than once?
A. (Affirmative nod).
Q. Every time it happened, did he tie you up or did sometimes he not tie you up?
A. He tied me up.

Q. He tied you up?
A. (Affirmative nod).
Q. Did you ever see his penis?
A. Yes, sir.
Q. Did anything ever come out of his penis?
A. White-yellow stuff.
Q. White-yellow stuff?
A. (Affirmative nod).
SOLICITOR JONES: No further questions, Your Honor.
THE COURT: Cross-examination?
JOHN DEJONG: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. So, MINOR CHILD back in 2009 or before, Mr. Jones was asking you about Bobby McCann. Did you go through an interview at that point in time?
A. I talked to the officers.
Q. Did they take you someplace and tell you that you were about to be videoed and all that good stuff?
A. Yes, sir.

Q. All right. And during the course of that, did you talk to police officers?

A. Yes, sir.

Q. All right. And did the police officers talk to you?

A. Yes, sir.

Q. That was a real learning experience, wasn't it?

A. (No verbal response).

Q. You learned a lot?

A. Yes, sir.

Q. Okay. And Mr. Jones asked you if Bobby McCann was -- I think convicted.

A. (Affirmative nod).

Q. Do you understand that word?

A. Yes, sir.

Q. Did he go to jail?

A. Yeah.

Q. So let's now back up a little bit, MINOR CHILD When you made -- when you said that David was touching you, do you remember what town that you lived in?

A. I remember one was in Pickens and the other was in Branchville.

Q. One was where? I'm sorry, dear.

A. One was in Pickens, one was in Branchville.

Q. I'm sorry?

A. One was in Pickens and the other one was in Branchville.

THE COURT: See if you can adjust her microphone so that we can hear her.

COURT REPORTER: (Adjusts microphone).

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. The house that you lived in before the one where you told the lady that David had been touching you, the house before, do you remember telling your mom that David had been touching you?

A. Yes.

Q. All right. And to your knowledge, if you know, did your mom go to the police?

A. Yes, sir.

Q. After that, after your mom went to the police, do you remember what you told your mother?

A. I'm sorry?

Q. Did you tell her it wasn't true?

A. (No verbal response).

Q. Did you tell her that it wasn't true, that you'd said it because you were mad at David because he'd taken your X-Box away from you?

A. I don't remember having an X-Box.

Q. A PlayStation or anything that, anything else?

A. No, sir.

Q. You just don't remember?

A. No, sir.

Q. Okay. All right. So -- well, when you say that David was doing these things to you, where was your brother?

A. He was either in the living room watching cartoons or outside playing.

Q. This is kind of an old house, wouldn't you say?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. And the inside doors were all just like normal inside doors; right?

A. Yes, sir.

Q. There was nothing special about any of them, was there?

A. Not really. They were thicker.

Q. I didn't hear you.

A. They were thicker.

Q. Okay. Well, let me back up again. The house that you lived in before you told the ladies that David was touching you, when you told your mom in that house, did you tell your mom the same thing?

A. The same thing as what?

Q. What you've told us today, did you tell your mom that in the house that you lived before?

A. Yes, sir.

Q. The very same thing?

A. Yes, sir.

Q. All right. And -- well, let me ask you this, MINOR CHILD If you know, after you told your mom all of that, do you know if anybody was arrested?

A. No, sir.

Q. You don't know or no one was arrested?

A. I don't know.

Q. But after you told you mom that, and that was in the house before, nothing

happened with that one; did it?

A. Nothing happened with what?

Q. When you went to your mom before this time, before you talked to the lady down in Orangeburg, the house that you lived in before, you said that you told your mom that he was touching you. Right?

A. Yes, sir.

Q. And I believe that you just shared with us that you told your mom that he did what you've shared with us today. Is that correct?

A. Yes, sir.

Q. All right. Then -- do you remember when that would have been? Could that possibly have been around Christmas?

A. I don't remember, sir.

Q. Well, let's talk a little bit about what was going on in your house. Did David and your mom get along?

A. Not really.

Q. Were there ever any fights in the house?

A. Yes, sir.

Q. And just so that we're all sure,

David is not your real dad; is that correct?

A. Yes, sir.

Q. Okay. I believe -- let me back up here. Do you remember now when you made -- when you said that David was touching you, that was in the house in Orangeburg. Can we agree that was in Orangeburg

A. Yes, sir.

Q. Let me ask you this, what we're here for today, who did you tell that to?

A. To my mom.

Q. Anybody else?

A. My brother.

Q. Your mom and your brother?

A. (Affirmative nod).

Q. All right, so let's come back to where we were. So your mom and your dad did a lot of fighting?

A. Yes, sir.

Q. You didn't particularly like David, did you?

A. No, sir.

Q. And indeed you -- because you thought David had hurt your mom, you wanted him out of the house, didn't you?

A. Yes, sir.

Q. More than that, you wanted David to go to jail; didn't you?

A. Yes, sir.

Q. He even went to jail for a little bit one time; isn't that right?

A. Yes, sir.

Q. And then when you -- do you remember talking to this lady -- not on the Bobby McCann case, but do you remember talking to the lady in the little room where they said you were -- that there was a camera, do you remember that?

A. No, sir.

Q. Do you remember her name?

A. No, sir.

Q. You do or don't? I'm having a hard time hearing you.

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. So you don't remember telling her that you had pictures on your tablet and you were going to take them to court with you and show the judge?

A. (No verbal response).

Q. You don't remember that?

A. No, sir.

SOLICITOR JONES: I would object to that question. He is intentionally trying to confuse the witness. He knows that she was not talking about this particular case when she talked about those photographs.

THE COURT: All right.

JOHN DEJONG: I think I was talking about a video, not photographs but -- okay.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. You just don't remember talking to this lady at all is what you're telling me?

A. (Affirmative nod), no, sir.

Q. Now, so you had told your mom before that David had been touching you, but nothing happened; right?

A. Yes, sir.

Q. Then David didn't go to jail then, did he?

A. No, sir.

Q. Did that make you angry?

A. I guess so.

Q. Because you wanted David to go to jail, didn't you?

A. Yes, sir.

Q. The -- what color was that rope?

A. What color was the rope?

Q. Yes, ma'am.

A. I think it was red.

Q. Do you like to draw cartoons?

A. Yes, sir.

Q. I understand that you do. That you're pretty good at it. Do you make up stories to go along with your cartoons?

A. No, sir, I just draw.

Q. Where do you get the ideas to draw your cartoons?

SOLICITOR JONES: I would objection to relevance, Your Honor.

THE COURT: Overruled.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Where do you get the ideas for your cartoons?

A. I don't know. Books and stuff.

Q. You said that David tied you up. How did he tie you up?

A. With the rope that was tied to the cement blocks and with the leash that was also tied to my hands.

Q. It was what?

A. It was tied to my hands.

Q. Tied to your hands?

A. (Affirmative nod).

Q. Were your hands down by your side?

A. (No verbal response).

Q. Up in the air? Where were they?

A. Laying outside me.

Q. All right. And so at some point in time you told your mother what you're telling us today; is that right?

A. Yes, sir.

Q. Did you talk to your mother since then about what we're talking about today?

A. Since I told her?

Q. I'm sorry?

A. Can you repeat that, please?

Q. Surely. You told your mother that this had happened.

A. (Affirmative nod).

Q. Since then have you talked to your mother about this?

A. Since it happened?

Q. Yes, ma'am.

A. I don't like talking about it, so I don't.

Q. Has your mother ever tried talking to you about it?

A. No.

Q. Is your mother angry with David?

A. Yes.

Q. How did it come about that you told your mother about this?

A. Because I, uh, eventually got tired of him saying he was going to kill my family and eventually I started not to believe him.

Q. Had he told you that when you told your mom before that he was touching you?

A. Yes, sir.

Q. Okay. So -- was there anyone else in the house when you told your mother other than your mother and your brother?

A. I don't remember, sir. I don't even remember my mother -- my brother being there.

Q. Okay. You said that this was David's bedroom. Did your mom and David share the same bedroom?

A. Yes, sir.

Q. So it wasn't just David's bedroom. It was your mom's and David's bedroom?

A. Yes, sir, but she normally didn't sleep there. She sleeps on the couch most of the couch.

Q. Did she sleep on the couch back then?

A. Yes, sir.

Q. Mr. Jones asked you about pornography. I understood you to say that David showed you pornography one time. Right?

A. Yes, sir.

Q. Had you seen pornography before then?

A. No, sir.

Q. Do you remember a friend that you had some time back and you and she talked about a lot of this stuff?

A. No, sir.

Q. You don't remember that?

A. (Negative gesture).

Q. You said that David tied you up more than once?

A. Yes, sir.

Q. Did he always use the same rope?

A. No, sir, not always.

Q. And you said that it was a red rope? A red rope or a red leash?

A. He didn't always use the red leash but he always used the rope.

Q. Was it the red rope?

A. Red rope or red leash?

Q. I didn't hear the last part?

A. It was a red leash.

Q. So now you're saying that it was red leash, not a red rope.

A. It was rope and a leash.

Q. I see. All right. Were they both red?

A. (No verbal response).

Q. What color was it?

A. One was red and I think -- I think the rope was a tan color.

Q. A tan color?

A. (Affirmative nod).

Q. I think I asked you this and that you answered but I just want to make sure, you don't remember talking to a Ms. Darby at

all?

A. No, sir.

JOHN DEJONG: Thank you, MINOR CHILD.

THE COURT: Redirect?

SOLICITOR JONES: Briefly

REDIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Hey, MINOR CHILD The defense attorney, Mr. Dejong, he talked to you a little bit about your mom and David fighting. Do you remember that?

A. Yes, sir.

Q. You saw them fighting?

A. Yes.

Q. Did you ever see David hit your mom?

A. Yes, sir.

Q. Did you ever see him cause holes to be in walls?

A. Yes, sir.

Q. Did you ever take pictures of that?

A. I didn't, but I have the pictures.

Q. You have the pictures?

A. (Affirmative nod).

Q. Is that what you meant before if you'd ever said that you have pictures on a

tablet?

A. Yes, sir.

Q. So you saw David hit your mom. Was that once or more than once?

A. It was more than once.

Q. Was it a lot?

A. Yes, sir.

Q. Were you scared of David because of that?

A. Yes, sir.

Q. Did he ever hit you?

A. He'd not really hit me but he did drag me around and stuff.

Q. And you told the defense attorney that you did want David to go to jail, didn't you?

A. Yes, sir.

Q. Why did you want David to go to jail?

A. Because he did bad things.

Q. Because he did bad things to you?

A. Yes, sir.

Q. MINOR CHILD you're only twelve now; right?

A. Yes, sir.

Q. You've moved around a lot, haven't you?

A. Yes, sir.

Q. How many times have you moved?

A. (No verbal response).

Q. More than four?

A. Four times.

Q. Do you remember the address for each particular house?

A. No.

Q. Do you remember each particular town?

A. No, sir.

Q. When the defense attorney was talking to you, did you get confused -- were you confused by some of the stuff that he asked you?

A. Yes, sir.

Q. Are you nervous?

A. Yes, sir.

Q. And you said that you don't like talking about David touching you, right?

A. Yes, sir.

Q. So some of the details -- have you forgotten some of the details, maybe?

A. Yes, sir.

Q. You may have forgotten the details but State's Exhibit 1, is that the house that David Bagwell sexually abused you at?

A. Yes.

Q. How many dogs did you have when you lived in that house, do you know? How many dogs lived in the house as well?

A. I only had one dog and I think I had a cat too.

Q. Did David have any dogs?

A. Well, that was -- it was his dog but it was in the house.

Q. So there was just the one dog?

A. Um-humm, -- yes, sir.

SOLICITOR JONES: No further questions, Your Honor.

THE COURT: You may step down.

JOHN DEJONG: I just have one on re-cross, Your Honor.

THE COURT: No. I'm going to ask her to step down.

JOHN DEJONG: Thank you, Your Honor.

(WITNESS STEPS DOWN)

THE COURT: Is this where you said that

you need to take ---

SOLICITOR JONES: Yes, sir, Your Honor.

THE COURT: We need to take a brief recess because the next witness is coming in and is running a little bit late. When she gets here, we will bring you back out.

Once again, don't discuss the case. We will let you know as soon as we can get you back out. Thank you

(JURY OUT @ 10:15 A.M.)

THE COURT: Let me know when they get here. I guess we'll have to have the in-camera first.

SOLICITOR JONES: We can do it however you want to do it. The one witness is Pam Darby and the other is Rebecca Mosely. So we can do Rebecca first or do the in-camera with Pam Darby for the forensic interview. However you want to do it.

THE COURT: Okay. Sounds like that would be the best way to do it.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Are they here?

SOLICITOR JONES: Yes, sir. If we can

do the proffer on Pam Darby first. She is the forensic interviewer.

THE COURT: Okay. Do whatever you need to do but the least amount of breaks that we have to take for the jury -- what is the most efficient way?

SOLICITOR JONES: That's fine, Your Honor. Do we need to discuss possible redactions first or bring her in here to proffer her testimony?

THE COURT: Y'all have agreed to the redactions, haven't you?

JOHN DEJONG: As far as I know.

THE COURT: Y'all agreed to the redactions and you put those on the record.

SOLICITOR JONES: Yes, sir.

THE COURT: I guess you need to establish the admissibility pursuant to the statute.

SOLICITOR JONES: Yes, sir, the State would call Pam Darby to the stand to proffer her testimony.

THE COURT: Before we get started, it's my understanding that this proffer is merely to establish the elements under South

Carolina 17-20-175?

SOLICITOR JONES: That's correct, Your Honor. The State's understanding per *State v. Anderson*, a recent Supreme Court case where they basically stated the proper procedure for establishing where the State complies with the forensic interview or the child hearsay statute, uh, we intend to offer Miss Pam Darby for those purposes.

THE COURT: All right.

JOHN DEJONG: Your Honor, I am familiar with *Anderson* but I want to make sure that we are clear that there are certain things that we can get into in this in-camera hearing but which would not be admissible before the jury.

SOLICITOR JONES: That's correct.

JOHN DEJONG: I think Your Honor kind of limited it to that, but I wanted to make sure; such as framing, background and all that kind of stuff ---

SOLICITOR JONES: Correct.

JOHN DEJONG: --- would be admissible for purposes of the in-camera but not in front of the jury.

SOLICITOR JONES: Well, I think her training and background, her education, are admissible.

JOHN DEJONG: We will have to argue that when the time comes, will we not?

SOLICITOR JONES: Okay.

JOHN DEJONG: I don't think it is.

THE COURT: You may proceed.

(WITNESS TAKES STAND)

PROFFERED TESTIMONY OF PAM DARBY

PAM DARBY, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Please state your name, ma'am.

A. Pamela Darby.

Q. Ms. Darby, tell the court about your educational background, please ma'am?

A. Yes, I am a licensed master social worker and I have a bachelor of arts in liberal arts from Stony Brook University and a Master in social work from Fordham University.

Q. I understand that you are not

working currently, but in 2014 what was your position?

A. I was the program manager with Casa Family Systems and subsequently the manager of Victims Services with Casa Family Systems in Orangeburg, South Carolina.

Q. Prior to that position, what did you do?

A. Prior to that, prior to Casa Family Systems, I was, uh, a social worker, a hospital social worker at Montclair (phonetic) Medical Center.

Q. What were your responsibilities while you worked at Casa?

A. With Casa Family Systems, I provided counseling for victims of sexual assault and abuse, and I also conducted forensic interviews for children regarding allegations of abuse.

Q. Tell the Court, please, what is a forensic interview.

A. A forensic interview is a neutral fact-finding interview for children who may have been exposed to or experienced sexual assault or physical abuse.

Q. If you had to guess, how many forensic interviews did you conduct throughout your career?

A. Over fifty. I don't recall the exact number but well over fifty.

Q. What do you do in a forensic interview to ensure that the child's answers are not influenced by your questions?

A. Well, a forensic interview is, again, a neutral fact-finding interview in which a child is questioned in developmentally nonsuggestive, appropriate manner regarding specific allegations in the investigative process. It is also to focus on building rapport with the child in which the interview guidelines are reviewed with the child along with the promise to tell the truth. It is objective nonleading questions and it gives the child opportunities to disclose about the abuse.

Q. On June 5th, 2014, did you interview MINOR CHILD ?

A. Yes.

Q. Was that interview video and audio recorded?

A. Yes.

Q. I hand you what has been marked as State's Exhibit 2. Do you recognize that?

A. Yes.

Q. What is it?

A. It's my forensic interview with MINOR CHILD on June 5th, 2014.

Q. Is that a true and accurate copy of the interview?

A. Yes.

Q. In that interview, was MINOR CHILD's statement elicited by any leading questions?

A. No, nonleading questions.

Q. As the interviewer, have you been trained outside of your education to conduct investigative interviews with children?

A. Yes. For forensic interviewing, I participated in basic intensive forensic interviewing along with advanced forensic interviewing. Also updated interview model training. I've participated in various courses and peer reviews from the Children's Law Center. I also participated in a multi-disciplinary team meetings to review physical abuse and sexual abuse cases.

Q. Okay. Was this statement made by MINOR CHILD during the course of the interview with a detailed account of the offense?

A. Yes.

Q. And did the statement have internal coherence?

A. We talked about the need to tell the truth during the interview with anything and everything that she disclosed.

Q. But did her conversation with you, did it make sense in the interview that she could articulate what was on her mind?

A. She verbalized things very accurately, very coherently.

Q. Thank you.

SOLICITOR JONES: I don't have any further questions.

THE COURT: Cross-examination?

JOHN DEJONG: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. Ms. Darby, as part of the interviewing process, are you trained to repeat everything that the child says?

A. Part of the process is that you do repeat if you, uh, to make sure that you heard the child correctly as to what they stated. Or you do that to give the child an opportunity to self-correct.

Q. So you ask a question, the child answers and then you repeat ---

A. I repeat the questions, uh, the responses that the child has given.

Q. Also as part of your training is to take this answer, you repeat it and then later on in the interview you bring up that same information and say, 'you told me awhile ago' this, that and the other. Right?

A. As part of the interview guidelines, if a child says something you repeat information; or if you need clarification of what they said or information that they shared as this opportunity to disclose, then yes, you review what they said.

Q. I understand what you're saying. You're saying that is for clarity.

A. Um-humm, (affirmative nod).

Q. But what I'm saying is that you put that in the form of question, basically. 'A

while ago you told me this, that and the other' and then you ask a question following that. That is not to clarify, is it?

A. Well, you are basically referring or restating a question. If I want to say 'is this what you said' for clarification purpose or if I am stating a question for just the first time, I will ask 'from what you've shared' -- I go back to what the child has disclosed.

Q. Right. But in this particular interview, not only do you repeat what the child answered your questions, quite often throughout the interview you went back to what she had said earlier. Did you not?

A. If anything needed to be restated or anything needs additional follow up from any questions that the child shares, then they would be reviewed (sic) back to what a child previously stated for either clarification or, uh, to continue on with the information that they are disclosing about.

Q. Well, why would it have to be restated?

A. Uh, the -- in a setting when you're

doing a forensic interview, you're recording it. You also have the -- not only the video but you also have the audio, so you do want to make sure that what the child is saying is being heard.

Q. Yes, ma'am, I understand that. Maybe I didn't understand what you just said.

Initially we talked about -- you said that you restated it, number one, to make sure it's what the child said. And then you restated it to make sure that's what you heard. Right?

A. Okay.

Q. That's the initial. Right?

A. Um-humm, (affirmative nod).

Q. Then we come back forward and I asked you about you take something that was said three minutes ago and you said if it needs to be restated.

A. Um-humm, (affirmative nod).

Q. What needs to be restated? Give me an example.

A. Well, like if you're -- to say what you're saying, three minutes. Either the child said something more and then the

question is either re-asked or restated, if it not just for clarification it might also be trying to just ascertain -- giving them more opportunity to share about the details of the abuse.

Q. By doing that, you steer the whole interview.

A. No, the questions are based on the responses of the child. So it's based on, 'Well, if -- when you said that you were in the house, can you tell me or share, uh, where in the house or what happened?' So you're just asking the child based on what they've already shared.

Q. Well, if a child says 'I don't know.'

A. If a child says that they don't know, then they have that opportunity to say that they don't know. And that's part of the interview guidelines, to let them know that they have the ability to say that they don't know.

Q. Yes, ma'am. But in this particular interview, there were a couple of occasions when the child said that she didn't know but

you pursued it.

SOLICITOR JONES: Your Honor, I am going to object. I think that he's made his point. At this stage it's argument and I think the argument needs to be directed to Your Honor.

Your Honor has watched the video.

Mr. Dejong has watched the video.

I don't see how questioning and challenging Ms. Darby any further could further his argument.

THE COURT: I will let him go a little father.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. There were a couple of occasions where she said 'I don't know' or 'I don't remember.' Do you recall that?

A. Not at this particular moment, but -- okay.

Q. Okay. One particular point was when there was some discussion of a DVD or a video, you asked her what was on it.

A. Okay.

Q. And she said that she didn't know.

A. Okay.

Q. Do you recall that?

A. I recall talking about the DVD. What was probably exploring what was maybe the content or what she saw. It's about giving the child the opportunity to share any of the details that they may not recall.

Q. My point is, when they say that they don't know, you don't accept that; do you?

A. If it is based on information on other details that probably were shared again or at another time, uh, it's just allowing again an opportunity for the child to have -- to share information and bring that to recall that information.

JOHN DEJONG: No further questions.

THE COURT: Any redirect?

SOLICITOR JONES: No, sir, Your Honor.

THE COURT: Anything else from this witness?

SOLICITOR JONES: Nothing else from this witness, Your Honor.

THE COURT: All right. Thank you. You may step down.

(WITNESS STEPS DOWN)

THE COURT: Anything else?

SOLICITOR JONES: Your Honor, I would ask that Your Honor find that the video did meet the requirements set forth in 17-23-175, that this statement was given in response to questions in an investigative interview; that the interview was audio and video recorded.

The child testified in this proceeding was subject to cross-examination. Ms. Darby, who conducted the interview is here to testify as well.

From watching the video and the questions posed, Ms. Darby, uh, there were no leading questions. She was trained in conducting investigative interviews. The child did give a detailed account of the offense. The overall interview did have internal coherence. Of course, again Ms. Darby was here to testify.

I know that Mr. Dejong did have some problems with the manner in which Ms. Darby asked questions, where she would repeat the answer of the child and then ask follow up questions. I think she testified that she was clarifying what the child said, that it was of benefit to everybody involved that Ms.

Darby would clarify what the child says, certainly a benefit to the fact finder. So certainly I don't think that it was an incidence of leading.

Ms. Darby was speaking to a child who, as Your Honor has seen when she testified, is very soft-spoken. I think defense counsel, even though it is hard to hear the child in the forensic interview, so any time that Ms. Darby repeated what she said it wasn't necessarily to emphasize the child's account but to clarify what the child was saying.

For all those reasons, I would ask you find that this video does meet the standards set forth in 17-23-175. Thank you.

THE COURT: Mr. Dejong?

JOHN DEJONG: Thank you, Your Honor, may it please the Court. Your Honor, I don't particularly have a problem with her repeating everything once a question is posed, the child responses and she repeats it.

The problem that I have is that the child says this at this point in time -- she says A-B-C and then there is a whole change in the

interview, then the interviewer comes back and says, 'A while ago you said A-B-C' and then asks another question.

I submit, Your Honor, that there are many ways to lead. I believe that's a leading question, Your Honor. It's not just a question and answer type thing. I think nothing could be further from the truth.

If it is a question-and-answer, once a question is asked and it's answered, it is answered.

I think it goes even a little further than that. I think that by the interviewer doing that, in the interview they are subtly conveying that they believe what this child is saying. It is an internal bolstering, if you will, of the child's testimony on the video. Obviously we can no longer do that in the courtroom. But I submit that's exactly what it is and that it is also leading.

As I said I think there are many forms of leading. Looking at this video as a whole, I would submit that it should not be introduced, Your Honor.

THE COURT: I thinking looking at the

statute, 17-23-175, clearly .1, .2 and .3 have been met. We had an in-camera hearing and my threshold is to determine whether there is a guaranty of trustworthiness.

One of the elements is that you may consider leading questions. I think even if there may have been leading questions at some point, overall I think that the statement -- and, again, I have also reviewed the video, State's Exhibit 2, I think the actual basis -- the basis of the statements were not to elicit leading questions (sic), and I think that it meets the trustworthiness requirements. I find that the elements of 17-23-175 have been met and I am going to allow it's admissibility generally.

Now, if we want to talk about -- okay. With that being said, it is my understanding that subject to your objection that y'all have agreed on the parts that will be redacted.

JOHN DEJONG: That's correct, Your Honor.

THE COURT: And there's no other issues on what needs to be redacted?

SOLICITOR JONES: No, sir.

THE COURT: And in looking at it yesterday, too, the redactions were -- do you want to put those back on the record now?

SOLICITOR JONES: Yes, sir.

THE COURT: They actually matched up. I could tell where you were right at where the questions started. It looks like the redactions matched, at least when I looked at them. So if you will announce the redactions.

SOLICITOR JONES: Yes, sir, the first redaction begins at 22 minutes, 19 seconds to 25 minutes, 33 seconds.

The second redactions is at 33 minutes, 28 seconds to 36 minutes, 28 seconds.

The third and final reactions begins at 54 minutes, 20 seconds to 54 minutes, 55 seconds.

THE COURT: All right. Do you agree with those redactions, subject to your objection, Mr. Dejong?

JOHN DEJONG: As best I can recall, Your Honor, (affirmative nod). I believe that's what we agreed to. I know more as to

the content than I do the actual times.

THE COURT: Okay.

JOHN DEJONG: I did give ---

SOLICITOR JONES: For the record, Your Honor, Mr. Dejong actually -- the time stamps that he wanted redacted were actually narrower than what was redacted. He told me the time stamps and the content of what was being discussed, and as I watched the video the content was actually several seconds longer than what Mr. Dejong had ---

THE COURT: Sounds like y'all are pretty much on the same page.

JOHN DEJONG: Yes, sir, I ---

SOLICITOR JONES: Yes, sir, Your Honor.

JOHN DEJONG: --- agree.

THE COURT: And I don't know what y'all have set up here but I had a very difficult time hearing it on my computer, so -- I have a feeling the jury is going to have a difficult time hearing it as well.

SOLICITOR JONES: Yes, sir, Your Honor. I have speakers that I can move up as close as ---

THE COURT: It doesn't help that this

fan is going on up here.

SOLICITOR JONES: Perhaps we could ask that the fan be turned off.

THE COURT: Is there anything that you can do? I know it gets hot up here.

CLERK: Yes, it does.

SOLICITOR JONES: Perhaps if we could cut it off for the hour and then at lunch cut it back on so that it will cool off.

THE COURT: That's a good idea. I really think that with the fan going that they are not going to be able to hear a thing that she says.

SOLICITOR JONES: Mr. Clerk, can we cut the fan off?

CLERK: I can turn it off.

JOHN DEJONG: That would be great.

THE COURT: I'll let them know. If it gets too hot and we have to take a break, we'll just have to take a break. I think it is important that they be able to hear.

The other issue, and let's just address this now, I read the *Anderson* case here, so do y'all want to talk about -- what are you -- are you going to put her up next?

SOLICITOR JONES: Yes, Your Honor, I am going to put Ms. Darby up next. I intend to ask her about her occupation in 2014, though she is no longer in that current role, her education and training and, uh, prior experience. And, 'did you conduct a forensic interview with MINOR CHILD on this particular date' and then play the video.

THE COURT: You are not going to qualify her as an expert?

SOLICITOR JONES: No.

THE COURT: John, do you have any objection to him ---

JOHN DEJONG: Just under *State* v. *Anderson*, Your Honor. I don't have the cite.

THE COURT: I have it.

JOHN DEJONG: What I am looking at is -- before it goes into the in-camera testimony, an interviewer must testify and establish the types of facts set forward such as their training, background, and other -- etc. Then of course there is -- (female coughing in courtroom) -- I apologize, I'm sorry, ma'am, but could you (female) leave the courtroom?

(UNIDENTIFIED FEMALE EXITS COURTROOM)

JOHN DEJONG: Sorry, Your Honor. The sole purpose of her jury testimony is to lay the foundation for the introduction of the video, and the questioning must be limited to that subject. There is to be no testimony to such things as techniques and instructions of the interviewed subject to the effects of telling the truth. The purpose of the interview is to allow law enforcement to conduct an investigation.

So I think the only thing that she can testify to is that on June the 6th, 2014, whatever the date was, she can testify as to where she did the interview. She can describe the room if she wants to, I don't care about that. But I think the only thing that she can do is to say that she was the interviewer, that she did the interview and that -- whatever Mr. Jones shows her as a copy of that video, done over my objection, Your Honor is going to let it in and for it to be played for the jury.

THE COURT: From what he just said, I think he is fully aware of *Anderson*. I don't

think that asking for background -- I think that he needs to lay some foundation for who she is and why she is the one doing the interview. I am not going to qualify her as an expert.

JOHN DEJONG: She can say that she is a forensic interviewer. But if she is going to get into ---

THE COURT: My understanding of what he is doing is saying that 'this isn't just some woman they pulled from the sidewalk and said, can you interview this woman.' 'This is why she was interviewing her.'

JOHN DEJONG: That -- to say she is a trained interviewer, I don't object to that. Anything beyond that, I do object.

SOLICITOR JONES: I just want to be clear that I am going to ask her her education, her training, where she worked in 2014, did she interview the child.

THE COURT: I am going to allow that. I am not sure that you object to that, I couldn't really tell. We had distractions with the lady coughing.

JOHN DEJONG: Well, -- yes, sir, we did.

When he rephrased what you said, it expanded in my mind. So just an ounce of prevention being worth ten pounds of cure, I will objected.

THE COURT: All right. Okay. Are we ready?

SOLICITOR JONES: Yes, sir, Your Honor. Well, one more thing. As far as redactions, I am going to have to sit up there and mute the redactions. Would Your Honor tell the jury that the State and defense have agreed upon certain content of the video that is irrelevant to their discussion?

THE COURT: I am always a little hesitant about saying irrelevant. I think I'm just going to say that this is the portion that you've agreed to play. I don't -- I always wonder -- you don't want to say too much, just that for their purposes this is the evidence that y'all have agreed to.

SOLICITOR JONES: Okay.

JOHN DEJONG: And I gather that we are going into Ms. Darby in the video now?

SOLICITOR JONES: Yes, sir.

JOHN DEJONG: Okay. I don't think that I

need to object again.

THE COURT: No. Turn the air off.

CLERK: (Complies).

THE COURT: Bring in the jury.

(JURY IN @ 11:25 a.m.)

THE COURT: All right, ladies and gentlemen. Thank you for your patience. In this room you cannot have both quietness and coolness. We are getting ready to hear a video, so we have turned the HVAC fan off so that you can hear the video. We may get warm, but it is something that we needed to do so that everybody can hear. If we need to take a break at some point, we can do so.

Also, the video that is going to be introduced, the parties have agreed to portions that will be presented to you. That's why you will see the attorneys muting certain parts which they have agreed are not to be presented to you.

With that being said, Mr. Jones, you may proceed.

SOLICITOR JONES: Thank you, Your Honor. The State calls Pam Darby.

(WITNESS TAKES STAND)

PAM DARBY, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Darby, in 2014 where were you employed?

A. Casa Family Systems in Orangeburg, South Carolina. Casa stands for Citizens Against Sexual Assault.

Q. What was your position there?

A. I was Director of Victim Services, having moved from Program Manager of Victim Services.

Q. Tell the jury, please, about your educational background?

A. Yes. I am a licensed master social worker, I have a BA in literal arts from Stony Brook University and a master's in social work from Fordham University.

Q. Do you have any particular training that was important for your job?

A. Yes. Victim services provided training as an victim advocate, being in that position as a victim advocate. But also

having been a forensic interviewer, having participated in basic interview training, uh, intensive training, advanced forensic interview training and interviewing training for the updated protocol model, uh, as long as -- again, as well as some courses in training in peer review through the Children's Law Center and participated in multidisciplinary team meetings that reviewed cases on sexual assault and physical abuse.

Q. Thank you. On June 5th, 2014, did you interview MINOR CHILD?

A. Yes.

Q. I hand you State's Exhibit 2. Do you recognize that?

A. Yes.

Q. Please tell the jury what this is.

A. That is the forensic interview that I conducted with MINOR CHILD on June 5th, 2014.

Q. Is it a true and accurate copy of that interview?

A. Yes.

Q. Okay.

SOLICITOR JONES: Your Honor, at this

time the State would move State's Exhibit 2 into evidence.

JOHN DEJONG: Subject to my previous objection.

(SO ENTERED AS STATE'S EXHIBIT 2)

THE COURT: And y'all have previously agreed to the portions that will be presented.

SOLICITOR JONES: Yes, sir.

THE COURT: Ladies and gentlemen, like I said, there will be times when the audio may be difficult to hear and that's why we had the HVAC fan turned off.

Move the speaker as close as you can to the jurors.

SOLICITOR JONES: Yes, sir.

THE COURT: Also, just to let you know, the video is approximately an hour and a half, is that about right?

SOLICITOR JONES: Yes, sir.

(WHEREUPON STATE'S EXHIBIT 2 PUBLISHED)

SOLICITOR JONES: Anything else from this witness?

SOLICITOR JONES: No, Your Honor.

THE COURT: From the defense?

JOHN DEJONG: None on behalf of Mr. Bagwell, Your Honor. No objection to her being excused, Your Honor.

THE COURT: You may step down.

(WITNESS STEPS DOWN)

THE COURT: Ladies and gentlemen, it is time for lunch. I will give you to 2:20, so please be back in your jury room at 2:20. It is 1:00 o'clock now.

Please do not discuss the case while you are. Do not do any research. Do not pay any attention to any media coverage of this. If anybody should contact you, please let the bailiffs know. Other than that, have a good lunch.

See you at 2:20.

(JURY OUT @ 1:00 P.M.)

THE COURT: For the record, -- again subject to your objection, are both parties in agreement with the redactions which were made on the presentation of the video?

SOLICITOR JONES: Yes, sir.

THE COURT: Did that comply with your understanding of what the redactions were?

JOHN DEJONG: There was one little bit

but I am not going to argue about it, Your Honor. I will say yeah, it was redacted.

THE COURT: And to make sure -- I know that you moved it in, but I did grant your Motion that it be introduced over your objection.

SOLICITOR JONES: Yes, sir, Your Honor. The video did comply with the statute.

THE COURT: All right, we will be at-ease until 2:15.

(OFF RECORD DISCUSSION RE SCHEDULEING)

JOHN DEJONG: Before we leave this afternoon, Your Honor, I need to take back up with you whether or not you're going to allow me to put up any extrinsic evidence on the recantation.

THE COURT: All right.

THE COURT: See everybody back at 2:20.

(LUNCH RECESS)

(DEFENDANT PRESENT)

THE COURT: Bring the jury in.

(JURY IN @ 2:33 P.M.)

THE COURT: All right, ladies and gentlemen, I hope everybody had a good lunch. The State is still in their case. So,

Mr. Jones, you may call your next witness.

SOLICITOR JONES: Thank you, Your Honor. The State calls Rebecca Mosely.

(WITNESS TAKES STAND)

REBECCA MOSELY, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Mosely, where are you currently employed?

A. The South Carolina Department of Social Services in Orangeburg County.

Q. Orangeburg County?

A. (Affirmative nod).

Q. And what is your position?

A. Currently?

Q. Currently, (affirmative nod).

A. I'm the Region Intake Hub supervisor.

Q. The supervisor.

A. Right.

Q. So tell us, what are some of your responsibilities currently?

A. I screen reports of child abuse and

neglect. Calls are called into a centralized hub. We process that info. It is forwarded to me and I make a determination as to whether we should accept it or refer it to other agencies.

Q. In May of 2014 what was your position?

A. I was as assessment manager.

Q. And what were some of your responsibilities in that role?

A. To investigate allegations of child abuse and neglect.

Q. And when you say you investigate allegations, what did you do to investigate the allegations?

A. I would make home visits and have conversations with household members, do walk-throughs of the home to assess the allegations. Touch on just about all areas of concerns to the agency, not just what the allegations were.

Q. So you went to the actual home?

A. Right. Yes.

Q. On May 15th, 2014, did you respond to [redacted] Neeses Highway in Orangeburg.

A. I did.

Q. What was the purpose of that visit?

A. To assess allegations of physical neglect.

Q. All right. And who were the children living in that home?

A. MINOR CHILD and BROTHER Durnil.

Q. Do you know who contacted your agency and told you to go visit the home?

A. I do, but I would have to double check my records.

Q. That's fine. When you go to check the home, what is the process? Do you call the parents and say, 'Hey, do you mind if we come over at this time?' What is the process?

A. Once we receive the report, it is processed. You have a time frame for a response. The response for this particular report was twenty-four hours, so I made contact with this place within twenty-four hours of the time that the report was accepted.

We do not announce our visits. They are pop up visits, so people are not expecting

us, at least at not for the initial contact.

Q. So on this particular time that you went out to visit with MINOR CHILD and her brother, did you call Toni Durnil and tell her that you were coming?

A. I didn't even have a number for her on the lead.

Q. Did anyone from your office call Toni and tell her that you were coming?

A. No.

Q. Tell the jury, please, what your standard procedure is once you get to a home to investigate neglect. Who do you call to and what do you do?

A. I arrive at the home, knock on the door of course and introduce myself. I try to find out who the adult in charge is, preferably the parent or grandparents. Any adult in the home. I don't speak with anyone about the allegations who are not a part of the household initially.

Then I try to speak to the children individually, separate from any adults in the home. So that means that I've got to go into a different part of the household, or they

do, or we go outside to speak with them. I take them someplace outside or in the house where the adults who may have an influence on their responses to me, I try to make sure that we are not in the same room anyone else -- not even other siblings.

Then for whatever the allegations are, I ask questions specific to the allegations but we also ask questions concerning drug use, sexual abuse, physical abuse, things of that nature, along that line.

Q. Can you go into a little more detail as to what questions you would normally ask and what questions you did ask Ericka Durnil?

A. I ask, like, if they eat every day, do they go to school every day, do they eat every day, uh, I walk around and look at the environment to make sure that their needs are met, that there is running water, electricity, working appliances, that the physical building or household that they are living in is safe.

Then I will ask questions about are they afraid of anybody in the home.

Is there someone in the home -- general

type questions such as, 'have you ever been touched in a way that makes you feel inappropriate', 'have you ever been inappropriately touched by someone by someone who lives in your home, or not in your home, who makes you feel inappropriate?'

I ask questions about the parents, drug use by the parents, I ask questions about domestic abuse, do the people in your home become physical with each other, have you ever seen them get angry and hit each other?

I ask questions in relationship of -- if they haven't lived where they are living long, 'how long have you lived where you are living?' 'Do you move a lot?' 'Why do you move?' Probing questions to see what the responses are.

Q. So when you arrived at the home, did Toni or any of the adults have the opportunity to be with MINOR CHILD alone while you were there?

A. Not prior to me speaking to her, no.

Q In speaking with MINOR CHILD, did she disclose anything as far as time and place of sexual abuse?

A. She did. She didn't give me a specific time but she did say that it happened at Cleo Chapman Highway.

Q. Did you know what Cleo Chapman Highway was?

A. No, it was an address that was given, because once we -- it was an address that was given to law enforcement.

Q. Right. Okay. So after MINOR CHILD disclosed to you sexual abuse, what was your next step? What did you do?

A. I immediately contacted law enforcement and notified them of the allegations.

Q. Do you know, did officers responded that day?

A. That day while I was there officers, Lt. Walton from the Orangeburg County Sheriff's Department, (affirmative nod).

Q. Can you describe the condition of the house as you remember?

A. The home was cluttered. There was not a lot of food in the home and we went into regarding the circumstances behind that.

It looked like they had just moved in. you know, there were a lot of things in boxes.

It was junky, for lack of a better terminology.

Q. Are you aware if David Bagwell was living in the home the day that you visited?

A. He had been arrested prior to me arriving at the home.

SOLICITOR JONES: Thank you, no further questions.

THE COURT: Cross-examination.

JOHN DEJONG: Thank you, Your Honor, may it please the court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. So actually you went out there in May 2014 to investigate abuse and neglect?

A. Neglect, yes.

Q. And that was reported by someone -- we didn't necessarily get into that, but that was a report made to Orangeburg DSS?

A. Correct.

Q. All right. Of course, at that point in time there was no indication at the time

that report came in of any kind of sexual abuse, was there?

A. No.

Q. It was purely physical abuse?

A. (Affirmative nod).

Q. Now, how many people go out there when you do that?

A. Just me.

Q. Just you?

A. Yes, sir.

Q. How many -- how many people were in the home?

A. When I arrived or when I left?

Q. When you arrived? Let's do that first.

A. Just three people when I arrived.

Q. And that was?

A. The grandmother and the two children.

Q. So Toni Bagwell or Toni Durnil was not there at the time?

A. She agreed later during my visit.

Q. Okay. What was the grandmother's name, do you recall?

A. The grandmother's name was Margaret,

Ms. Margaret Durnil.

Q. So you go through this litany of questions. If conditions are such -- forget about sexual abuse for a moment. If conditions were such, you could remove a child from the home, right?

A. I did not remove the child. Law enforcement removed the child from the home.

Q. But the same thing, you would contact law enforcement and they would remove the child from the home?

A. Absolutely.

Q. We're kinda playing a word game here, but that's okay. I understand what you're saying.

A. (No verbal response).

Q. Certainly you would be the trigger, so to speak, to get the child removed from the home?

A. (No verbal response).

Q. You would report to law enforcement and then law enforcement, based on that, ---

A. Would make the final decision.

Q. Right. I understand that. Yes, ma'am. So did you share with MINOR CHILD or the

grandmother that you were there for an abuse and neglect checkup or whatever?

A. I spoke with them in reference to the allegation, yes, sir.

Q. Both MINOR CHILD and the grandmother?

A. Yes.

Q. Did DSS have an open case on this family at that point in time?

A. Once we initiated an investigation, that's an open case. I was initiating the investigation.

Q. But prior to this report, did DSS have an open investigation?

A. Not prior to the report.

Q. Do you know how long they had lived in Orangeburg County at that point in time?

A. I never got a specific answer, just "not long." The children hadn't been enrolled in school, so it couldn't have been that long.

Q. This was in May, correct?

A. Yeah, (laughing).

Q. I'm sorry?

A. (Laughing).

Q. Okay. So did -- I gather that you

were asking questions that MINOR CHILD just gratuitously volunteered this information about sexual abuse?

A. I asked her, you know, my model questions and she responded/disclosed.

Q. You said that David was not there because he was in jail. Do you know what he was in jail for?

A. Domestic violence.

Q. Do you know when he went to jail?

A. On May 7th, 2014.

Q. And when did you do your visit?

A. On May 15th.

Q. So roughly a week after he'd gone to jail?

A. (Affirmative nod).

Q. Who shared that information with you?

A. That he had gone to jail?

Q. (Affirmative nod).

A. Ms. Margaret.

Q. Did MINOR CHILD talk about that at all?

A. She did, (affirmative nod).

Q. So you're saying that MINOR CHILD told you that it was Cleo Chapman Highway?

A. She told law enforcement and law enforcement -- I was there when law enforcement got that information.

Q. So she gave an address?

A. She gave an address.

Q. How old was she at the time?

A. She was, uh, eleven.

Q. Were there any animals in the home?

A. I don't recall.

Q. Were there any allegations of drug use?

A. I don't recall.

Q. Any other allegations other than what you've already shared as to domestic violence in the home?

A. I don't recall.

Q. Pardon me?

A. I said that I don't recall any allegations of domestic violence in the home other than what we have already talked about.

Q. There may have been, you just don't remember?

A. What's what I mean, I don't recall.

Q. So the only thing that you do remember is the disclosure, as you put it, of

sexual abuse?

A. That's not the only thing I remember.

Q. What else?

A. I remember that there were concerns about the condition of the home, the lack of food in the home, and that's the reason why I was out there.

Q. Yes, ma'am, I understand that. But what you're sharing with me today, basically what you remember is the allegations of a sexual assault.

A. Among other things, yes, sir.

Q. Okay. Was there any allegations as to sexual assault of any other individual?

A. I'm sorry?

Q. Was there an allegation of sexual assault against any other individual in ---

SOLICITOR JONES: I object, Your Honor.

THE COURT: Sustained.

JOHN DEJONG: Thank you, ma'am.

THE COURT: Redirect?

SOLICITOR JONES: Briefly, Your Honor.

REDIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Mosely, are you aware of where MINOR CHILD lived after she disclosed sexual abuse to you and law enforcement got involved? After that event where MINOR CHILD resided?

JOHN DEJONG: I don't think that's appropriate redirect. Redirect is something that I bring up in my cross that ---

THE COURT: I am aware of what redirect is.

JOHN DEJONG: Sorry?

THE COURT: I am aware of what redirect is?

JOHN DEJONG: Well, I'm saying that I didn't raise any of that in ---

THE COURT: I think you kinda did, so I am going to allow it.

REDIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Ms. Mosely, are you aware of where MINOR CHILD lived after she disclosed sexual abuse?

A. After she disclosed to me?

Q. Right.

A. The family moved to Pickens County.

Q. Are you aware of MINOR CHILD being taken

away from the family?

A. That would be beyond my investigation.

SOLICITOR JONES: No further questions, Your Honor.

THE COURT: You may step down.

SOLICITOR JONES: Your Honor, I asked that Ms. Moseley and Ms. Darby be released from their subpoenas.

JOHN DEJONG: No objection.

THE COURT: And you are free to go. Thank you for being here.

(WITNESS STEPS DOWN)

THE COURT: Call your next witness.

SOLICITOR JONES: The State would call Dr. Mary Frances Croswell.

(WITNESS TAKES STAND)

MARY FRAN CROSWELL, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Dr. Croswell, will you tell the jury, please, where you are currently employed?

A. I am employed by the Greenville Health System in the Division of Child Abuse and Neglect.

Q. What is your occupation?

A. I am a child abuse pediatrician. I see children referred when there are concerns of some form of child maltreatment.

Q. Please tell the jury about your education?

A. I received my undergraduate degree from Wake Forest University.

I received my medical degree from the University of Louisville School of Medicine.

I completed my Pediatric residency program in Greenville.

Q. How long have you been in practice?

A. I've been in practice since 2003. I've been in my current position since 2006.

Q. Do you have any specific training as to your current position?

A. Yes, I have done numerous courses, continuing medical education courses in the field of child abuse and neglect.

In 2011, I was eligible to sit for the boards in -- subspecialty board certification

for child abuse and neglect. So currently, I'm double Board-certified in General Pediatrics and Child Abuse and Neglect.

Q. If you had to estimate, how many child sexual assault exams have you performed?

A. At a minimum probably a hundred and fifty a year, so probably fifteen hundred as a rough estimate of exams that I have performed.

Q. Have you ever been qualified as an expert in the field of child sexual assault exams?

A. Yes, I have.

Q. About how many times?

A. I don't know in that specific qualification versus child abuse and neglect, so I would have to estimate fifteen to twenty times in child sexual assault.

Q. What about in total?

A. In total, I've testified at least forty times.

Q. At least forty?

A. (Affirmative nod)

Q. And each time, was that in General

Sessions Court or a different ---

A. General Session or Family Court in South Carolina.

SOLICITOR JONES: Your Honor, at this time I would offer Dr. Croswell as an expert in the fields of child sexual assault examinations.

JOHN DEJONG: No *voir dire*, Your Honor.

THE COURT: Any objections?

JOHN DEJONG: No, sir.

THE COURT: All right. I so qualify her. Ladies and gentlemen, normally a person cannot testify outside of what they have observed with their senses: seeing, hearing, things of that nature. If someone is qualified as an expert, then they can testify about their opinions within their field of expertise.

In this case this witness has been qualified as an expert in the field of child sexual assault examination.

That does not mean that you have to accept her testimony as is, but that y'all are to consider it and give it the weight that you feel is appropriate during your

deliberations.

You may proceed.

SOLICITOR JONES: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. Dr. Croswell, please tell the jury what you do in a child sexual assault examination?

A. So the, uh, child comes to our office at -- currently at the Julie Valentine Center, which is a child advocacy center. Is greeted by a child life specialist who brings them back to our exam room, allows the child to go through the entire medical procedure, medical examination, with an anatomically correct doll, so that they understand what to expect from my examination.

Next, I will get a medical history from the caregiver who brings the child to the appointment. If the child has the verbal ability, I try to take the history directly from my patient independently.

Then I perform a head to toe medical exam. The final portion of that exam is a genital exam, in which I use a colposcope. A

colposcope for my purposes is a bright light source, a way to magnify the areas that I am observing and has the ability to photo-document any findings that I may have.

Next I will determine any appropriate laboratory treatment that is needed and make any recommendations to the caregiver at that time.

Q. In the examinations, is there anything in particular that you're looking for?

A. Sometimes children who are referred to for one reason may also have experienced other forms of child maltreatment. Specifically for child sexual examination, I get a detailed history; one, to know their risk for having contracted a sexually-transmitted infections and, two, to understand what type of injuries, if any, that they may have experienced as a result of the abuse.

Q. Are there always physical symptoms of sexual abuse?

A. There are not always physical symptoms of physical abuse -- excuse me, no

always physical symptoms of sexual abuse. The symptoms can actually vary. There's a wide range of symptoms.

There are rarely physical signs of sexual abuse as well. Current studies indicate that anywhere from five to fifteen percent of physical exams will have physical findings. Most often children of sexual abuse do not have physical findings on their exam.

Q. Why is that?

A. One is that the nature of abuse may not cause an injury that is visible to the eye.

Two, sometimes the injuries can be very superficial and can heal in a matter of days.

Three, sometimes deeper injuries, because of the nature of the tissue that they are located in may heal without leaving scarring behind.

Q. Can you elaborate a little more, please, on the nature of the tissue?

A. So the -- the genital area is made up of mucous tissue, which is very vascular, meaning it has a good blood supply to it, which allows for very quick and rapid healing

of those areas.

Q. When you say that it is very vascular, what does that mean?

A. Means good blood flow, good blood supply to that area.

Q. Can you compare the vascular area of the genitalia to another body part?

A. I often compare it to the inside of your mouth. When you think about you bite the inside of your mouth, the bite may be gone within a day or two as long as it is not re-traumatized. You might not necessarily see any scarring between because of the nature of that tissue.

Q. So could a normal exam be consistent with the victim's medical history of sexual assault?

A. Yes, it could.

Q. Please tell the jury what the hymen is.

A. The hymen is a very thin layer of tissue that partially covers the entrance into the vagina.

Q. Would it help you explain in a little more detail if you could draw and

label the different parts?

A. Sure.

Q. I think that there is a large pad and a marker there for you to drop with.

A. (Moves to easel and sketches). When you've first looking at the genital exam of a female, you're going to come to two fatty layers of tissue, the first of which is called the *labia majora*. When you separate those, you see another layer of tissue called the *labia minora*.

We have the clitoris here.

Then it circles around and deeper to that you have the opening to the vagina.

Then there is -- in a pre-pubertal girl that is often tissue that covers that entrance and that is the hymen.

Q. Thank you.

A. (Resumes witness stand).

Q. Can you help explain whether it would be difficult or not for a female child, when they were explaining whether someone touched on their vagina or in the vagina, can you explain the difficulty in that coming from a child, and what your distinction

medically would be?

A. For a child to know exactly where the vagina begins and ends is very difficult. It is a very complex piece of anatomy.

For me if there is any genital to genital contact, any penis contact with the genital area, there is a risk for sexually-transmitted infection. For me, trying to distinguish exactly where that contact begins and ends is -- it is extremely difficult and really not necessary for what I need to do to diagnose and treat their abuse.

Q. Did you have the opportunity to examine MINOR CHILD?

A. Yes, I did.

Q. Do you know the date of that exam?

A. It was July 31st, 2914.

Q. And what type of exam was performed?

A. So we -- a child can have an acute sexual exam, which is within seventy-two hours, or what we call a chronic exam.

An acute examination, it's recommended that it be done in the emergency room. That is for the purpose of evidence collection directly from that exam.

The chronic exam, we feel is more appropriate to do in a child advocacy center that is more child friendly for the purpose and for treatment of their abuse.

Q. What type of exam was performed on Ericka?

A. It was a chronic exam.

Q. And what areas of the anatomy was examined?

A. Again, it was a head to toe physical exam. So all parts of her body were examined.

Q. What were your specific findings?

A. She had a normal exam.

Q. And in speaking with MINOR CHILDas to sexual abuse, did she tell you anything about the time and place that the sexual abuse occurred?

A. Yes, she did. She told me that she was eight the first and the last time that it happened. That it happened before they moved to Walterboro, when they were living at Cleo Chapman.

Q. Did she give you a number of the road or just Cleo Chapman?

A. Just Cleo Chapman.

Q. Was anybody else in the room with you when you examined her?

A. Just the child life -- oh, when I talked to her or when I examined her?

Q. When you examined her?

A. When I examined her, the child life specialist and her mother were in the room. When I talked to her, it was the child life specialist that was in the room.

Q. So when she told you it happened on Cleo Chapman, who was in the room?

A. Just the child life specialist.

Q. Did you know what Cleo Chapman meant?

A. I did not.

Q. Also in speaking with MINOR CHILD, did it appear that she had moved around quite a bit for someone her age?

A. In speaking with her mother and in getting her background period it did appear that she had moved around quite a bit.

SOLICITOR JONES: Thank you, Your Honor. I have no further questions.

THE COURT: Cross-examination?

JOHN DEJONG: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. Dr. Croswell, at the time that you talked to MINOR CHILD whatever date that you just gave us, do you know who she was living with?

A. I do. MINOR CHILD told me that she was living with her Uncle James, her Aunt Melissa, her Nana, her mom, BROTHER and Michael.

Q. In that whole litany of people, she was still living with her mother? That's what I am trying to get at?

A. Yes, she was.

Q. Okay. Now, as part of this, you took basically a history as you would do for treatment purposes; is that correct?

A. That's right.

Q. Now, in getting that history, did Ericka share with you that when this happened it was normally that she would be asleep, then wake up in her mother's and dad's bed?

SOLICITOR JONES: Your Honor, I would object to the hearsay.

JOHN DEJONG: We've already established that she is doing this for treatment purposes, Your Honor. I think I certainly am allowed to go into it.

THE COURT: I will allow it.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. That when this happened she would wake up in her mother's and David's bed?

A. Uh, she said that she didn't know how many times he had touched her. She said that usually he would get her out of bed while she was asleep and that then she would wake up in his -- should I just keep going to the end of the sentence?

SOLICITOR JONES: Your Honor, I would object. She's having to read from the report. It's clearly hearsay.

THE COURT: I'll give it a limited ---

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. I think you've answered my questions. But I think when you were talking about that in your report you said that she spontaneously offered that; did you not?

A. Yes, I did.

Q. It wasn't as a result of any questioning. She just said that it was getting out of her bed and waking up in mama's and David's bed, or something like that?

A. Can I give a limited response of why she spontaneously -- I just don't know what I am able to say and not say.

SOLICITOR JONES: I am going to ask that she not ---

THE COURT: Let's take this up outside the jury here. I ask that you all step out and do not discuss the case.

(JURY OUT @ 3:05 P.M.)

SOLICITOR JONES: Your Honor, I think he wanted to impeach the victim that he should have asked the victim while she was on the stand, 'did you ever make these other statements?' Instead he is trying to back door and ask the doctor what the child told her, not for purposes of medical treatment but he is essentially trying to backdoor impeach the victim without the victim being on the stand. Now the victim is not going to

be able to testify, to clarify what she meant. I think at this point that the victim might have to get back up there to clarify some of the stuff that he's already brought out in front of the jury.

THE COURT: Response?

JOHN DEJONG: The response is, Your Honor, that any time that we get into these scenarios, the doctor, the expert takes a history. And that is, as I understand it, that they take a history for treatment purposes.

The Solicitor went into what part that he wanted for basically treatment purposes.

SOLICITOR JONES: No, Your Honor, I went into time and place exception.

JOHN DEJONG: I didn't interrupt you, so please hush. Now I've lost my train of thought.

I think it was more than time and place, Your Honor, that he went into.

But if she is the expert and she does something for treatment purposes, then I'm entitled to go into it.

THE COURT: I think that this goes

beyond the scope of what her treatment was for, one, a child sexual assault examination. I'll let you have a little leeway but ---

JOHN DEJONG: I'm through with it.

THE COURT: At this point you are through with it.

SOLICITOR JONES: At this point he's already gotten out what he wanted to get out, where some of the sexual abuse occurred that the victim didn't speak about when she testified.

I am going to think about it but I might have to recall the victim. I specifically asked Dr. Croswell as to time and place. I did not get out who the child disclosed, what person, who was the perpetrator or anything else, because I wanted to stay away from that.

JOHN DEJONG: I'm done with it.

THE COURT: If it appears that you need to bring her back, I'll be glad to consider that when you make that decision. I sustain his objection to any further ---

JOHN DEJONG: Well, then I do have another question or two to ask, so let's see

where we go with that.

SOLICITOR JONES: Your Honor, I would ask that he go ahead and ask the questions now so we can determine whether it is relevant, instead of just blurting it out in front of the jury.

JOHN DEJONG: Did she say Cleo Chapman Highway?

DR. CROSWELL: I documented that she told me "Cleo Chapman." I didn't know what Cleo Chapman was.

JOHN DEJONG: Just Cleo Chapman?

DR. CROSWELL: Correct.

JOHN DEJONG: She'd told you other places that she lived, by name?

DR. CROSWELL: She told me Walterboro.

JOHN DEJONG: She mentioned Smoaks, didn't she?

DR. CROSWELL: Uh, -- yes. I'm sorry. She did mention Smoaks as well.

JOHN DEJONG: That would be the extent of that, as well, Your Honor.

THE COURT: All right. Anything else before we bring the jury back in?

SOLICITOR JONES: No, sir, Your Honor.

THE COURT: Bring them in if they are ready.

(JURY IN @ 3:10 P.M.)

THE COURT: You may proceed.

JOHN DEJONG: We are missing a juror, Your Honor.

THE COURT: Okay, thank you -- we now have all the jurors. You may proceed.

CROSS EXAMINATION RESUMED

BY JOHN DEJONG:

Q. Did MINOR CHILD specifically tell you Cleo Chapman?

A. Yes, sir, she did.

Q. Did she mention by name any other places that she had lived?

A. Yes, sir, she did.

Q. What were they?

A. Walterboro and Smoaks.

Q. Now, we talk about these exams and we -- we don't -- but we've gone to great lengths to explain that it is normal not to find anything on a sexual assault case; right?

A. In many cases that is normal.

Q. That could also mean that there was no sexual assault?

A. A medical exam depends not only on the physical exam but the history that I obtain as well.

Q. I understand that, but in this case you found nothing.

A. Her physical exam was normal.

Q. Yes, ma'am.

A. That doesn't mean that I found nothing.

Q. So being normal, that would indicate that there hadn't been any physical ---

A. A normal exam does not exclude or include abuse.

Q. That is the whole point that I am trying to make. You can't go to these great lengths and say it is normal in a sex case not to find anything, because it can include or exclude ---

A. But a medical diagnosis does not rely on a physical exam alone.

Q. That's what you do, is it not?

A. That's correct.

Q. That's your function, right?

A. That's correct.

Q. As a pediatric ---

A. Child abuse pediatrician.

Q. That is for physical findings, right?

A. I'm sorry?

Q. That's for physical findings, medical findings?

A. It is for medical evaluation.

Q. Right. That is your expertise, medical evaluation?

A. That's correct.

Q. When Mr. Jones was talking to you, he had you do this drawing and he asked you about the hymen, I believe; is that correct?

A. That's correct.

Q. I think sometimes that is referred to as the hymeneal ring, is that correct?

A. That can be used interchangeably.

Q. Was her hymen intact?

A. Her hymen did not have any -- we don't use the term "intact", that's not a medical terminology. She did not have any tears of her hymeneal tissue.

Q. Okay. I'm not a doctor. But there

was nothing unusual about her hymen?

A. That's correct.

Q. Had their been digital penetration or penile penetration to the depth of the hymen, there would have been some indication; would there not?

A. Not necessarily.

Q. But there would have been a greater chance of ---

A. No, the -- the degree -- the level of penetration is beyond the labia and that is not even necessarily reaching the vaginal opening. It just depends on your definition of penetration.

Q. Okay, I'm with you. So you're saying that there could be penetration with no damage to the hymen?

A. That's correct.

Q. Or there could be no damage to the hymen and no penetration?

A. That's correct.

JOHN DEJONG: Thank you.

THE COURT: Redirect?

SOLICITOR JONES: Briefly, Your Honor.

REDIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Dr. Croswell, as you were examining MINOR CHILD did she tell you that David Bagwell sexually abused her once or more than once?

A. More than once.

Q. Did she say that the abuse occurred while her mother was at work?

A. (Upon review of notes), yes.

Q. Did she mention anything to you about being tied to a bed?

A. Yes, she did.

Q. And do you recall that MINOR CHILD mentioned anything to you about Mr. Bagwell showing her pornography?

A. Yes, she did.

Q. Did she tell you anything about what he would do to her eyes as he showed her the pornography?

A. Yes. I had asked her if she had saw anything that made her think that she was hurt, and she said no but that he tried to hold her eyes open when he wanted her to see a movie in a pink case that has all kinds of people's bad parts. She would try to keep her eyes closed and he would hold them open.

Q. Was your interview or discussion with her videotaped?

A. No, it was not.

Q. So it was not video recorded?

A. No.

Q. Did you ever show any type of report or anything to MINOR CHILD?

A. No.

Q. Did you ever show any report to Toni?

A. No, I did not. Unless she requested medical records, then she would have seen that without my knowledge.

SOLICITOR JONES: No further questions.

JOHN DEJONG: Your Honor, based on that, I think he opened the door. I can go into the whole report.

SOLICITOR JONES: Your Honor, he opened the door.

JOHN DEJONG: But I got the door closed on me. You opened it ---

THE COURT: I am going to have to send you out, ladies and gentlemen, so that we can discuss this further. I thought that we had, but -- please do not discuss the case.

(JURY OUT @ 3:17 P.M.)

JOHN DEJONG: Your Honor gave me some latitude. I don't think that I went beyond that latitude and I don't think I opened the door. When he got up on redirect, he opened the door on a whole big bunch of stuff. Now I think -- if I opened the door, I may have opened it a crack. But he's flung that sucker wide open.

THE COURT: What else is in the report that y'all are -- what are we getting into? That's what I want to know.

JOHN DEJONG: Well, she talks about when they moved to Walterboro, moved to Smoaks. The main part that I got out was that she -- about her being in the bedroom, waking up in David's bed.

THE COURT: So you got into that. What else do you ---

JOHN DEJONG: Yeah, I understand. I understand. But there are some things that are not in the report that I would like to ask her about, but that's neither here nor there. I will let it go.

THE COURT: So you just wanted to stand

up and holler.

JOHN DEJONG: I love to, Your Honor.

THE COURT: So what are you asking, so I get it ---

JOHN DEJONG: Nothing.

SOLICITOR JONES: I'm finished with redirect, so we're finished with this witness.

THE COURT: We are. You may step down.

JOHN DEJONG: No objection to her being excused, Your Honor.

(WITNESS STEPS DOWN)

THE COURT: Are you ready for your next witness?

SOLICITOR JONES: Yes, Your Honor. Before we bring the jury back in, maybe I need to check and make sure that she is here.

THE COURT: That would be good. Every time we call one, they've disappeared on us.

SOLICITOR JONES: She is here. So we're good.

THE COURT: Good. Okay, bring in the jury.

JOHN DEJONG: Before we bring them back in, --

THE COURT: What?

JOHN DEJONG: I am not sure but I think that the Solicitor's next witness and possibly the last witness is Shauna Galloway-Williams. Is that correct?

SOLICITOR JONES: That's correct.

JOHN DEJONG: The -- I gather that is going to try to offer her as an expert. I am not quite sure and why. But be that as it may ---

THE COURT: I'm sure he is closely following *State* v. *Brown*, the transcript that our Supreme Court has given us for going through these.

JOHN DEJONG: The problem that I have in this case, looking at Rule 702, I am trying to figure out what "technical or other specialized knowledge in this case will assist the trier of facts." I can't think of any. The forensic video was in. What specialized knowledge?

And here is my whole problem with that. I understand *Brown*. But, Your Honor, bringing these people, and I am speaking specifically of Shauna Galloway-Williams.

As my learned friend said awhile ago that I was trying to backdoor, well, that's exactly what the State tries to do. An interviewer can't bolster testimony any more, so they bring this supposed expert, which is nothing more than back-dooring bolstering an alleged victim's testimony. They talk about delayed reporting and all that. When we talk about delayed reporting, we're saying 'okay, it was delayed reporting, that's normal' but that's simply bolstering alleged victim's testimony.

In this case, again, there was maybe some brief delayed reporting but it was not like two years, three years. It may have been some months. And if you get into December, it would be less than that.

I am simply questioning what it is that the State intends to show that is going to help the trier of facts in this case. I don't understand.

THE COURT: Mr. Jones?

SOLICITOR JONES: Your Honor, *State v. Brown* and even some of the *State v. Anderson* case that I have sent to you, but *State v Brown* the court explained that parties can

present testimony of scientific testing or other specialized knowledge that will assist the triers of facts to understand evidence or determine facts in issue.

The Court discussed the three-prong test in *Watson v. Ford Motor Company*, and the Court held that child abuse dynamics and disclosure is a subject beyond the ordinary knowledge of a jury, so the expert testimony is permissible.

I know that is a broad term, encompasses a lot. However, Miss Galloway in particular, as well as some other experts in child sexual abuse dynamics have testified many times over the last ten years or so and the Supreme Court has upheld their testimony.

Mr. Dejong knows very well what she is going to testify to: delayed disclosure, coaching, why a child that was sexually abused may or may not recant; factors that make a child more or less vulnerable to be abused. There are a number of -- give me one second, Your Honor.

THE COURT: That's fine. Mr. Dejong is fully aware of -- *State v. Brown*, the Court

of Appeals has addressed this issue. At some point there may be a change in that but as of now, *State v. Brown* has identified those issues.

JOHN DEJONG: I appreciate Your Honor's comments but if we don't continue to object, the Court of Appeals won't ever change it.

THE COURT: I understand.

JOHN DEJONG: I simply suggest to you, Your Honor, with no disrespect to the Court of Appeals, that they are wrong. It's -- that is just my humble opinion.

I understand Your Honor's ruling, but just so that the record is clear and so that I don't appear overly litigious in front of this jury, I object to the entire line of this testimony.

THE COURT: Your objection is noted.

JOHN DEJONG: Thank you.

THE COURT: Based on *State v. Brown*, I am going to allow her to testify. Is there anything else before we bring in the jury?

JOHN DEJONG: I can't think of anything. Thank you, Your Honor.

SOLICITOR JONES: Nothing from the

State.

THE COURT: Bring in the jury.

(JURY IN @ 3:25 P.M.)

THE COURT: Sometimes it makes things more efficient if we take things up out of your presence.

That was the end of the last witness, so we appreciate your patience. Mr. Jones will now call his next witness.

SOLICITOR JONES: Thank you, Your Honor. The State will call Shauna Galloway-Williams.

(WITNESS TAKES STAND)

SHAUNA GALLOWAY-WILLIAMS, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Galloway-Williams, what is your occupation?

A. I am the executive director of the Julie Valentine Center.

Q. What are your responsibilities in that role?

A. As Executive Director, I am responsible for the day to day administration

of the agency, I oversee the day to day operations: staffing, program management, and oversee the leadership team that leads the remainder of the team for the agency.

Q. What services do you provide or does your organization provide?

A. We are the child sexual assault and abuse and recovery center that serves Greenville and Pickens counties.

We provide prevention and education services as well as intervention and treatment services for children and adults who may have been impacted by child abuse and/or sexual assault.

Q. Can you tell the jury about your educational background, please?

A. Sure. I have a Bachelor's degree in Psychology from Winthrop University and a Master's degree in counseling from Clemson University.

Q. Have you had any specialized training beyond that education?

A. I do. In addition to that I'm licensed as a professional counselor in the state of South Carolina.

I also have many hours of training specifically related to the areas of child abuse and sexual assault.

I have over a hundred and fifty skills-based training hours directly related to the assessment of children who may have been abused or neglected.

I also am required by my licensure to attend trainings annually which are required, at least forty hours every two years for our license.

Q. Have you ever, or do you currently, taught courses related to this field?

A. I do. I am an adjunct faculty member of USC-Upstate in their Child Advocacy Studies Program. I teach two courses there.

I teach one course on child maltreatment as an introduction to child maltreatment.

I also teach gender-based violence.

Q. Can you tell the jury about any current licenses that you hold?

A. Yes, I am licensed as a professional counselor in the state of South Carolina.

Q. How many years have you been in your current position?

A. I've been the executive director now for nine years.

Q. Prior to your current position, what was your occupation or what did you do?

A. I've been in the area of counseling and mental health treatment for twenty years now.

I have specialized specifically in the area of working with children and families since 2001.

I formerly had a private practice where I worked with children and family who had been impacted by child abuse and sexual assault.

I formerly worked at the Julie Valentine Center as the Clinical Director before becoming the Executive Director.

Q. Have you ever been qualified as an expert in child sexual abuse dynamics and disclosure?

A. I have.

Q. Approximately how many times?

A. Forty times now.

Q. Is that in General Sessions court or other courts?

A. General Sessions.

SOLICITOR JONES: Your Honor, I would move Ms. Shauna Galloway-Williams as an expert in the field of child sexual abuse dynamics and disclosure.

THE COURT: Any *voir dire*?

JOHN DEJONG: None, Your Honor.

THE COURT: I qualify her subject to the defendant's objection previously put on the record.

Ladies and gentlemen, as I told you before, when somebody is qualified as an expert, then they can go beyond what they observed, smelled, tasted, general stuff that a lay witness would be allowed to testify about. They can testify about their opinion in their particular field in which they've been qualified.

Again, this is not something that you have to accept but it is something that you can use, give it the weight which you feel is appropriate when you enter your deliberations.

You may proceed.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. How is your position and your organization funded?

A. We are a 501(c)(3), so we're a nonprofit organization. My position is funded through the general operating funds. Most of our funding comes in through either Federal funding, through the Victims of Crime Act, the Violence Against Women Act, uh, -- we also have two primary fundraisers. We receive United Way funding, and do a lot of additional fundraising.

Q. Is your payment contingent upon what you say here today?

A. It is not.

Q. Have you ever met with MINOR CHILD ?

A. I have not.

Q. Do you know anything about the case here at trial today?

A. No, other than what you and I have spoken about.

Q. Would you please tell the jury what is meant by delayed disclosure?

A. Delayed disclosure refers to when a child or an adult does not disclose or make a

statement regarding abuse right after it happens. There may be a delay of hours, days, months, years. Often someone may be an adult before they might disclose or share that information.

Q. How common is delayed disclosure in sexual abuse?

A. Delayed disclosure is very common in sexual abuse. Most of the research -- in my experience, it's far more common than not.

Q. Do you have any particular articles that you are aware of that are not -- maybe an article that is very important in your field, that you rely on?

A. Sure, there are a number of articles, articles that have been cited repeatedly in the literature.

Goodman-Brown is an article that looks directly at delayed disclosure.

Sas and Cunningham.

Breaire (phonetic).

There are a number of articles.

It is so common in our field that it is something that has been replicated over and over again.

Q. From your experience and from your training and education, why do victims disclose at a later date? Why does it take them time sometimes to disclose?

A. There are a number of reasons why someone might delay disclosing.

Particularly with a child, one of the reasons is that they might fear what the consequences are of telling. They may fear what is going to happen to themselves or the person that did this to them.

Many times children are abused by someone that they know, they love or they trust or by someone that is known, loved and trusted by their family or their community. Those relationship dynamics make it very difficult for children to disclose.

They may have a relationship with this person that is both positive and negative. They may have a very close relationship to this person and the abuse is a part of it that they don't like, so they may have a difficult time sharing that information.

Depending on the age of the child, they may not have the language or the words to

disclose. They may not know how to share that information.

Children may have been threatened. Threats could be direct or indirect threats, meaning that they could have been told that should they tell that something would happen to them or to someone that they know. Or it may be indirect threats, for instance if they'd witnessed the person who did this commit violence acts or be violent against others. They may internalize that if they tell that something like that may happen to them as well.

Q. What is meant by the term "process of disclosure".

A. We use that to refer to disclosure because disclosure is a process. What we mean by that is that a child may not tell every single detail about the abuse the first time that they disclose or the first time that they ask about it.

There are different ways that we describe disclosure.

Children may accidentally disclose. That means that a child may demonstrate behavior

or may make a statement that someone then questions them about and that leads them to disclosing.

It may mean an accidental disclosure in that they may have written a letter or had a journal entry that then led someone to ask them questions about it, rather than it being a purposeful disclosure where the child has made a conscious and deliberate effort to tell someone, where they decided that they were going to tell someone what's happened to them.

We also know that children may not tell every single detail about what's happened. They may tell a little bit to sort of test the water, to see what the response of others is going to be.

What they tell may be determined based on questions.

So the process piece of it is that children over time may begin to tell more information based on their comfort level, it could be based on who is asking the questions, could be based on the proximity that they have to the person that committed

the acts.

Q. I think you really just touched on a lot of this, but why is disclosure a process for some victims?

A. Again, you know, many times victims are not making a conscious effort to tell, not making a deliberate effort to tell. So many times it's an accidental disclosure and they are not really prepared for what they are going to say.

Many times it is really dependent on who is asking the questions and the type of information that they are seeking. You know, a family member asking questions may have different questions that they are asking and the child may share different information with them than, say, a law enforcement investigator who is asking for different types of information or a counselor or medical provider.

Q. Are there any articles -- you mentioned a few earlier -- but any articles that talk about the process of disclosure, that you're aware of?

A. Off the top of my head, Sorenson

Snow is one of the article that we reference very often, where they looked at a large sample size of abuse survivors, and looked at how they disclosed abuse. They specifically reference the tentative and accidental disclosure, looking at actual cases of abuse.

Q. In that Sorenson and Snow, are you aware or do you know how the researchers confirmed that sexual abuse occurred?

A. These were cases that had come through -- if I remember correctly, these were cases that had come through the District Attorney's Office. They were confirmed cases of abuse.

Q. In your field, what does the term "grooming" mean?

A. Grooming is really a way of developing a trusting relationship with a child and also sort of testing the waters with a child.

Developing a trusting relationship in the sense that this person may give the child special attention, special affection. They may offer them treats or gifts. They may also be introducing the child to sexual

material as an introduction to other types of sexual behavior. So in our field, introducing a child to sexual cartoons, videos, jokes, magazines, uh, to see how they might respond to that before introducing them to additional types of material. It's developing that trusting type relationship through those behaviors that we consider grooming.

Q. What about exposure to pornography?

A. Yes, that would be included in that exposure to sexual materials, whether that be magazines, books, videos, uh, any type of sexual materials.

It sometimes may be introducing or getting a child comfortable to touch. You know, constantly introducing a child to touch that might be confused for normal versus inappropriate touch. For example, putting a hand on top of the child's butt to see how the child reacts, does the child tell; then taking that hand a little bit farther under the clothing or something else. Testing the water in that way could also be considered grooming.

Q. Any of those things that you just mentioned about grooming, is there an importance or a focus on normalizing sex for the victim?

A. It's that whole idea of whether it creates confusion about whether this is normal or appropriate, inappropriate, uh, -- that's where the trust in that relationship dynamic comes into play as well.

If this person is introducing this behavior to me, and this is someone that I trust and my family trusts, then there is a question of whether this is okay or not. It causes just some sort of a confusion there.

Q. Why does that cause a confusion for the child?

A. Well, again, a lot of it has to do with the relationship with the person who is introducing that information to them. You know, children generally believe that adults have their best interests in mind, they believe -- children are pretty egocentric and they believe that adults know what they are thinking and what is best for them, so they just give us this trust. They give adults

trust. So when adults introduce that type of material of behavior to them, that causes a confusion to them. They may wonder, you know, is this okay -- question whether or not this is okay or not because of the person that is introducing it.

Q. Are you aware from your training or experience of any common factors that you've seen or that you're aware of amongst sexual abuse victims with regard to their family life? That was kind of a convoluted questions, maybe I should restate that.

A. Are you asking if there are risk factors for children that make them more at risk for abuse?

Q. Yes. That's correct.

A. There are some factors that put children at a higher risk for abuse.

One of the risk factors is their age. The younger a child is, the higher their dependency on adults. The higher the risk factor for them being abused. They are more dependent on adults, they rely on us for more care, and a lot of times a lot of more hands on care if they are younger.

Children who have disabilities or special needs, they are high risk as well.

Particularly children who are not yet verbal. They can't articulate. They can't tell us if something has happened to them, so they are more vulnerable to abuse.

Children who are in single family households are at higher risks at times. They are more vulnerable, the family is more vulnerable at times because there are more opportunities to other caregivers to be a part of their life. There are risk factors associated with that. Not to say that single parents are putting their children at-risk, but there is a higher risk for that and the literature shows that.

Households where there is substance abuse, the children are at higher risk because they are -- a lot of times families are not paying as close attention. Substance abuse itself creates a higher vulnerability within the household.

Children that tend to be more isolated, who may not have as many friends or who may not be as socially involved with others may

be at a higher risk. They are more vulnerable to those who want to pay them special attention and they may fall victim more easily to the grooming that we talked about earlier.

Q. What about other abuse, other types of abuse?

A. We do often see in child mal-treatment that when a child is the victim of one type of abuse, they may also be at risk for other types of abuse.

When a child has been victimized once, they are at higher risk of being re-victimized, particularly if they have not received treatment, if the family has not received treatment and if the family has not been supportive in following up with treatments and protections to keep the child safe. Oftentimes that is related to a child just -- possibly once they've been exposed to sexual behavior, they are at higher risk of understanding what sexual inappropriate behavior is. They may have poor boundaries and are at much higher risk for re-victimization.

Q. You mentioned other abuse, what about violence in general? Violence in the house?

A. As a risk factor for ---

Q. As a risk factor for sexual abuse?

A. Well, violence in the home is a risk factor for maltreatment in general. You know, children witnessing violence in the home is neglect in and of itself. It's a form of maltreatment. Exposing children to inappropriate relationships and behaviors is not showing them healthy relationship dynamics and puts them at a higher risk for abuse.

Q. What does the term coaching mean in your field?

A. Influencing a child to make a statement, influencing what the child reports to someone.

Q. And do you look for specific signs of whether a child has been influenced?

A. When we are looking at children's disclosure, we are typically looking to see if the child can provide core and contextual details. Those core details would be who,

what, when, where.

Contextual details would be those sensory details that would help you to see or understand that the child is reporting something that they've experienced themselves rather than something that someone else has told them that they have experienced. Can they say how something felt, how something smelled, how something tasted. Contextual details that they wouldn't necessarily know about unless they had been part of an experience.

Q. Can you talk a little about the difficulty of influencing a child's sexual abuse disclosure. Is it relatively easy or relatively difficult?

A. To coach a child?

Q. Yes.

A. Well, I relate this to my own experience with my own children and children that I have worked with. I equate this to thinking about children in school plays or telling your child not to repeat something that you've said, or that you want them to repeat and think back in your experience how

hard or difficult that was when you think about an abuse scenario, then equate that to an abuse scenario where you're trying to influence a child to talk about something that they really don't have any knowledge about most of the time -- talking about a young child who has no sexual knowledge. Trying to get a child to repeat what you said and not only to repeat that but to repeat that to law enforcement, to the Department of Social Services and possibly to a forensic interviwer, and to many other people that might ask them questions, it can be really challenging to do. When I think about own experiences, working with my children on just memorizing lines for a school play, thinking about how challenging that is for them, I think it is pretty difficult to coach a child to be able to repeat details to multiple interviewers across time and maintain those contextual core details that they are sharing.

Q. I think you mentioned this earlier, but can you explain a little more about what you mean by core and contextual details.

What are core and contextual details versus noncore and contextual details?

A. Core details would be who -- who is the person that did this? What happened? Can the child identify what the disclosure is? What is the act that is being investigated? Who, what, when.

We know that children have a really hard time with time. So when I say when, I don't necessarily mean that a child can tell me the exact time, the exact, the exact year. Because really until about thirteen or fourteen years old, time is really still a very abstract concept and it's very difficult for children to be able to remember the exact dates and times.

So when I say "when", we mean associating that with maybe a grade that they were in in school, a season that it might have happened in, which house they were living in if it is a child that lived in multiple homes. Something so we can have details that will confirm that time period.

So who, what, when, where.

If they can talk about where the incident

occurred. Did it happen in a house, in a car, which house, which car?

Those are the core details, the general details.

The contextual details are details as to how something felt, what something smelled like, where other people were if they can remember there were other people around -- you know, was anyone else in the room? Was anyone else in the house? What was on the television if this happened when they were in a room and the television was on. You know, what did they see in a room, did they see things on the walls. Those sensory details, things that they saw, felt, smelt, things that typically if someone were going to couch a child to say something are probably not the kinds of things that they would think about to tell a child.

Q. Thank you.

SOLICITOR JONES: No further questions, Your Honor.

THE COURT: Cross-examination.

JOHN DEJONG: Thank you, Your Honor, may it please the Court.

CROSS EXAMINATION

BY JOHN DEJONG:

Q. Not all disclosure are true, are they Ms. Galloway?

A. No, not all disclosure are true.

Q. And there can certainly be false disclosures?

A. Yes, there can be.

Q. And you would agree with me that children lie?

A. Children do lie. They tend to lie about things to keep themselves out of trouble, they tend to lie -- they are not very sophisticated liars, I will say that.

Q. Or they lie to get someone out of trouble?

A. Ahh, -- they typically lie to keep themselves out of trouble. They are not very sophisticated liars, meaning that they often get caught in a lie.

Q. And children have imaginative minds? In other words, they have great imaginations?

A. Children do have great imaginations, yes.

Q. And they like to pretend?

A. They do.

Q. And they get angry?

A. Children do get angry.

Q. At someone in their home, a friend or whoever; correct?

A. Children can be angry at anyone, yes.

Q. And you were talking about children -- about people that children trust. There may be people in the home that the children are very angry with?

A. Yes.

Q. If a child didn't like someone in the home, was angry at that someone, they could make up something about that person?

A. From my experience, most children don't make up sexual abuse disclosures because they are angry at someone in their home.

Q. But you also said that -- I think -- I forget which context it was in but maybe in the context of coaching a child who had no previous sexual knowledge, it would be more difficult to coach them?

A. It might be difficult -- yes. If a

child had not sexual experience or knowledge, then by virtue of coaching them you are exposing them to sexual behavior and knowledge.

Q. Right. So I guess the reverse is true, if there has been prior sexual knowledge then a child would not be as hard to coach?

A. I don't think I'd say that they wouldn't be as hard to coach. I think that you would have other challenges in attempting to coach a child that had already been sexually abused previously.

Q. You do know a little bit about this case, obviously; correct?

A. Yes.

Q. You had some conversation with the Solicitor?

A. I know that it involved sexual abuse.

Q. Okay.

A. And I know the general dynamic topics that I would be testifying to today.

Q. Okay. Would you agree with me that children, by and large, like to please

adults?

A. Children are -- yes, they do tend to like to please us, particularly at younger ages they do even moreso.

Q. Yes, ma'am. So in wanting to please an adult, if you ask them a question and they respond and you continue to ask the same question, will they change that answer to try to please that adult?

A. It would depend. They could, which is one of the reasons why when questioning children we use different types of questions when questioning them.

Q. I get a little confused when you talk about the process of disclosure and then you talk about core and conceptual details. The process of disclosure, you say 'well, we don't -- that it is not necessarily unusual that we get details.' But then when you talk about conceptual details, you're getting into much more detail. So which one are you looking for?

A. When you're talking about the process of disclosure, in an initial disclosure a child may not give all the

details. What I'm talking about is -- disclosure is a process and the investigation is a process as well.

So that initial disclosure, whether or not it is an accidental disclosure or a purposeful disclosure, may be made to caregiver, a teacher, someone else, whomever that person is. So the disclosure that they make then is their initial disclosure.

So that initial disclosure, they only give the details or who and what. That disclosure then is likely reported to an investigative agency. Those individuals may contact interviews and ask questions of the child. That would elicit or it might lead to different details being shared, because they might ask different questions than the person who received the initial disclosure did, the mandated reporter.

If a forensic interviewer is involved, then they might ask additional questions and additional information may arise.

So that process is not only the process of the child but it is also the process of the system as well.

So those initial details are likely the core details. There may also be some contextual details as well.

But when the person is actually interviewing the child and those more narrative interviews that take place is where you would expect more core and contextual details to come out.

Does that clear things up?

Q. Assume for the moment that there is only one interview, which is a forensic interview.

A. Okay.

Q. Then there are inconsistencies in that interview. Can you explain that?

A. Well, I guess I would -- I would want more information about what you mean by inconsistencies.

Are those inconsistencies between what the child has reported across multiple interviews or are there inconsistencies between what the child is reporting and what the adults are reporting?

Are those inconsistencies related to time or sequence?

I think I would need more information to be able to answer that questions fully.

Q. Well, on grooming, I believe you talked a little bit about pornography, right?

A. Yes, that could be used as a grooming tool.

Q. Grooming, though, by the very term would be over a period of time, would it not?

A. I mean, it could be over a period of time. It could be part of a relationship and be a one-time incident that occurred as part of that great relationship. So the grooming itself may not be just that one exposure to pornography. The grooming might be the development of this relationship with this child, exposure to multiple things across time. So it is really more about a relationship building and not just a one time exposure.

Q. Multiple events?

A. It could be. It could be a single, uh, -- it's the relationship that is the grooming. So it could be that this child was exposed to pornographic material, it could be that this child is offered treats and special

attention as part of grooming, it could be that this child is given additional time to do things that the child enjoys doing. It could be multiple things that could be going on.

Q. Basically what we're talking about is that it could have been many things?

A. Grooming is not just one thing. Yes.

Q. You speak in large generalities, don't you?

A. (No verbal response).

Q. What you're talking are large generalities?

A. With grooming, or with the dynamics of abuse?

Q. With the dynamics of abuse.

A. So when I'm speaking about the dynamics of abuse, these are things that are common among abuse -- these are things that are common in the research and experience of child sexual abuse and child maltreatment. These are things that have been cited repeatedly in multiple peer-reviewed articles and journals and based on actual

survivors/victims of child abuse and sexual assault.

Q. I understand that you say time is for a young child pretty much outerspace. They don't remember time, do they?

A. Yeah, it's pretty much an abstract concept, hard for them to understand.

Q. When you get into those conceptual -- if that's the word -- or contextual, I think, details, sequencing of events, would a young child normally remember that?

A. The details of?

Q. The sequencing of events that they say happened: 'this happened, this happened and then this happened.' Do you agree with that?

A. Again, I guess it would depend on the event that they're reporting. Are you asking me if a child is sexually abused, are they able to say what happened before, during and after a sexual abuse incident?

Q. During a sexual abuse incident?

A. Ask me the question again. I just need to make sure that I understand what you're asking me.

Q. Sure. When you get to that contextual detail, a child sequencing an event -- for examples, 'he touched me on my chest, he touched me on my private part, he touched me on my bottom part', would you not expect in that series of events that a child would know the sequence of events? Which happened first? Which happened next? Which happened last?

A. Not necessarily. It would depend on the age of the child, it would depend on whether or not this was a one-time incident or multiple incidents and even in a single incident they may not be able to remember the sequence of those events.

Even an adult engaged in a sexual act may not remember if their partner kissed them, touched them, here, there, in sequence. So I don't always expect a child to be able to do that as well, particularly if they're not paying attention to those type things.

Q. Certainly children learn from example?

A. Children learn from examples, they certainly do.

Q. And certainly children learn from their experiences.

A. They do, (affirmative nod).

Q. Whether those are good experiences or bad experiences, they learn?

A. Yes.

Q. And they had to learn systems and how things operate? Not to a complex degree but they -- they know where our buttons are, don't they?

A. I am not sure I know exactly what you mean when you say 'our buttons'.

Q. In life's learning experiences, they learn buttons. In that learning process, they learn how to push our buttons?

A. By our, do you mean as parents? As adults in general?

Q. Adults in general.

A. (No verbal response).

Q. Adults in general. They know how to push buttons, based on life's experiences?

A. Let me make sure that I understand what you're asking me. Are you asking me if children learn how to manipulate adults and do they do that?

Q. Yes. I like your word better than mine. Manipulate. They learn how to manipulate, don't they?

A. Well, I would say that children learn through experiences. I would say that children do learn how to ask for things that they need and how to seek those things out. If you're -- do I think that children intentionally manipulate these types of situations, in general 'no.'

Q. Well, then a child that makes a false allegations, they're not manipulating?

A. Well, the vast majority of false allegations in the research and statistics are false denials. We see far more reports of children denying abuse when abuse has actually occurred than children false reporting, or having false disclosures.

Of the false disclosures that are not false denials, uh, those fall in the categories oftentimes when it is more about the adult's manipulation of the child and their needs and not about a child making a conscious decision to manipulate an adult or an adult system. What I mean by that is

adult coaching a child to do this for their own gratification, not the child wanting to tell other people that they have had a sexual relationship with an adult to get their way. It's not typically how children think to meet their needs.

Q. Some adults manipulate children to meet the adult's needs. Right?

A. Yes, we do see that.

Q. And that could certainly come into the area of sexual molestation, too; couldn't it?

A. Where adults are manipulating children?

Q. Yes, ma'am.

A. Yes, there's a lot of manipulation in sexual abuse.

Q. Well, what I'm saying is an adult can get a child in the posture of reporting sexual abuse to manipulate them -- for this adult who is manipulating them, to get what they want.

A. So that's when you're talking about coaching a child? Is that ---

Q. Well, you call it coaching. I call

it manipulation.

A. Yes. So that is why when we're looking at children's disclosures we are looking for those types of indicators.

Is this a situation where there might have been an adult who would have coached this child?

Is what the child saying something that sounds coached, or does it sound like something that the child has actually experienced?

All those things are taken into context when looking at a particular case.

JOHN DEJONG: Thank you, Ms. Galloway-Williams. It is always a pleasure.

THE COURT: Redirect?

SOLICITOR JONES: Just briefly.

REDIRECT EXAMINATION

BY SOLICITOR JONES:

Q. Ms. Galloway-Williams, defense counsel asked a little bit about coaching. In your experience and in your training, when trying to detect coaching, do you look at the particular words that the child uses as they described a particular event?

A. Yes.

Q. And why is that important?

A. That would be something else that is included in those contextual details, is the child using words that are appropriate to their development and the way that they speak about other things? Or are they using words that sound more adult-like.

Certainly when children describe disclosures, are they using child-like language, are they describing it the way that we as adults describe it, or are they describing it the way that a child who might have limited sexual knowledge would describe it?

We also look at the type of incidents that they are describing. Some of the types of abuse that we see with children are not typical types of sexual behavior that adults engage in. So if the child is describing a sexual interaction, you know, an adult who is coaching them might not even think of to tell them. So, you know, is this the type of touching that is happening a certain way, that may not be a typical type of intimate

sexual interaction that an adult would have. Is that -- does that make sense?

Q. You mean that an adult coaching a child would describe, uh, an adult sexual experience, is that what you're saying?

A. Yeah. Saying that, you know, sometimes when adults are led to coach children they may not be -- they might use adult language to describe that rather than describing it to the child in the way that a child would describe it happening to them.

Q. So is it important when being interviewed, when the therapist or interviewer asks the child what they call a particular private part?

A. Yes.

Q. Is that important?

A. Yes. In a lot of interviews, anatomy identification is used just to make sure that the interviewer or assessor is using the same language that the child is. So it's important to know what they call their body parts and to ask them for that information rather than giving that information to them.

SOLICITOR JONES: Thank you, Your Honor. No further questions.

THE COURT: Recross?

JOHN DEJONG: No, Your Honor, no recross.

THE COURT: You may step down.

JOHN DEJONG: No objection to her being excused.

THE COURT: And you are excused.

(WITNESS STEPS DOWN)

SOLICITOR JONES: Your Honor, at this time the State rests.

THE COURT: Ladies and gentlemen, the State has rested, so that is the extent of the evidence that they will be presenting in their case in chief.

There are some matters that we need to go over, so I'll ask you to go back to your jury room again and we will be with you shortly. Do not discuss the case.

(JURY OUT @ 4:13 P.M.)

THE COURT: The State has rested. Any Motions?

JOHN DEJONG: If it please the court, at this point in time on behalf of Mr. Bagwell, I would make a Motion for directed verdict.

I understand the standard but in this case I would submit that there was no substantial credible evidence from which a jury could find guilt.

I think substantial and credible go together. If you look at the interview as a whole, if you look at the other testimony, the inconsistencies, even in the video not to mention the other inconsistencies when Dr. Croswell was testifying, that none of this made sense. I would submit that at this point in time to allow the case to go to the jury is only going to allow them to speculate or use conjecture to arrive at a verdict. In order to arrive at a verdict of guilty would require pure speculation.

THE COURT: I think there was evidence in the video and from the victim on the stand that rises to the level that would allow it to go to the jury to make that decision, so I respectfully deny your Motion

JOHN DEJONG: Thank you, Your Honor.

THE COURT: Any other Motion?

JOHN DEJONG: No, sir, but I would like a minute to go to the bathroom.

THE COURT: Are you ready to go forward on any of yours?

JOHN DEJONG: No, sir, I've got the one witness that we discussed.

THE COURT: Okay. Well, why don't you go to the restroom and then we will discuss it.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: You anticipate calling the Colleton County ---

JOHN DEJONG: That is the plan, Your Honor. What I would like to do is, I've been over with Mr. Bagwell his right to testify, his right not to testify. As I tell all of my clients, they can wait until the State rests to make that decision. We did start talking about that -- "we" being me and my client and his wife -- a little bit shortly after lunch. I don't think he's confused about his rights. He is confused about what he wants to do. I understand that has got to be his decision.

THE COURT: I am going to give you time. We are not going to start him this

afternoon.

JOHN DEJONG: Thank you, Your Honor.

THE COURT: I guess one of the questions that you want to know from me, though, is how much I will let, if any, this guy from Colleton County testify?

JOHN DEJONG: Yes, sir.

THE COURT: I guess I don't have sufficient information to know that. I've actually reviewed the case law and my question is going to be is that collateral or not.

JOHN DEJONG: Well, ---

THE COURT: Without giving me more information as to what that information is, I don't know that I can make that decision.

SOLICITOR JONES: Another problem, Your Honor, is that defense counsel, when he had the victim on the stand, he did not show her the statement, give her an opportunity to say 'yes, I said that', 'no, I didn't say that.' He just wants to bring a third party to testify to hearsay in front of the jury, that another witness said something different previously.

THE COURT: You know, I think my analysis is whether it is collateral or not. That's what I have got to figure out. I know that there was some recanting. I know that there is somebody from Colleton County ---

JOHN DEJONG: I will be very candid with the court because I have been with my client, I may have the wrong officer under subpoena. I don't know if I can correct that tonight or not. I'm working on it as we speak but I don't know. Frankly, I haven't really talked to the officer that I have under subpoena from Colleton County. I'm kind of in a quandary here myself.

THE COURT: I don't want to complicate your quandary, but I don't know how I can make a informed decision on that without proffered testimony.

JOHN DEJONG: I understand that, Your Honor, but I won't have anybody here until tomorrow morning.

THE COURT: I don't have any problem with that. It sounds like if -- if you do proceed with your case, it's not going to be very long. I don't know if you plan on -- I

am trying to figure out if we could get this case to the jury by lunchtime tomorrow.

SOLICITOR JONES: Yes, sir, Your Honor, absolutely -- but I don't know how many witnesses he is going to call.

THE COURT: Sounds like there is a possibility of two, one or none.

SOLICITOR JONES: He says he doesn't know what the officer is going to say. He wrote a report that is about ten sentences long. He's going to say that the child recanted to him, said that it didn't happen. But, again, without defense counsel -- the proper procedure is for him to confront the victim first with that statement and give her an opportunity to say 'yes, I said that' or 'no, I didn't say that.'

But he said, 'did you ever recant, did you ever tell somebody that this didn't happen' and she said, 'I don't remember.' In my mind -- from my understanding of the Rules, that's where it -- where the issue ends. He has to live with that answer.

THE COURT: If it's collateral. Isn't that the *Wiggins* case? It is collateral if

it has to do with that answer. It is not collateral if he doesn't -- extrinsic evidence.

SOLICITOR JONES: I think the extrinsic evidence is a written statement of the -- from the witness, not a separate witness, third party to come in here and say, 'this is what the witness said.' Then we're all of a sudden trying a little issue that distracts the jury from the issue at hand.

THE COURT: And that's why the analysis of is it collateral or not. It all goes back to that. At least that's my analysis.

JOHN DEJONG: You keep talking about a written statement. There was no written statement.

SOLICITOR JONES: I know. That's what I ---

THE COURT: All right.

JOHN DEJONG: I can't offer something that doesn't exist.

THE COURT: All right, we need to bring the jury out and tell them that they can go home for the day.

Then if anybody has any jury charges,

they need to start getting them my way.

JOHN DEJONG: I don't know if Your Honor wants to do it this evening, to *voir dire* my client as to whether he wants to testify.

THE COURT: Okay. You want to do that now?

JOHN DEJONG: Let's get the jury out.

THE COURT: And then we can follow up in the morning. Okay, bring us the jury.

(JURY IN @ 4:30 P.M.)

THE COURT: Ladies and gentlemen, as I indicated before, the State has closed their case. Since it is 4:30 and there are things that we have to go over at this point, it doesn't make sense for us -- this is a good time for y'all to break, because we still have some matters to go over. We will break for the day as far as y'all are concerned. Please come back at 9:30 in the morning.

I know y'all are tired of hearing this, but don't discuss the case among yourselves, with family members, friends or anything like that. Do not do any independent research about this, do not pay any attention to any news media coverage: TV, radio, newspaper,

social media especially. Also if you're contacted by anybody other than the clerk's office, please let the bailiff know. Y'all have a good evening, see you in the morning at 9:30.

(JURY OUT @ 4:32 P.M.)

THE COURT: Mr. Bagwell, raise your right hand.

DEFENDANT: (Complies).

THE COURT: Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

DEFENDANT: I do.

THE COURT: All right. Now, as I am sure your attorney has discussed with you -- first of all, for the record, you're David Bagwell; is that right?

DEFENDANT: Yes, sir.

THE COURT: Now I'm going to ask you -- I'm going to talk to you about your right to testify and your right not to testify, just to make sure that you know your rights. As your attorney indicated, you make the final decision.

DEFENDANT: Yes, sir.

THE COURT: But you have the absolute right to testify on your behalf. You also have the right to remain silent, that is your Constitutional right.

If you decide that you don't want to testify, then I will instruct the jury that they are not to consider that in any way against you because the burden will still be on the State to prove you guilty beyond a reasonable doubt. Okay?

DEFENDANT: Yes, sir.

THE COURT: So therefore if you do not testify -- and I'm sure your attorney has discussed with you that if you decide not to testify and y'all don't put up any evidence, there are certain strategies for that but that could not be used against you; even if you did put up other evidence, the fact that you don't testify cannot be held against you.

Now, if you do decide to take the stand then you're subject to the same cross-examination as any other witness. That would include any prior criminal record -- is there any prior criminal record that could be used for cross-examination purposes?

SOLICITOR JONES: I apologize, Your Honor, I can't remember. I know that he does have several convictions. Let me look at that really quick. (Upon review), he has a breach of trust charge/conviction, a petit larceny charge/conviction, financial card theft, financial card fraud, another petit larceny, and a habitual traffic offender.

THE COURT: Which ones do you take the position that you would be able to cross-examine him on?

SOLICITOR JONES: All the ones that I read, I believe, were crimes of dishonesty and the habitual traffic conviction was one where he could have been sentenced for more than a year, a felony. And he does have a domestic violence conviction that we've already talked about, so I don't know how you feel about me crossing him on those.

THE COURT: There have been discussions of arrests on those, but have there been convictions?

JOHN DEJONG: I don't recall any discussions of convictions.

SOLICITOR JONES: I think the child

testified that he was convicted of that as well.

THE COURT: I think the question was asked but she didn't -- and then the question was rephrased, did he go to jail? I think was the ---

SOLICITOR JONES: (Affirmative nod), did he go to jail.

THE COURT: Or that was Bobby McCann. Anyway. The reason we are discussing is because, Mr. Bagwell, do you understand that you could be cross-examined on convictions and that your criminal record could be relevant in your cross-examination?

DEFENDANT: Yes, sir.

THE COURT: I just want to make sure that you're aware should you testify that is one of the things that can be used against you. Do you understand your rights, the right to testify and your right not to testify?

DEFENDANT: Yes, sir.

THE COURT: Do you understand all the factors that go into that decision?

DEFENDANT: Yes, sir.

THE COURT: Have you had sufficient time to talk with your attorney about these issues and whether you should testify or not testify?

DEFENDANT: Well, -- yes and no. I still want to ---

THE COURT: I don't want you to go into any discussions. I'll go through this and then I'll ask you in the morning your decision. It sounds like, first of all, that you want some additional time to talk to your attorney.

DEFENDANT: Yes, sir.

THE COURT: Do you have any questions of the court about your rights?

DEFENDANT: Actually I do.

THE COURT: Okay.

DEFENDANT: Some of the evidence that I've had for three years ---

THE COURT: Hold on. I'm just talking about your right to testify or not testify.

DEFENDANT: Oh, all right.

THE COURT: Do you have any questions regarding that?

DEFENDANT: No, sir.

THE COURT: What I am going to do is we're going to adjourn today, you'll have time to talk with your attorney and in the morning -- your attorney will probably indicate to me whether you want to testify or not, but I'm going to ask you again at that point if you fully understand your rights as I have explained them to you, have you had plenty of time to talk to your attorney, and do you wish to testify or not. Those are the three questions that I will ask you in the morning and you can let me know at that point. Okay?

DEFENDANT: Okay.

THE COURT: Anything else before we break for the day?

SOLICITOR JONES: Nothing from the State.

JOHN DEJONG: Nothing on behalf of Mr. Bagwell. I would ask if maybe security could put up with me for a few minutes so we can have a discussion about whether he wants to testify or not, and to have his wife present.

THE COURT: That's up to Security.

JOHN DEJONG: Thank you.

THE COURT: Be here t 9:30. If you have any jury charges, you can e-mail them, fax them, drop them by, send them by Pony Express. Get them to me.

SOLICITOR JONES: Your Honor, Toni Bagwell -- Toni Durnil received a subpoena for today's date, period, no other dates. She was here today and yesterday. She desperately wants to be released so that she can go back to work.

JOHN DEJONG: I release her.

THE COURT: This is the mother of the victim.

SOLICITOR JONES: That's correct.

THE COURT: Mr. Dejong, you said that you release her?

JOHN DEJONG: That's correct, Your Honor.

(COURT IN RECESS)

(TRANSCRIPT CONTINUED NEXT PAGE)

AUGUST 30, 2017 9:30 A.M.

(DEFENDANT PRESENT)

THE COURT: Do you want to talk to him first or present the proffer?

JOHN DEJONG: I've talked to Mr. Bagwell to let him know what is going on. What we'd like to do first is proffer the testimony of Mr. Nettles, get Your Honors' ruling. I don't want to keep this fine officer here any longer than we need to.

THE COURT: Okay.

JOHN DEJONG: For the purpose of proffer, I would call Sgt. Lonnie Nettles to the stand.

(WITNESS TAKES STAND)

LONNIE NETTLES, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY JOHN DEJONG:

Q. Who are you employed with, Sgt. Nettles?

A. Colleton County Sheriff's Office.

Q. How long have you been with them?

A. A little over six years now.

Q. All right. Were you employed by the Colleton County Sheriff's office in December of 2013?

A. Yes, sir.

Q. Around December 30th, 2013, did you take a report on a criminal sexual conduct case?

A. I did.

Q. Who was the complainant in that case?

A. The complainant was Toni Antoinette Bagwell.

Q. Who was the alleged victim in that case?

A. There were two alleged victims, two juveniles, a male and a female: Ericka Durnil and Nicholas Durnil.

Q. Was an arrest warrant ever issued in that case?

A. There was no arrest warrant issued.

Q. Was David Bagwell -- excuse me, who was the alleged suspect?

A. The suspect was David Scott Bagwell.

Q. And was David Scott Bagwell ever

arrested?

A. He was not.

Q. Is the case open at this point in time?

A. It is not.

JOHN DEJONG: That would be the extent of what I would ask him, Your Honor.

THE COURT: Do you want to ask him anything?

SOLICITOR JONES: No, sir.

THE COURT: I think this -- I mean, I think this has all kinds of evidentiary -- constitutes all kinds of problems. For one thing, I think that the prejudice clearly outweighs the probative value because it would allow the jury to have to speculate 'okay, there was a report made but why wasn't it made?' Was it because the solicitor decided that there wasn't a case there? Was it because the case was retracted by the victims? Did somebody make a finding that there wasn't probable cause? You know, a statement -- and it is also a claim made by the mother, who hasn't testified. I just think -- I don't believe that this is going

to be admissible evidence.

JOHN DEJONG: Very well, Your Honor.

THE COURT: I'm sorry you had to drive up here for that.

WITNESS: No problem.

(WITNESS STEPS DOWN)

THE COURT: Therefore, I deny your Motion to present this witness.

All right. Now, shall we talk further to Mr. Bagwell about his decision ---

JOHN DEJONG: I will offer him to you, Your Honor. He has indicated to me that he is going to testify.

THE COURT: Mr. Bagwell, I went through everything yesterday. Do you recall our conversation yesterday about ---

DEFENDANT: Yes, sir.

THE COURT: --- your right to testify, your right to not testify. Do you have any questions regarding that?

DEFENDANT: No, sir.

THE COURT: Have you had sufficient time to talk with your attorney about whether your should testify or not testify?

DEFENDANT: Yes, sir.

THE COURT: Your attorney has indicated that you do wish to testify.

DEFENDANT: Yes, sir.

THE COURT: And that is your decision?

DEFENDANT: Yes, sir.

THE COURT: In light of understanding all your rights, that is what you wish to do?

DEFENDANT: Yes, sir.

THE COURT: That's fine. Are we ready to bring the jury in? Anything from the State?

SOLICITOR JONES: Nothing from the State.

THE COURT: Anything else before we bring the jury in?

JOHN DEJONG: No, Your Honor.

THE COURT: Bring the jury in.

CLERK: We don't have all the jurors, Your Honor.

THE COURT: Then we will be at-ease until they all get here.

(BRIEF RECESS)

(DEFENDANT PRESENT)

(JURY IN @ 9:45 A.M.)

THE COURT: Good morning, ladies and

gentlemen. We will now -- at the end of the day yesterday, the State closed their case, so we will now -- Mr. Dejong?

JOHN DEJONG: May it please the Court, Your Honor, the defense would call David Scott Bagwell.

(WITNESS TAKES STAND)

DAVID SCOTT BAGWELL, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY JOHN DEJONG:

Q. State your name again, please.

A. David Scott Bagwell.

Q. Now, if you will stay that close to the microphone, we'll be able to hear you.

A. Okay.

Q. Mr. Bagwell, did you ever tie up MINOR CHILD ?

A. No, sir, I did not.

Q. Did you ever fondle MINOR CHILD ?

A. No, sir, I did not.

Q. Did you keep a rope in your bedroom?

A. No, sir, I do not.

Q. Did you ever keep a green rope in

your bedroom?

A. No, sir.

Q. Did you ever keep a red rope in your bedroom?

A. No, sir.

Q. Did you ever keep a tan rope in your bedroom?

A. No, sir.

Q. Did you ever move MINOR CHILD from her bed into your bed or her mother's bed while she was asleep?

A. No, sir.

Q. Did you discipline MINOR CHILD?

A. When needed; yes, sir.

Q. How old are you, Mr. Bagwell?

A. Thirty-nine years old.

Q. Are you currently married?

A. Yes, sir.

Q. Who are you married to?

A. Meghan Owens Bagwell.

Q. How long have y'all been married?

A. Since October of last year.

Q. Did you ever live on Cleo Chapman Highway?

A. Yes, sir, back in 2013.

Q. When did you move in there, do you recall?

A. I want to say it was right before the summer, possibly, of 2013.

Q. Let me digress a moment here. Do you know who Toni Bagwell or Toni Durnil is?

A. Yes, sir.

Q. Who is she?

A. She is my ex-wife.

Q. When were you and she married?

A. September 21, 2012.

Q. And how long did you live at the [redacted] Cleo Chapman Highway address?

A. I'd say between five and seven months, possibly.

Q. Do you recall about when you left the Cleo Chapman Highway address?

A. I believe that it was October, late September or early October.

Q. Where did you move to?

A. To Walterboro.

Q. Do you remember that address?

A. [redacted] Peniel Road, I believe.

Q. How long did you live there?

A. About a week.

Q. Then where did you move from there?
A. To Ruffin, South Carolina.
Q. Sorry?
A. Ruffin, South Carolina.
Q. Where is that?
A. That's probably about thirty minutes from Walterboro, between Walterboro and Orangeburg.
Q. What county is that in?
A. Colleton.
Q. All right. How long did you live in Colleton County?
A. Altogether probably a month or two, two months maybe.
Q. What is the time and date frame that you lived in Colleton County?
A. We moved to Colleton the first time in October, then we moved to Victoria Lane in Ruffin November, and then about the middle of November we moved to Beulah Road in Smoaks.
Q. What county is that in?
A. That's Colleton also,
Q. How long did you live in Smoaks?
A. Until December. The end of December, right after Christmas, we moved to

Branchville.

Q. When you lived in Smoaks, did you have occasion to talk to law enforcement while you were there?

Q. On the telephone, yes.

Q. Were you ever arrested by Colleton County ---

SOLICITOR JONES: I object to this line of questioning, Your Honor.

THE COURT: Sustained.

JOHN DEJONG: I'm sorry, I didn't hear Your Honor.

THE COURT: I am going to sustain the objection unless you lay some other foundation.

JOHN DEJONG: Very well. I am not sure which part that he objected to, so we will move forward and we'll see.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Were you ever arrested in Colleton County?

A. No, sir.

SOLICITOR JONES: Objection, Your Honor.

THE COURT: All right. Sustained. I ask that that be stricken. Ladies and gentlemen, once something is stricken, that is not something that you are to consider in your deliberations.

JOHN DEJONG: All right.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. After Colleton County where did you live?

A. We moved to Branchville, Ridge Street.

Q. When you say "we", who ---

A. Me and Toni and the kids and her mother.

Q. Let's go back to [redacted] Cleo Chapman Highway a little bit, who lived at that address?

A. Me, Toni, MINOR CHILD, BROTHER and for about half the summer I got my three kids. That's pretty much who lived there.

Q. When you left Cleo Chapman Highway, did your kids go with you?

A. No, sir. They was -- Toni and my ex-wife, they got into a fight and since then

I haven't seen my children.

Q. When you and Toni got married, were you working?

A. No, sir.

Q. Do you work now?

A. No, sir.

Q. Why not?

A. I am disabled.

Q. What is the nature of your disability?

A. I have PTSD, am bipolar. I was physically beat as a child up until I was old enough to get out of the house. It's caused me a lot of grief in my life.

Q. For the better part of the time you and Toni were married, who was the bread winner?

A. Toni was.

Q. So when she worked, who stayed home with the children?

A. I did.

Q. Was that basically on a twenty-four hour basis?

A. Yes. I was basically mom and dad to all five of the kids when they was there.

Q. Did you ever show special treatment to one child over another child?

A. No, sir, I was not allowed to do that.

Q. Did you ever show MINOR CHILD or any other child pornography?

A. No, sir, I was not allowed to have pornography. I don't particularly like pornography.

Q. Let's talk a little bit about you disciplining the children. What forms of discipline would you use?

A. I would put them in the corner. I would also make them do a chair exercise, to put their back up against the wall and squat down like they were sitting in a chair.

Q. Did you ever take anything away from them as punishment?

A. Yes, sir. If they wouldn't do their chores or clean up, make their beds, I'd take away their Nintendo PlayStation, Nintendo DS. I'd take that away from them if they didn't clean their room properly or, you know, do what they were supposed to do.

Q. In December of 2013, do you remember

disciplining the children?

SOLICITOR JONES: I object again to the line of questioning, Your Honor.

THE COURT: What grounds?

SOLICITOR JONES: Relevance.

THE COURT: Overruled.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. In December of 2013, do you remember disciplining the children?

A. Yes, sir.

Q. How -- what form of discipline did you use that time?

A. We'd just moved in over to Beulah Road in Smoaks and we was trying to get everything unpacked, get everything cleaned up, get stuff situated. I put them in their room, MINOR CHILD and BROTHER in their room to clean their room to get everything situated, to get their clothes put away, toys. They refused to do it. They sat in there playing their DS. So I took their DS away from them and they got mad at me.

Q. What was their reaction to that?

A. They got really mad.

Q. How would you describe your relationship with Toni Bagwell? A happy relationship? A loving relationship? A stormy relationship?

A. It was kind of stormy until we moved in with her mother, when we moved to Walterboro. After that it was just -- went kaput. There was no relationship after that.

Q. When did you and Toni separate?

A. Let's see -- April 14th.

Q. Once you separated, where did you go?

A. I moved in with Meghan.

Q. You were still married to Toni at that point in time?

A. Yes, sir.

Q. Was she aware that you'd moved in with Meghan?

A. Yeah. She was very mad about that.

Q. Okay. So I guess down in Colleton County and in Orangeburg, both, you had a bit of a stormy relationship with Toni?

A. Yes, sir.

Q. Without going into a great deal of detail, tell us a little bit about that.

A. Like I said, when we moved to Walterboro, her mother was supposedly having heart problems or something, so we moved down there to help her. Toni was a CNA, so she was going to move down and help her mom.

We got down there and her mom started running the house. I didn't like that because I'm the husband, I'm supposed to be the one that you talk to about stuff. You discuss stuff with your mom and then all of a sudden I'm out of the picture, you know.

We started to not get along. I was working at a friend of mine's place. That's where I met Meghan at. When Toni found out that me and Meghan had been talking to each other, she had me locked up.

Q. For what?

A. CDV.

Q. Was that in Colleton County?

A. No, it was in Orangeburg County. The first one was in Branchville and the second one was in Orangeburg.

Q. Where was the first one?

A. Branchville.

Q. What county is that?

A. That's Orangeburg County.

Q. Where was the second one?

A. Orangeburg.

Q. Both of them were in Orangeburg?

A. Right. I was living at [redacted] Bridge Street when I got the first one. Well, I wasn't living there, that's where she was living at after we had separated.

Like I said, me and Meghan had come back to Pickens so that I could get away from her. She wasn't leaving me alone, she kept following me around town. I had to have the police escort her -- to keep her away from me.

SOLICITOR JONES: I am going to object to relevance on this, Your Honor.

THE COURT: I will allow it.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Go ahead, Mr. Bagwell.

A. The police chief down there at the Branchville police station told me that she could -- she and her mother would ride by, screaming obscenities at me and I had to call the police. He was like ---

SOLICITOR JONES: Your Honor, I am going to object to relevance on this.

THE COURT: Well, I think it is relevant, so I'm going to let it go -- as long as it is not hearsay.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Go ahead.

A. He pulled up while I was on the phone with her and she immediately said, 'Oh, he said..' ---

SOLICITOR JONES: Objection, Your Honor.

JOHN DEJONG: Don't say what she said or he said.

THE COURT: Sustained as to hearsay.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Go ahead but don't say what she said.

A. Okay. Sorry.

Q. Go ahead.

A. Well, he pulled up and ended the situation. That's when I decided to move back to Pickens.

When we was in Pickens, I got a phone

call from the Branchville Police that said that I had a warrant for a CDV.

THE COURT: All right, that's hearsay.

DIRECT EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. Don't get into what people say.

A. Okay. Sorry.

Q. Did you go back to Branchville?

A. Yes, sir, I had to.

Q. Then what happened?

A. I went to jail for the whole month of May. Every time I'd get out of jail, I'd go right back to jail for CDV or breaking my bond or -- just a number of things that happened.

Q. So when did you finally break all ties with Toni Bagwell?

A. That would be after I had one CDV dropped, another CDV where I had to plead no contest because they wouldn't accept my evidence. After that, I haven't heard or talked to her since.

Q. Well, you just mentioned that you had those CDVs. You've had a couple of other problems with the law, have you not?

A. Yes.

Q. Let me just ask you, were you convicted of breach of trust?

A. Yes, sir, I was.

Q. Where was that?

A. That was in Pickens County.

Q. How about financial card -- financial transaction theft?

A. Yes, sir, that was in Pickens County also.

Q. And financial transaction card fraud?

A. That was in Pickens County also.

Q. Two counts of financial transaction card fraud?

A. That was in Pickens County.

Q. Petit larceny?

A. That was in Easley.

Q. All right. Did you have trials on those or did you plead guilty?

A. I pled guilty, Your Honor -- sir.

Q. If you know, who made the report to Orangeburg County on the physical abuse and neglect?

A. That was me.

Q. Pardon?

A. That was me.

Q. That was you?

A. Yes, sir.

Q. So you called DSS and reported it?

A. Yes, sir.

Q. A typical day in your household, can you just kind of explain that a little bit?

A. I would wake up about 5:30. The kids would get on the bus about 6:30. I'd get up, get the kids their bath, do MINOR CHILD's hair, fix BROTHER's hair because by that time their mama had already gone to work. I would fix their hair so they wouldn't cry when they come home from school because they got picked on because their hair was all nappy. So I'd get them ready, make their lunch, whatever, put them on the school bus.

You know, I'd pick the house up, wash clothes or whatever I had to do until they got home from school.

Then I would make them dinner, because she worked two shifts. She worked first and second shift, so she didn't get home until after ---

Q. She worked what?

A. She worked first and second shift.

Q. What hours?

A. She would get to work about 6:30 and wouldn't get home until probably about midnight or so.

Q. 6:30 in the morning?

A. Yes, sir.

Q. Okay.

A. So I was -- I was mom and dad to MINOR CHILD and BROTHER. I treated them no different than I treated my kids. I loved them. I raised MINOR CHIL since he was a little over a year old.

Q. Did -- it's a bit of a personal question, but I will ask anyway. When y'all lived at # Cleo Chapman Highway, did you and Toni Bagwell share a bed?

A. Yes.

Q. All right. Did you and she share a bedroom?

A. Yes, sir.

Q. Okay. You have given quite a few addresses, Mr. Bagwell, that you and Toni and the children lived at. I asked you about 507

Cleo Chapman Highway. Did you ever tie MINOR CHILD up at any of those addresses?

A. No, sir.

Q. Did you ever fondle her at any of those addresses?

A. No, sir.

Q. Did you ever lock her in the bedroom?

A. No, sir.

Q. Did you ever lock her in the bedroom at Cleo Chapman Highway?

A. No, sir.

Q. When MINOR CHILD was home, was BORTHER usually there?

A. Yes, sir.

Q. Would you say most of the time, some of the time or a little of the time or how would you ---

A. I would say 99.9 percent of the time or a hundred percent of the time. If MINOR CHILD was home, BROTHER was home too. They went to the same school, they were all there at the same time.

Q. How old was BROTHER?

A. I think he was six.

Q. How old was MINOR CHIL?

A. I think she was, like, nine.

Q. Just so that I am sure, I don't think I asked this question but you're not the biological father or either MINOR CHILD or BROTHER, are you?

A. No, sir.

Q. This particular case that we are here for, have been for the last two-plus days now, did you ever talk to law enforcement? Did you ever talk to the cops?

A. No, nobody ever -- the only time that I ever had contact with them was when I got arrested for it. I just so happened to be at a friend's house and an ambulance was called. The police came out with the ambulance because -- I don't know why, but that's the first time that I knew that I had warrants.

Q. Okay.

A. I had no clue.

Q. You had not talked to them before them?

A. No, sir. I've had the same phone number since me and Toni separated and

I've yet to get a phone call from anybody.

Q. Did you ever talk to them after that?

A. No, they wouldn't talk to me.

Q. When was the last time that you got out of jail on one of those criminal domestic violence?

A. That would be a few months back, I believe.

Q. When?

A. A few months back.

Q. I'm talking about when you lived in Colleton County. Is that what you're talking about?

A. No, no, I'd been living in Orangeburg.

Q. How long did you spend in jail?

A. Almost -- I'd say about thirty-five days, give or take.

JOHN DEJONG: The witness is with you, Mr. Jones.

SOLICITOR JONES: Your Honor, may it please the Court.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY SOLICITOR JONES:

Q. Mr. Bagwell, you did live at [#] Cleo Chapman Highway in 2013; is that right?

A. Yes, sir.

Q. You testified that you lived there with Toni Durnil, [MINOR CHILD] and [MINOR CHIL]'s little brother; is that right?

A. Yes, sir.

Q. Did anybody else live there with y'all?

A. My three kids lived there with us for about half the summer.

Q. Half a summer?

A. (Affirmative nod).

Q. So would that be a month or a little over a month?

A. About, half the summer.

Q. And you said that Toni worked a lot?

A. Yes, sir.

Q. That she worked two shifts.

A. (Affirmative nod).

Q. Where did she work?

A. Harvey's Loving Care in Six Mile.

Q. And you said that you didn't work, that you have a disability?

A. Right.

Q. Let me clarify. You said that you also met your current wife, Meghan, at work or while you were working for a friend?

A. Well, her -- yes, sir.

Q. Where was that at?

A. Her dad -- I was volunteering over there helping -- well, I had met her brother through a couple of other friends. His dad needed some help and I went over to help him.

Q. So you worked and met Meghan at work?

A. Well, I didn't work. I say work but I volunteered and I didn't get paid.

Q. What was the nature of that volunteer work?

A. Putting some tires on some rims.

Q. Putting tires on rims?

A. (Affirmative nod).

Q. When you lived at [redacted] Cleo Chapman Highway, the bed that you slept on, you didn't have an actual bedframe, did you?

A. Yes, sir. We had a headboard and a footboard.

Q. But the bed was on cinderblocks,

wasn't it?

A. No, sir.

Q. There was never a bed that was on cinderblocks?

A. Not to my knowledge. There was no reason for it to have been on cinderblocks.

Q. So you've never slept on a bed that was atop cinderblocks?

A. I mean, I may have. I'm thirty-five, but I didn't at that time; no, sir.

Q. At that time?

A. (No verbal response).

Q. Well, you say that you may have.

A. What I am saying is that at the house, I didn't.

Q. So you say that you may have slept on a bed on top of cinderblocks?

A. I've been married four times now, so I've ---

Q. You've been married four times?

A. Yes, sir, but we never had a bed with cinderblocks on it. We had a headboard and a footboard for our bed, and that was it.

Q. Just to be clear, you have slept on a bed that's been on cinderblocks, it just

wasn't at Cleo Chapman?

A. Well, yeah, but not with me knowing.

Q. Not at Cleo Chapman?

A. Right.

Q. Okay. This is your fourth wife?

A. Yes, sir.

Q. So Toni worked two jobs. How many hours a day was she away from the home?

A. She worked one job.

Q. Two shifts. Excuse me. How many hours was she away from the house?

A. Like I said, she had to leave and be at work by 6:30, 6:45 and sometimes she didn't get home until 11:3o or 12:00. I mean, she didn't always work two shifts but for the most part she did.

Q. Can you give me a timeline from the time that you were with Toni of where you lived? The first place you lived, so on and so forth?

A. Yes, the first place we lived was [redacted] Blacksnake (phonetic) Road.

Q. Where was that?

A. That was [redacted], my mother's address is [redacted]. That's over here in Pickens County.

Q. Okay.

A. From there ---

Q. When about was that?

A. That was November of 2010.

Q. Where did you move after that?

A. I've got to think. I know that we lived on Camp Creek Road. That was 2010-2011. I am not sure of the month.,

Q. Okay. Just continue on for me with where all you lived.

A. Okay. Camp Creek in 2011.

When we moved from there, we moved to Florida and lived with Toni's dad. Pensacola, Florida in like November'ish, 2011.

We moved back from Florida and we lived on Duncan Road in Six Mile.

From there we moved to [redacted] Cleo Chapman Highway.

From there we moved to Walterboro.

Then to Ruffin.

Smoaks.

Branchville.

Then we moved to Neeses Highway and that's when ---

Q. That was a lot of moving, wasn't it?

A. (No verbal response).

Q. Sometimes when you moved, did y'all even have time to unpack everything?

A. Yeah.

Q. You always unpacked everything?

A. Yeah.

Q. You didn't have boxes of clothes, boxes sitting around the house?

A. When I was arrested at Neeses' Highway, yeah, we still hadn't unpacked because we had only been there for two days.

Q. You testified that you and Toni -- y'all had a pretty rocky relationship, didn't you?

A. Not until we moved in with her mother.

Q. So after her mother moved in, the relationship was strained?

A. Oh, yeah, because I didn't like her mother.

Q. So you felt that her mother was taking on your role as the man of the house?

A. No, her mother was calling MINOR CHILD and Toni blind SOB's because ---

Q. That's going into what ---

THE COURT: Yeah, you can't testify about what somebody else said.

DEFENDANT: Okay. He was asking and I was just answering.

CROSS EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. So it's safe to say that you didn't like Toni's mother and Toni's mother didn't like you. Correct?

A. Correct.

Q. So after -- you testified a little bit about the domestic violence arrest that occurred. After the domestic violence arrest and you said that you pled, what was your word?

A. No contest. Like I said, the judge wouldn't allow my evidence.

Q. Since then, isn't it true that you've attempted to get back with Toni?

A. No, sir.

Q. You never attempted to get back with Toni?

A. No, sir. Toni has talked to me and even -- this, that and the other. But, no,

I'm happy with Meghan.

Q. Did you send Toni an e-mail?

A. Only after she e-mailed me.

Q. Only after she e-mailed you?

A. She e-mailed me and I e-mailed back but that was way before these accusations came out.

Q. Did you not e-mail here in 2016 and tell her that you loved her?

A. I don't think so.

Q. If I showed you the e-mail, would that refresh your recollection?

A. Yes. To answer your question, I did e-mail her.

Q. Okay.

A. But I had found out that I had Chron's disease and I thought -- they told me that I was dying and I was just letting her know what had happened, whatever.

Q. Do you remember -- did you express your love for Toni in that e-mail?

A. Maybe that I had loved her. But I would not have e-mailed her had she not put a note on my car at McDonald's. That's the only reason that I e-mailed her.

Q. Okay. Isn't it true that at times you and Toni argued.

A. Sometimes, yeah.

Q. Sometimes?

A. (Affirmative nod), not all the time. We wouldn't have been together five years if it was all the time arguing.

Q. And isn't it true that at times when you argued that you threatened to kill Toni?

A. No, sir, that's negative.

Q. That's not true?

A. No, sir.

Q. Isn't it true that you threatened to kill the kids?

A. No, sir, it's not.

Q. Isn't it true that you threatened to kill them and you said that you would get away with it?

A. No, sir, I don't recall talking to children like that. I wouldn't have. I'm not a violent person.

Q. You said that Toni worked two shifts, so at times she would get home quite late?

A. A lot of times, (affirmative nod).

Q. And at times when she'd get home late, she's sleep on the couch?; wouldn't she?

A. No.

Q. She never slept on the couch?

A. No, I'd have her dinner ready. I'd warm her dinner up, she'd eat dinner and then come to bed with me after her shower.

Q. So you would always have dinner ready for her, is that correct?

A. If she hadn't had nothing. Yes, sir.

Q. What time would she come home from work?

A. Between 11:30 and 12:00 usually.

Q. Between 11:30 and 12:00 and you'd have dinner waiting for her, most of the time?

A. I'd cook dinner for the kids and I'd have her plate in the microwave. Yes, sir. I'd heat it back up for her.

Q. So you would stay up to 11:30 or 12:00 waiting for Toni?

A. Yeah, so I could spend some time with my wife.

Q. And then you would wake up at 5:30 in the morning to help the kids?

A. Yes, sir. When you have responsibilities, you have to do what you have to do.

Q. Do you have any tattoos on your forearm?

A. Yes, sir.

Q. Do you have a tattoo of an alien on your forearm?

A. Yes, sir.

SOLICITOR JONES: Your Honor, I would ask that Mr. Bagwell show that tattoo to the jury.

DEFENDANT: (Displays left forearm to the jury).

CROSS EXAMINATION CONTINUED

BY SOLICITOR JONES:

Q. So on Cleo Chapman, you said that it was summertime. You also said that you would wake up at 5:30 to get the kids to the bus and all that stuff.

A. Not in the summertime, no.

Q. Tell me what you did in the summertime. When you were at Cleo Chapman Highway, it was summertime, right?

A. We would go to the river, right at the bottom of the hill. We went to the river every day, all five kids. We'd go fishing swimming, whatever they wanted to do.

Q. Just you and the five kids?

A. Yes.

Q. What about after your three sons no longer lived with you?

A. We still went to the river. We'd get out of the house, we'd get tired of playing the same games.

Q. You said that you're not a violent person but you were arrested, how many times, for domestic violence?

A. I was arrested twice for domestic violence.

Q. Twice?

A. Yes.

Q. Just twice?

A. Yes, sir. One of them got dropped because they couldn't show that I'd put my hands on anybody. And, like I said, they wouldn't accept my evidence in the other one so I pled no contest.

Q. And you said when Mr. Dejong

questioned you that the last time that you got out of jail for domestic violence was a couple of months ago?

A. Right. It was for failure to go to the Casa classes, which I didn't know that I had to go to any. I think it was the anger management classes but I didn't know that I had to go to any. I spent thirty days in Orangeburg County.

Q. So you failed to go to your anger management classes?

A. Well, I didn't know that I had classes. It was for the one that I pled no contest to. They were supposed to contact me and I never got contacted.

Q. But you've had the same phone number forever?

A. Yes, sir. Well, not forever, just since April of '14, I think.

Q. Would you say that you have a bit of temper at times?

A. I would say no. Ninety-five percent of the time, no. If somebody were to want to fight or something, I would not back down. But I wouldn't say that I like to fight or

anything.

Q. So you said that you were mother and father to all the kids, that you would brush their hair, bathe them -- did that include Ericka? Did you bathe MINOR CHILD?

A. No. She was old enough to bathe herself. All of the kids would bathe themselves. I would just tell them to go get a bath. Her mother had to show me how to do her hair, so that I could do her hair in the mornings. She would come home from school crying because people were picking on her because her hair was nappy and looked like garbage.

SOLICITOR JONES: I beg the Court's indulgence -- no further questions, Your Honor.

JOHN DEJONG: Nothing on redirect, Your Honor. Step down, Mr. Bagwell.

(WITNESS STEPS DOWN)

JOHN DEJONG: The defense rests, Your Honor.

THE COURT: Ladies and gentlemen, the defense has rested their case. We will now have to take another break. Please return to

your jury room. Again, do not discus the case. We will bring you right back out as soon as we figure out our schedule.

(JURY OUT @ 10:25 A.M.)

THE COURT: Are you anticipating any additional evidence from the State?

SOLICITOR JONES: Your Honor, I don't think so but I would like a couple of minutes to kind of collect my thoughts.

THE COURT: We'll take a break. If you are, then we will go ahead and discuss jury charges and all that stuff.

SOLICITOR JONES: Yes, sir.

THE COURT: All right, we will be at-ease for a few minutes.

(BRIEF RECESS)

(IN CHAMBERS CHARGE CONFERENCE)

(DEFENDANT PRESENT)

THE COURT: Is the State ready? Anything before we bring the jury in?

SOLICITOR JONES: The State is ready, Your Honor.

THE COURT: Defense? Anything before we bring the jury in?

JOHN DEJONG: Ready for the Defense,

Your Honor. For the record, I would renew all Motions, the Motion for a mistrial and our Motion for a directed verdict.

THE COURT: And I deny those on the grounds stated. Anything else?

JOHN DEJONG: No, sir, Your Honor.

THE COURT: Bring in our jury.

(JURY IN @ 11:25 A.M.)

THE COURT: All right, ladies and gentlemen. I appreciate your patience.

The defendant rested and the State is not putting up any additional evidence, therefore that is the close of the case as far as all evidence that will be presented to y'all.

Then we had to take some time to determine, you know, make sure what the law I will be charging you was.

So as I said, all the evidence has been presented and now we will have closing arguments by the attorneys. I remind you that this is not evidence, it is their summation or arguments about the case.

Then I will charge you on the law applicable to this case. Then you will retire to your jury room and begin your

deliberations.

At this time, I would ask that you devote your attention to the attorneys. Mr. Jones.

SOLICITOR JONES: Thank you, Your Honor. Did this look like it was fun for MINOR CHILD? Did she look like she was having a good time when she testified? Walking in this courtroom and telling a bunch of strangers about sexual abuse? Standing in the same room with David Bagwell?

Did she enjoy it when that defense attorney got up and asked her questions?

Absolutely not.

If you would believe that MINOR CHILD made this up, she'd have to have been a eight or nine-year-old evil genius. At eight or nine years old she concocted a plan to charge David Bagwell with criminal sexual conduct with a minor in the first degree.

She was so angry at David for beating her mother that she wanted him gone and she knew that DSS was going to come to her house, completely unannounced. You heard what DSS said, that it was an unannounced visit. Did she call that mother and tell her that she

was coming? (Negative gesture). Did she call that grandmother and tell her that she was coming? (Negative gesture). Nobody in the house knew that Rebecca Mosely from DSS was going to come. But MINOR CHILD, the evil genius, knew that she was coming?

She talked to the DSS agent, no other adults in the room, and she told her that she was sexually abused.

Then about a month later she went to a forensic interview and she talked for thirty, maybe even forty minutes, about domestic violence, violence in the home, until the forensic interviewer brought up 'any other type of abuse?' Then she finally started talking about the sexual abuse because she knew that would be more important?

Then two months later that child met with a pediatrician and told that doctor the exact same thing, that she had been tied, that he had held her eyeballs open while he forced her to watch pornography, that he kept pornography under the bed. That he repeatedly told her that he'd kill her if she told anyone, and that he threatened to kill

her family as well.

Then the child is taken away from her family, taken away from her mother for three years. For three years she maintains the story.

Then she comes in here and she said the same thing. In her cross-examination testimony, she said the same thing.

The truth of the matter, what has happened to the child is horrific:

She was sexually abused in 2009. She told law enforcement, she testified and that man was convicted.

She lived with her mother and David Bagwell and endured domestic violence throughout the home. Then finally when a third party authority gets her by herself, the DSS agent, the child tells her what is happening. She has maintained that story to today, because it is the truth.

If all Ericka wanted was to get David out of the house, remember the timeline of when she disclosed. He testified that in April he was gone, he was already living with his new wife, he wasn't in the home. Yet in May she

tells DSS because she wants him gone? That doesn't make sense, because he already is gone.

What about this mother? This mother had multiple partners who lived in the home, that exposed her to sexual abuse as a nine-year-old. Obviously it's -- it is what it is.

If you want to believe that MINOR CHILD maintained the lie for years on end to protect that mother, (negative gesture), it doesn't make any sense.

It appeared that the defense attorney was questioning MINOR CHILD, trying to imply that because MINOR CHILD witnessed the domestic abuse that she was mad at David. She was so mad at David that she watched this domestic violence, watched him beat her mother, that that was her motive to lie?

Then the defendant got on the stand and said there was no domestic violence, none whatsoever. 'I am the perfect father.'

Which one was it? Was there domestic violence and the child had a motive to lie? Or was there no domestic violence and he was the perfect father?

That child had never watched that forensic interview. She had never talked to the police herself. She had never looked at that pediatric report. She came in and testified to the same thing: tied up on the bed, put his mouth on her vagina, forced to watch pornography. I think Shauna Galloway-Williams put it as "core contextual details." That is what she is talking about when she says core contextual details.

We all know how difficult it is to remember things in the past as adults. Think about a child. Think about a child that has lived in almost ten homes in three or four years.

The defendant's testimony was that he had been the perfect father, the perfect husband, that he took care of everybody.

Pled guilty to domestic abuse charge though he'd never assaulted anyone. He had been in and out of jail. He didn't complete his anger management classes because nobody called him. Like in this case, 'I was available but the cops just never called me. They didn't want to talk to me.' That is not

what J.B. Kelley said, 'Yeah, I called him multiple times, left messages.' It was always somebody else's fault. He had a lot of excuses.

He lied about that just like he lied about not sexually abusing MINOR CHILD, not tying her to the bed, not showing her pornography. Think about the credibility of that.

The judge is going to tell you that the credibility of each witness is totally up to you. You can believe all of what a witness said, parts of what a witness said, or nothing that they said.

Think about why people lie. They lie to gain a reward or to avoid punishment, don't they? Children on up to adults. An adult might lie on a resume to get a better job or pay less taxes.

What did MINOR CHILD gain? What punishment did she avoid? Being taken from her house for three years, living in a foster facility? Seeing her brother once a month?

At any time in those three years she could have said, 'Wait a minute, Time-out, guys. I made this stuff up, it didn't

happen. It didn't happen. Send me back to my mom, send me back to my brother, let us put our family back together.'

As I said before, she didn't need to say this to get David Bagwell out of the home. He was already gone.

She said it because it is the truth.

What about David Bagwell? Was anything he said truthful? Was anything that he said true? What reason does he have to lie to y'all?

I spoke to you in my opening about the nature of sexual abuse, that unlike other crimes there is no surveillance video; there is no third-party witness, a neighbor who saw somebody stealing the car; there's no fingerprint left on an object. It is just the defendant and the child. So they are very difficult cases for law enforcement.

Shauna Galloway-Williams has tremendous education and training in the field of child sexual abuse, child sexual abuse disclosure and dynamics. She mentioned how long she has been in practice, how many children that she has talked to, how many sexual abuse cases

she has dealt with. In all her years and with all her training, she told you about common factors in families where sexual abuse occurs: single mother, multiple partners coming in and out of the home, leaving your child with third parties; domestic violence in the home, abuse in any way more likely leads to sexual abuse; if you are sexually abused once you are more likely to be sexually abused again if you are not removed from that situation. We heard that MINOR CHILD was not removed from that situation.

Why did it take some time for Ericka to disclose? Shauna Galloway-Williams touched on that as well:

The defendant was married to her mother, her mother had had multiple partners. It sounds like they had a rocky relationship at time but I'm sure that he made the mother happy at times.

She is a child. She goes to school, she had other friends, they had fathers, she wanted a father. He's an adult, he's an authority figure in their house.

The mom was gone, I am sure at times he

did make her food, put her on the school bus, acted like a father. How difficult is that in a child's mind to understand, that this person who is a father figure is also sexually abusing her?

He threatened to kill her, 'I will kill your family, I will get away with it.' A threat from a man who you have seen beat your mother, drag your mother off the couch and slam her head into walls. Do you think she believed him?

Then what happened? In April he left the home with another woman. He's gone. The threat is gone. DSS came at just the right time. She felt safe to tell DSS what happened.

This case has all of those things, aspects of disclosure, that Shauna Galloway-Williams talked about.

Let's think about for a second the difficulty in coaching a child to say these things. You can imagine the training and experience that you would have to have to tell a child what to say, how to say it to ensure that the child told authorities in

child-like terms. For a child to maintain the same consistent core contextual details over time to DSS, to a forensic interviewer who is going to ask an hour and a half worth of questions, to a pediatrician, and to you three years later on a witness stand.

The difficulty in telling a child 'when you talk about pornography, make sure that you say that it is, like, R-rated.' Because a child knows that R is bad, that they can't watch; pornography is bad, so it's got to be R-rated. Make sure you say that he held your eyes open. Make sure to say that he kept his pornography underneath the bed.

'Make sure that you say he tied you down and tried to touch you, but you wiggled so much that you don't think he could put anything inside you, that he put his tongue on your vagina. Don't call it your vagina.' Think about how difficult that would be, to coach a child. Think about how impossible it would be for a child to repeat consistently over years, to multiple people.

Dr. Croswell testified as a pediatrician who practices and evaluates child sexual

abuse. She testified that in the vast majority of case, in the vast majority of sexual abuse cases that you do not see any signs of penetration, you do not see any physical symptoms of sexual abuse.

Quite frankly, in a case where an adult puts his mouth on the vagina of a child, you wouldn't expect to see any type of damage or injury to the child physically.

She also told you a few things that the child told her. Keep in mind the time from when the child told Dr. Croswell those details to today, how a nine-year-old could keep all that straight.

She kept it straight because it's the truth.

The judge is going to go over with you the elements of the offense. I mentioned them to you in my opening. The defendant is charged with criminal sexual conduct with a minor in the first degree. We have shown that the defendant committed a sexual battery on the victim, who at the time was under the age of eleven years. MINOR CHILD told you her birthday and at the time of the abuse she was

under the age of eleven. She accused the defendant of performing oral sex on her, of putting his mouth on her vagina. That makes this criminal sexual conduct with a minor in the first degree.

Dr. Croswell also told you the difficulty of a child knowing when an adult touches their vagina what is penetrated and what is not. Remember that the statute says "however slight." He touched her vagina with his hand. If he penetrated, however slight, that would also be criminal sexual conduct with a minor in the first degree.

The judge is going to give you the definition of "beyond a reasonable doubt." You hear that all the time if you watch *Law & Order*, and other shows, "beyond a reasonable doubt." But what does it mean? The judge is going to give you a fairly lengthy definition. Part of what he is going to say is that there are few things in this world that we know beyond all possible doubt. In this particular case, the evidence doesn't have to be beyond all possible doubt. It has to be beyond a reasonable doubt.

I want you to remember when we started the trial that the clerk asked you to take an oath. You stood up and you swore to tell the truth. You didn't swear to look for reasonable doubt. If reasonable doubt were here, you wouldn't have to look for it, you'd see it. You don't see it because it's not here.

Think about all that this child went through her entire life. It's a tragedy. Sexually abused at eight or nine. She testified. Lived with her mother who brings multiple partners in the home, and another partner sexually abuses her and she is taken away from her family.

Why does she maintain the story? Not because she has some motive to punish David. It's not because her mother told her to say things. She maintained the story because it's the truth. Thank you.

THE COURT: Mr. Dejong.

JOHN DEJONG: Thank you, Your Honor, may it please the Court, Mister Prosecutor, Mr. Bagwell, ladies and gentlemen of the jury.

At the outset, ladies and gentlemen, let me say this, that David Bagwell is not on trial for domestic violence. You heard a lot of testimony as to that, that is not what this case is about. Obviously there were some dynamics in this family, maybe we could say dysfunctional dynamics in this family, but he is not on trial for domestic violence.

What he is on trial for, His Honor shared with you yesterday in the Indictment: criminal sexual conduct in the first degree. That is what he is on trial for. This other stuff does have bearing on the case but it is not what he is on trial for.

Additionally, ladies and gentlemen, while we are in that vein, when Mr. Bagwell testified, he shared with you that he has a prior criminal record. Now, His Honor is going to give you the law. I am not the law giver, Mr. Jones is not the law giver. His Honor is the law giver, so you take the law from him as you hear it. But I believe that he will charge you somewhere or somehow along the lines that the fact that his prior criminal record was brought out in this trial

is not to be used by you to determine Mr. Bagwell's guilt or innocence in this case. The only thing that you can use that for, if you use it for anything, and that is totally up to y'all, but the only thing that it can be used for is, as we often say, that it goes to his credibility or his believability. Yes, you may use it for that. I believe His Honor's charge will include that.

But, again, the same as all the talk about the domestic violence, neither of those are what he is on trial for.

Now, in this case -- and you have now, as His Honor shared with you, you have now heard all the testimony and seen all the evidence that has been admitted in this case.

Basically what this case boils down to, ladies and gentlemen, is the alleged victim's testimony against David Bagwell.

Yesterday the alleged victim made it clear on the witness stand that she did not like David Bagwell, that she wanted David Bagwell out of the house, she wanted David Bagwell to go to jail for a long time.

There was no question that the alleged

victim in this case was a victim in a prior sexual abuse case. Again, I say that certainly not to ask for sympathy for her, because that would be a violation of your oath, but I say that because children learn. I think even the State's expert finally agreed with me that they learn from their prior experiences. I submit to you, ladies and gentlemen, that this alleged victim in this case went through the basic same process in that case as she has gone through in this case. So in one sense, there was nothing new to her in this case because she had been through it.

Yesterday when she was on the witness stand, she talked about a red rope and a red leash. I ask you to hold that thought for a moment, because as I recall that's what she said on the witness stand.

I add parenthetically there that me saying what I heard from the witness stand, if you heard something different, you take it the way that you heard it. I would not intentionally try to misstate what was said or what you heard. Sometimes we hear things

differently, so I just share that with you.

Also she testified yesterday, as I recall, that she had made these same allegations earlier, in the month of December, 2013.

SOLICITOR JONES: Your Honor, I would object to that.

THE COURT: I think you need to -- I'll sustain the objection.

JOHN DEJONG: May I be heard, Your Honor?

THE COURT: I think we need to send the jury out then.

JOHN DEJONG: Pardon me?

THE COURT: I think we need to send the jury out then.

JOHN DEJONG: That's fine.

THE COURT: Ladies and gentlemen, I would ask you -- this is -- I know it is the middle of the closing statements but there is a matter that we need to address. If you would, return to your jury room. We will be with you shortly. Do not discuss the case.

(JURY OUT @ 11:53 A.M.)

THE COURT: First of all, please repeat what you said.

JOHN DEJONG: She said on the witness stand yesterday, Your Honor, that she had made these same allegations in December of 2013.

THE COURT: I don't remember the specifics.

SOLICITOR JONES: Your Honor, she did not say that. She said that she did not remember. He kept asking her -- the child was very confused during the cross-examination. He kept asking her that but the child said, 'I don't remember.' 'I don't remember.' He kept asking her about making allegations previously and her only response was that she did not remember.

THE COURT: I don't -- was it during your cross-examination.

SOLICITOR JONES: She did admit that she had told her mother previously but he's trying to get back into December that she said it happened.

THE COURT: Ms. Garrison (court reporter), can we find ---

COURT REPORTER: --- her testimony?

THE COURT: Yes.

LAW CLERK: It was in the cross-examination, right after cross started.

COURT REPORTER: Yes, sir. The reference to December was in the cross-examination by Mr. Dejong (audio replayed):

Q. So let's now back up a little bit, Ericka. When you made -- when you said that David was touching you, do you remember what town that you lived in?

A. I remember one was in Pickens and the other was in Branchville.

Q. One was where? I'm sorry, dear.

A. One was in Pickens, one was in Branchville.

Q. I'm sorry?

A. One was in Pickens and the other one was in Branchville.

THE COURT: See if you can adjust her microphone so that we can hear her.

COURT REPORTER: (Adjusts microphone).

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. The house that you lived in before the one where you told the lady that David had been touching you, the house before, do

you remember telling your mom that David had been touching you?

A. Yes.

Q. All right. And to your knowledge, if you know, did your mom go to the police?

A. Yes, sir.

Q. After that, after your mom went to the police, do you remember what you told your mother?

A. I'm sorry?

Q. Did you tell her it wasn't true?

A. (No verbal response).

Q. Did you tell her that it wasn't true, that you'd said it because you were mad at David because he'd taken your X-Box away from you?

A. I don't remember having an X-Box.

Q. A PlayStation or anything that, anything else?

A. No, sir.

Q. You just don't remember?

A. No, sir.

Q. Okay. All right. So -- well, when you say that David was doing these things to you, where was your brother?

A. He was either in the living room watching cartoons or outside playing.

Q. This is kind of an old house, wouldn't you say?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. And the inside doors were all just like normal inside doors; right?

A. Yes, sir.

Q. There was nothing special about any of them, was there?

A. Not really. They were thicker.

Q. I didn't hear you.

A. They were thicker.

Q. Okay. Well, let me back up again. The house that you lived in before you told the ladies that David was touching you, when you told your mom in that house, did you tell your mom the same thing?

A. The same thing as what?

Q. What you've told us today, did you tell your mom that in the house that you lived before?

A. Yes, sir.

Q. The very same thing?

A. Yes, sir.

Q. All right. And -- well, let me ask you this, MINOR CHILD. If you know, after you told your mom all of that, do you know if anybody was arrested?

A. No, sir.

Q. You don't know or no one was arrested?

A. I don't know.

Q. But after you told you mom that, and that was in the house before, nothing happened with that one; did it?

A. Nothing happened with what?

Q. When you went to your mom before this time, before you talked to the lady down in Orangeburg, the house that you lived in before, you said that you told your mom that he was touching you. Right?

A. Yes, sir.

Q. And I believe that you just shared with us that you told your mom that he did what you've shared with us today. Is that correct?

A. Yes, sir.

Q. All right. Then -- do you remember when that would have been? Could that possibly have been around Christmas?

A. I don't remember, sir.

Q. Well, let's talk a little bit about what was going on in your house. Did David and your mom get along?

A. Not really.

Q. Were there ever any fights in the house?

A. Yes, sir.

Q. And just so that we're all sure, David is not your real dad; is that correct?

A. Yes, sir.

Q. Okay. I believe -- let me back up here. Do you remember now when you made -- when you said that David was touching you, that was in the house in Orangeburg. Can we agree that was in Orangeburg?

A. Yes, sir.

Q. Let me ask you this, what we're here for today, who did you tell that to?

A. To my mom.

Q. Anybody else?

A. My brother.

Q. Your mom and your brother?

A. (Affirmative nod).

Q. All right, so let's come back to where we were. So your mom and your dad did a lot of fighting?

A. Yes, sir.

Q. You didn't particularly like David, did you?

A. No, sir.

Q. And indeed you -- because you thought David had hurt your mom, you wanted him out of the house, didn't you?

A. Yes, sir.

Q. More than that, you wanted David to go to jail; didn't you?

A. Yes, sir.

Q. He even went to jail for a little bit one time; isn't that right?

A. Yes, sir.

Q. And then when you -- do you remember talking to this lady -- not on the Bobby McCann case, but do you remember talking to the lady in the little room where they said you were -- that there was a camera, do you remember that?

A. No, sir.

Q. Do you remember her name?

A. No, sir.

Q. You do or don't? I'm having a hard time hearing you.

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. So you don't remember telling her that you had pictures on your tablet and you were going to take them to court with you and show the judge?

A. (No verbal response).

Q. You don't remember that?

A. No, sir.

SOLICITOR JONES: I would object to that question. He is intentionally trying to confuse the witness. He knows that she was not talking about this particular case when she talked about those photographs.

THE COURT: All right.

JOHN DEJONG: I think I was talking about a video, not photographs but -- okay.

CROSS EXAMINATION CONTINUED

BY JOHN DEJONG:

Q. You just don't remember talking to this lady at all is what you're telling me?

A. (Affirmative nod), no, sir.

Q. Now, so you had told your mom before that David had been touching you, but nothing happened; right?

A. Yes, sir.

Q. Then David didn't go to jail then, did he?

A. No, sir.

Q. Did that make you angry?

A. I guess so.

Q. Because you wanted David to go to jail, didn't you?

A. Yes, sir.

THE COURT: All right. Thank you.

(PLAYBACK CONCLUDED)

THE COURT: Okay. Bring the jury in.

(JURY IN @ 12:08 P.M.)

THE COURT: All right, ladies and gentlemen, sorry to have to break in the middle of that. One of the things that we had to do is determine what her testimony was. But it is up to you to determine, as always, what you recall the testimony is.

Mr. Dejong, you may continue with your argument.

JOHN DEJONG: Thank you, Your Honor, may it please the court.

So let's come to the video and talk about that a little bit, remembering that the alleged victim in this case, who had already been through this once, I submit to you knows the magic buttons and everything else.

The first thing that I would note about the video is that when the examiner/ interviewer, whatever you want to call her, asked her if she knew why she was there, her response was, as I recall, 'Mom sent me to talk about David.' Then for the next fifteen or twenty minutes, however long it was, she talked about all the domestic violence that had taken place in the household. There was not one word about sexual molestation, touching or anything else at that point in time.

If you noticed in that video, she was quite talkative, quite forthright in talking about all of that. When the interviewer shifted gears, she became very reticent,

hesitant, took a long time to answer questions. Remember, she had been through this once before.

Then, again, it was a bit confusing as to whether David had threatened her or whether it was a secret or what exactly it was. She alleges that David had touched her, that something had happened along with the domestic violence issues but, again, we don't know.

Now, in the interview she talks about being tied up. She talks about one rope, she talks about a lime green rope. Yesterday, as I mentioned a few moments ago, she talked about a red rope, a red leash or possibly a tan leash.

Now, the expert that the State brought before you talked in vast generalities, 'what happens here, what happens there.' She did not talk about what happened in this particular case because she couldn't.

She agreed that there are false allegations. As I recall, she agrees that children can be manipulative. One thing I did find fascinating in her testimony, if I

recall correctly, was that she said that adult can be equally manipulative -- she didn't say equally manipulative. She said adults can be very manipulative to get what they want. As I recall, she said that -- she, the victim, on the witness stand -- mom was very upset and angry with David.

The part that, I guess, really puzzles me is the sequence or lack of sequence of events, as they alleged occurred as stated by the alleged victim in the interview.

She says that she was tied up, said that her arms were tied at her sides. So that David tied her so that she couldn't move. She repeatedly said, 'I was wiggling, I broke some of the ropes', although at one point in time she said she could not remove the ropes, she said that she'd broke some of the ropes. She was wiggling so much, as I recall, that David 'couldn't really do anything.'

Again, yesterday she talked about the ropes -- whether it was tied to cinderblocks or not, I don't remember. You take it the way that you heard it, but there was certainly no mention of cinderblocks in the

interview.

Now, the expert, I submit to you, -- and, okay, she has education, she has training, she's got everything -- not everything, but training. She came in here and talked in generalities. We are not here today, we have not been here for the last two and a half days to talk about generalities.

She said that children can pretend, she admitted that children can lie, she admitted that children can be manipulative, which they do.

Then she talks about her clothes being cut off. This is another strange one to me. She alleges that David cut off her shirt, cut off her pants and he burned them. Then what did she say? That he throwed them in the woods? Now, folks, if I am going to burn anything, I am going to burn underwear, not her shirt, not her pants. But even if you were going to burn the shirt and pants, why not burn the underwear also? Where they were burned, we have no idea. She did say the woods behind the house. Again, we didn't hear anything from law enforcement say 'well,

maybe we should have gone and looked in the woods.' Nothing was none. Indeed, law enforcement -- as I recall -- never even attempted to talk to Mr. Bagwell. They might have attempted once but -- Detective J.B. Kelley, I don't remember exactly what his testimony was but you heard that but he said he attempted to talk to Mr. Bagwell but he never was able to talk with him.

Now, sometimes in all of the -- (coughing), excuse me. An alleged victim can be quite spontaneous sometimes in relating details.

The expert said that they watch for contextual core details. Well, when we start talking about that, the interview she just very gratuitously threw in that David told her that the only reason that he'd married her mom was for her. Remember, -- I don't remember the dates that came off the witness stand but David and the mother had been together for a number of years. Perhaps it was a tumultuous relationship towards the end but, nevertheless, they were together for a number of years.

Then you talk about, I guess, gratuitous spontaneity, when she was talking with Dr. Croswell, -- she being the victim in this case -- now she spontaneously throws out something totally different. Now she throws down that she was asleep, as I recall, in her bed and moved to her mom's bed, David's and mom's bed, or whosever it was. At that point in time there was no mention of locked doors or anything else, she just said 'I was moved.' Now, then, she alleges that he abused her at that point in time.

You know, it's like the expert comes in -- experts come in and try to justify what is inconsistent in these cases. You've got the case as a whole and this particular case -- again, not generalities, -- the -- and another thing that I noticed in the video when she was talking, she the alleged victim, was talking about the touching. She says that David had her tied up, had her tied up real tight. Then the examiner asked her about touching on her rear and private parts. The child had to think about that one for a moment. So now she says that David untied

her when he did that. Again, that is the sequence of events that I don't understand. I submit to you that there would be some remembering of the sequence of events.

Then in that same vein, and I do not mean to be crude, but this was on the video, the alleged victim said she peed on him and on the bed, then he leaves the room and then he come back. Is this the sequence of events or is this some grandiose story that this alleged victim has come up with because she wants David Bagwell to go to jail, according to her testimony, "for a long time."

Also in that testimony -- and I asked Ms. Shauna Galloway-Williams, the State's expert, if children like to please. I think her response was that yes, by and large, children like to please adults. In the interview, as the interviewer was going through this, there were times that the young lady, the alleged victim, would say 'I don't remember' or 'I don't know.' Now, the interviewer does not accept that as an answer. She keeps pushing, keeps pushing, keeps pushing and ultimately I suggest to you that this child wanted to

please the interviewer, so she had -- she felt like she had to come up with an answer to that question.

And in that interview, it's almost like there are two separate interviews; one where the interview is just with the interviewer and the alleged victim. Then we shift gears and we go to the anatomical dolls. Again, if you look at that -- in my opinion, there are some pretty big differences when she starts dealing with the anatomical dolls and what she told the interviewer to begin with. I would just ask you to consider that and to remember that.

As I remember the testimony yesterday, there was nothing as to penetration. His Honor, I believe, is going to charge you on both criminal sexual conduct first degree and on criminal sexual conduct third degree. If you find that there was no penetration, which I submit there was no testimony about, then you're thrown into the criminal sexual conduct third degree. Just for purposes of this statement, Mr. Bagwell, if he is guilty of anything, which I submit that he is not,

but if he is then I submit what it would be is criminal sexual conduct third degree.

The credibility of the witnesses, again we talked about that a little bit -- seems like a long time ago, Monday. Just a little bit more on that, you can believe all of what a witness says, you can believe none of what a witness says, you can believe some of it. That is up to you.

In particular, one of the things that you can use is to look at the witnesses is the demeanor of the witnesses, how they questioned, the way that they answered questions.

Now, Mr. Jones, when he was up here a few minutes ago asked why do people lie. It's an obvious question, but he answered 'to gain a reward.' There was a reward for the alleged witness. That reward was that she wanted David Bagwell to go to jail for a long time.

SOLICITOR JONES: Your Honor, I would object to that.

THE COURT: Overruled.

JOHN DEJONG: David was in and out of the home, even -- I believe he was in the

home with the children, according to his testimony, in 2014. So he was certainly in and out of the house in whatever kind of relationship this was. So where that leaves us is that there is no other evidence in this case, no physical evidence, and that always fascinates me too. Dr. Croswell comes in and goes to these great lengths to say, 'well, in a sexual abuse case we don't often find physical evidence.' But they don't want to agree that the fact that they don't find any physical evidence or medical evidence is because it didn't happen. They will not agree with that, at least I couldn't get her to yesterday, as memory serves me.

Again, these folks come in and here say 'well, you might not have this', 'you might not have any physical evidence, but that doesn't mean that it didn't happen.' They also say it could be made up. There's a reason for making it up.

Again, Shauna Galloway-Williams talked about coaching. This child didn't need to be coached. She'd been through all of this before, unfortunately. But she knew what to

say, how to say it, when to say it.

Reasonable doubt. His Honor will charge you on what is reasonable doubt. Take the law from him. I think his charge is along the lines of, 'If you are firmly convinced that Mr. Bagwell is guilty, you have to find him guilty. But if you think there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of that and find him not guilty.'

Yes, that is the difficult position that y'all are in. However, today, ladies and gentlemen, you are absolutely perfect. Whatever your verdict is, no one can question you. Whatever your verdict is, you don't have to defend it. It is your verdict. Nobody can question you or your verdict, that's the end of it.

It is David Scott Bagwell's day in court and that, ladies and gentlemen, is in your hands. So I would ask you to look at the totality of this case. You've heard all the testimony, so you now have to make the ultimate decision in this case.

I would ask you to look at the totality

of the case and determine, number one, which I do not concede that he is guilty but if he is guilty of anything it is criminal sexual conduct in the third degree. I submit to you that he is not guilty of anything. On behalf of Mr. Bagwell, I ask you to bring back a verdict of Not Guilty both on criminal sexual conduct in the first degree and on criminal sexual conduct in the third degree.

I am not going to belabor the point anymore. I am going to sit down and hush. You have been a tremendously attentive jury throughout this trial and I appreciate that. Again, on behalf of Mr. Bagwell, I truly, truly appreciate you being here for the last two and a half days.

THE COURT: Mr. Jones.

SOLICITOR JONES: Thank you, Your Honor, may it please the Court.

Defense counsel made much that the child had abused before, had testified before. He apparently thinks that she is and evil genius. A nine-year-old evil genius who has maintained a story for years just to get David Bagwell out of the house, even though

he was not in the home when she made the disclosure.

A child who had been through all of this before, who had been cross-examined, who had been in therapy, thought that such a wonderful experience that she wanted to do it again?

Think about what that child went through. Was this fun for her? Did she get a reward?

Also Shauna Galloway-Williams testified that in her experience and training and articles that she's aware of that if you were sexually abused once, you are more likely to be sexually abused again.

According to Mr. Dejong, if you're sexually abused once you can't be believed because you know "the magic buttons."

You will have the video available to you to review, you will have the photographs available to you for review.

Mr. Dejong mentioned several things that he thinks he remembers about the testimony, but I submit to you that he is incorrect. The forensic interviewer asked her, around the eighteen minute mark, 'why are you here

today?' She says something about David and then for the next thirty or forty minutes she talks about the abuse, where they lived, all that sort of stuff. Then around the forty-two minute mark the interviewer asked her about any other type of abuse. That is when she gets real quiet. It's something that she didn't want to talk about. She knows that she has been victimized. She's embarrassed. But according to defense counsel she just knows the "magic buttons."

If she knew the magic buttons, why wouldn't she have gotten into the forensic interview and in the first place start talking about the sexual abuse?

If she knew the magic buttons, why would she say that he didn't really penetrate but that he did put his mouth on her and wiggle his tongue?

If she made this up and wanted to punish David Bagwell, why didn't she give these facts?

Defense counsel also talked about the problem with the sequence that the child told of the sexual events. At one point she told

the pediatrician there were times when she would wake up in the bedroom with David. At other times she said that she was tied down, after she got out of school but before her mother got home from work.

But what she did say was that she was abused on more than one occasion. This child moved to ten different places in three to four years. Sexually abused on more than one occasion. Do you think those sexual abuse locations might have run together a little bit?

Do you think it might be difficult for a nine-year-old or a ten-year-old to articulate the exact sequence of what happened during the sexual abuse?

We don't need Shauna Galloway-Williams to tell us that it would be difficult for a nine-year-old to tell you the exact sequence of events on every particular day, at every particular address, of how the sexual abuse occurred.

Defense counsel also makes a big deal that children like to pretend. That you could never believe a child. That's absurd.

That child testified and she said that she knows the difference between right and wrong.

You're the sole judge of the credibility of that child. I want you to think of the totality of the circumstances of her credibility, her entire story.

Shauna Galloway-Williams didn't read any of the reports, she didn't interview this child, she didn't know anything about this case. She talked to you about her training, her experience and her education. She knows nothing about this particular case. Yet every article that she cited, every factor, every element of sexual abuse came directly, related directly to the facts of this case. Why is that? Because the child was sexually abused. It is not just some crazy coincidence.

Defense counsel also wanted to make a big deal out of that MINOR CHILD said that she wanted the Defendant to be punished. She sat here and told you that he sexually abused her. What would you expect a child to say? Of course she does.

You can watch the video and see for

yourself if you think that this child is just trying to please the interviewer and that she was being coached. The interviewer would repeat what the child was saying to her to clarify what the child was saying. On several occasions the child did clarify, 'no, no, I meant this.' Each time the interviewer said 'thank you for clarifying, that's important.' Remember, the interviewer goes over that in the beginning of the interview.

The interviewer did not suggest one detail to that child. You all watched the video and you'll have it back in the jury room and you can watch it again if you need to.

Criminal sexual conduct in the first degree, part of the offense is cunnilingus, fellatio. That's oral sex. Cunnilingus is oral sex performed on a female, that's what happened in this case. These are not things that people discuss in polite conversations but it is necessary to know in this particular case.

Defense counsel said that if he is guilty of anything that he is guilty of CSC with a

minor third. There is no "if" about it. David Bagwell is guilty of criminal sexual conduct with a minor in the first degree.

Since defense counsel mentioned it, when I talked about credibility, why do people lie? Remember what happened to the child after she disclosed. Was she rewarded? No. Did she escape some punishment? No.

David Bagwell, what does he have to lose?

Defense counsel very briefly mentioned punishment. Punishment is not to be discussed at all. You are to determine the facts or whether this happened or not.

And I want you to remember this as you discuss what happened, and I know that this is a very difficult topic to talk about, it hasn't been fun for y'all either, but when you go home you're going to try to forget about this case. Nobody likes to think about sexual abuse occurring in our society, to our children. But it does. It did to MINOR CHILD and David Bagwell is the one who sexually abused her. Her mother did not protect her but you can give her justice and you can let her know that people in the

community will not stand for this, that when an adult sexually abuses a child that they are found guilty. Thank you for your time.

THE COURT: All right, ladies and gentlemen, now you get to hear from me. It is my job now to charge you on the law of the case that applies in this matter.

First of all, the indictments charge the defendant with criminal sexual conduct with a minor in the first degree. I remind you that the fact that the defendant was arrested and charged in this case is not evidence. It cannot be considered by you as evidence of his guilt, not does it create any presumption of any inference of his guilt.

Indictments, the document that you have heard referenced, are simple formal written documents to bring a matter to court. That is the only thing that it is to be used for.

The defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the Defendant guilty, prove him guilty beyond a reasonable doubt.

I charge that it is an important rule of law that a defendant in a criminal trial, no

matter what the seriousness of the charge may be, will always be presumed innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you, the jury, of his guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations but accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness around his shoulders, which remains with him until it is stripped from the defendant by evidence again satisfying you of his guilt beyond a reasonable doubt.

The presumption of innocence is not merely a legal theory, it's not just a legal phrase. It is a very important and substantial right to which every defendant coming into any courtroom is entitled to unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a

reasonable doubt.

So what is reasonable doubt? You have heard that term quite a few times, so let me define for you what reasonable doubt is. Reasonable doubt is that doubt which would make a honest, conscientious juror searching for the truth in a case to hesitate to act.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt.

There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty.

If on the other hand you find that there is a very real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

As I told you in the beginning, you and I have difference roles in this trial. As the

trial judge, it is my responsibility to preside over the trial of the case. I also have the duty to rule on the admissibility of evidence that has been offered during the trial.

You are to consider only the competent evidence which came from this witness stand, the documents introduced into evidence and any stipulation. If there was any testimony or questions stricken from the record during this trial, then you must not consider that in your deliberations. You are to only consider the testimony which has been presented here from this witness stand and which has been ruled on as being admissible.

I also have the duty to charge you on what the law is. Basically you took an oath that you would follow that law. You're to disregard -- if you felt like the law should be something different or if you were under the impression that the law was something different, or you were involved in a matter previously where you thought the law was different, then you are to disregard that and you are to apply the law which I am stating

to you right now.

In every case tried before a jury, you are the sole judge of the facts. That is a very important part of this. As a judge, I cannot intimate, I can't state, I can't comment, I can't have an opinion about the facts in a case. If anything that I did or that I said in any way made you think that I have an opinion on the facts or if I stated something that appeared to be an opinion on the facts, please disregard that. It is your duty to determine what the facts of this particular case are. The law does not allow me to have an opinion on the facts.

This is a matter solely for you. As jurors, it is your duty to determine the effect, the value and the weight of all the evidence presented during this trial.

Direct and circumstantial evidence, I want to discuss that with you. There are two types of evidence that are generally presented during a trial, direct evidence and circumstantial evidence.

Direct testimony is the testimony of a person who claims to have actual knowledge of

facts, such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

I usually like to give an illustration. Direct evidence is if you go home this evening and as you are getting out of the car it is raining. That is direct evidence that it is raining. But if you pull up, you go in your house and you come back out an hour later and it is not raining but the top of your car is wet, there are puddles, the ground is wet, then that is circumstantial evidence that it rained while you were in the house.

The law makes no difference to the weight or value to given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of

circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case.

After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Necessarily you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or you may believe several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part. You may accept the entire testimony or you may reject the entire testimony.

You are to consider whether any witness has exhibited any interest, bias, prejudice

or other motive in the case. You can also consider the appearance and manner of a witness while they were on the witness stand. In other words, you give it the weight that you feel is appropriate based on the competent experience of the twelve jurors.

There has been evidence presented that witnesses have made prior statements which are not consistent with the witness' present statement or testimony. You may use this evidence to decide whether to believe a witness. You may also use evidence of the earlier contradictory statement to determine the truth of those statements. It is up to you to decide to believe the earlier statement or the testimony given in trial.

If a witness has shown to have knowingly testified untruthfully concerning a material matter, you may consider this in determining whether to trust the witness' testimony as to other matters. You may reject all testimony of that witness of give all or part of the testimony the weight that you think it deserves.

You have heard evidence that the

You should consider any expert opinion received in evidence in this case like all other evidence and give it the weight that you think that it deserves.

If you decide that the opinion of an expert witness is not based on sufficient education and experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of any other witness simply because that witness was an expert.

Further, you are not required to accept an expert's opinion even though it may be uncontradicted.

We also had testimony of children during this trial, of a child. Where a witness is a child, you must determine, as with any witness, whether that testimony is believable. In deciding believability, you may consider not only matters that I have already discussed with you about witnesses

but you may also consider the age of the age, the child's ability to observe and remember facts, and the child's ability to understand and answer questions. Because a young child may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness in a criminal trial, whether the child understood the questions, whether the child has a good memory, and whether the child understands the difference between lying and telling the truth.

In addition, young children may be influenced by the way that questions are asked. It is up to you to decide whether the children understood the questions asked and, again, to give it the weight that you feel is appropriate.

The particular charge here is criminal sexual conduct with a minor in the first degree. In order for the defendant -- strike that.

The State, as I have said throughout, has the burden of proof. This is what the State has to prove beyond a reasonable doubt:

One, that the actor -- and I will define some of these terms in a minute. The actor engages in sexual battery with a victim who is less than eleven years of age.

A "sexual battery" is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

If you find that the State has not shown beyond a reasonable doubt that a sexual battery occurred, you would stop deliberating on this charge and your verdict would have to be Not Guilty as to the charge of criminal sexual conduct with a minor in the first degree.

If you find that a sexual battery did occur, you must then decide whether the State has proven beyond a reasonable doubt that the victim is less than eleven years of age.

Those are the elements of criminal sexual conduct with a minor, first degree.

If you find that the State has not proven that the defendant is guilty of first degree criminal sexual conduct with a minor, has not met the elements of that charge, then you must then determine whether the State has proved that the defendant is guilty of what we call a lesser-included offense of third degree criminal sexual conduct with a minor.

The elements for criminal sexual conduct with a minor in the third degree that a person -- again, this is a lesser-included offense if you find that they did not meet the burden on first degree. Third degree is defined as a person is guilty of criminal sexual conduct with a minor if the actor, which I have already defined for you, is over fourteen years of age and the actor willfully and lewdly commits, or attempts to commit, a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desires of the actor or of the child.

"Actor" means a person accused of criminal sexual conduct.

The word "lascivious" means tending to excite lust, lewd, indecent, obscene, sexual impurity, tending to deprave morals in respect to sexual relations.

The word "lewd" means obscene, lustful, indecent, and lecherous. The term imports a lascivious intent. It signifies that form of immorality which has relation to moral impurity in order to establish criminal liability, criminal intent is required.

For example, the mental state required to be proven by the State for a particular crime must be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty. There is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have

existed. This is how you make a determination of whether or not the element requiring intent was present.

It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or an indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

At this time, Mister Foreman, I am going to go over the verdict form with you. I'll ask the bailiff to hand you the form, (tendering).

First of all, the first part is just the

caption of the case with the Indictment number. It says Verdict Form.

The first question that you've got to answer is, number one, as to Indictment -- and it gives the indictment number -- "We, the jury, unanimously find the Defendant, David Bagwell,…" -- this is your deliberation on criminal sexual conduct with a minor in the first degree. You will check -- and pay no attention to the order, because I had to put them in some order. The first is that if you feel the State has met its burden on that charge, then you would check Guilty. Sign your name at the bottom. If you find that the State did not meet its burden on that charge, that the defendant is not guilty, then you would check "Not Guilty" and sign your name at the bottom.

If you find Guilty on the charge, then you've completed your deliberation.

If you find Not Guilty, then you go to number two, because that is the lesser-included offense that I talked about. Then you must determine if you feel that the State met its burden beyond a reasonable doubt

proving criminal sexual conduct in the third degree, a lesser-included offense of the first charge. If you find that it has, then you would check Guilty. If you find that the State did not meet its burden, that the Defendant is not guilty, then you would check Not Guilty.

When you complete your deliberations, you sign the verdict form.

Let me make sure that you understand, too, that your verdict must be unanimous. That means that all twelve of you must agree on the verdict.

Your verdict cannot be based on sympathy, passion, prejudice, emotion or any other consideration but merely on the evidence which has been presented to you.

What you are going to do is that you're going back there, you're going to deliberate and when you've reached your verdict, knock on the door and let the bailiff know. Then we will bring you back to the courtroom to receive your verdict.

A couple of other things. If you have any questions, Mister Foreman, your job is to

write that question on a piece of paper, date it, sign it and give that to the bailiff. The bailiff will present that question to me and I will respond to your question either in writing or by bringing you back into the courtroom.

I would also tell you that very often -- sometimes jurors will come back and ask to see some other document or hear some evidence or see some statement. The only thing that you can consider is the evidence that was admitted during the trial by the parties. We cannot supplement the record, it is the evidence that has already been presented.

I want to thank the alternate. You're like the backup quarterback. If nothing happens -- and you know that we have already had to use an alternate, so your role is very important. Unfortunately, under our law you cannot deliberate with the twelve jurors. So once the deliberations begin, you will need to step out.

Put the verdict form on the bar there.

FOREMAN: (Complies).

THE COURT: Now, I'm sending you back

to the jury room but you may not start your deliberations yet. I need to consult with the attorneys to make sure that I didn't miss something in my charge on the law or misstated something. If there is any additional part, I'll bring you back out and give you additional instructions on the law. If not, then you will receive the exhibits and at that point you may begin your deliberations, but not before. Okay. You may retire to your jury room.

Also, your lunch should be here. If not, it will be very shortly -- it's pizza.

If you have any questions, write them down.

(JURY OUT @ 1:00 P.M.)

THE COURT: Any exceptions or additions from the State?

SOLICITOR JONES: None from the State, Your Honor.

THE COURT: Any exceptions or additions from the Defense?

JOHN DEJONG: None on behalf of Mr. Bagwell, Your Honor.

THE COURT: Then if you will review the

exhibits, we will send them to the jury and they may begin their deliberations. If they want to send the video, they can send a note out and we will let them review it.

JOHN DEJONG: Are you going to send it back?

SOLICITOR JONES: They can't view back there but, Your Honor, just send it back.

THE COURT: Okay. They'll let us know if they want to see it.

(COUNSEL APPROVAL OF EXHIBITS)

(JURY IN DELIBERATIONS @ 1:10 P.M.)

(ALTERNATE EXCUSED)

(DEFENDANT PRESENT)

(NOTIFIED OF JURY QUESTION @ 1:50 P.M.)

THE COURT: We have received a note from the jury. I'm going to bring them in to answer it.

COURT REPORTER: Court's Exhibit 2.

(SO ENTERED AS COURT'S EXHIBIT 2)

(JURY INTO COURTROOM @ 1:58 P.M.)

THE COURT: Mister Foreman, I have received your note asking, (reading): "Is the tongue or the hand touching the outside of the vagina or butt considered first degree

criminal sexual conduct?" Then you've signed it and dated it today.

I think the way to respond to that is that I am just going to recharge you on just the elements of criminal sexual conduct with a minor, first degree.

Criminal sexual conduct is the actor engages in sexual battery with a victim who is less than eleven years of age.

A "sexual battery" is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

That is the definition. That is the question that you need to respond to.

If you have any additional questions or need to be recharged on any additional law, just let me know.

(JURY OUT @ 2:05 P.M.)

THE COURT: Any exception or objection from the State on that definition?

SOLICITOR JONES: Your Honor, I think if you're going to read CSC first, I think also CSC third should have been read as well.

THE COURT: I think that they asked specifically as to what is considered first degree, and that's the reason that I responded that way.

SOLICITOR JONES: Yes, sir.

THE COURT: Any objection from the Defense?

JOHN DEJONG: No, Your Honor. As I understood the question, they were basically asking for the definition of sexual battery?

THE COURT: That's what I -- yeah. I think that's all they needed.

JOHN DEJONG: I think in your charge that you said sexual battery was the same either for -- you basically gave -- it couldn't have been the same, though.

THE COURT: No, I gave the whole thing about lewd and lascivious.

JOHN DEJONG: Yes, sir.

THE COURT: Okay, we will be -- well, we have another question.

(NOTIFIED OF JURY NOTE @ 2:08 P.M.)

COURT REPORTER: Court's Exhibit 3.

(DEFENDANT PRESENT)

THE COURT: All right, we are still on the record. The question is, "Did the victims say that the defendant put his mouth on her vagina and wiggled his tongue?"

My response that I've written on the note is, "I cannot answer a question about a factual matter. We can replay any portion of the testimony requested. If you want to replay any portion of the testimony, try to identify specific portions."

Any objections or exceptions to that response?

SOLICITOR JONES: I think there is a chance that they may not understand and will want to see the video again.

THE COURT: Then they can ask to see it.

JOHN DEJONG: I think that it is pretty clear.

THE COURT: All right, take that to the jury.

(COURT'S EXHIBIT 3 RETURNED TO JURY)

THE COURT: We will be at-ease until

the next question.

(JURY IN DELIBERATION @ 2:18 P.M.)

(ADVISED OF JURY VERDICT @ 2:20 P.M.)

(DEFENDANT PRESENT)

THE COURT: All right, I've been advised that we have a verdict. Anything from the State before we bring the jury in?

SOLICITOR JONES: No, sir, Your Honor.

THE COURT: Anything from the defense?

JOHN DEJONG: Nothing from the defense, Your Honor.

THE COURT: All right. I know that I don't have to remind you but I would ask that all parties restrain yourselves. I don't want any type of reaction whatsoever to the verdict.

(JURY IN @ 2:25 P.M.)

THE COURT: Mister Foreman, I understand that the jury has reached a verdict?

FOREMAN: Yes, sir.

THE COURT: Please tender the verdict form to the Clerk.

FOREMAN: (Tenders).

THE COURT: (Upon review), I find that the verdict appears to be in proper form.

I need for the Foreman to check the date. You can go back to the jury room and -- or correct the date on that.

FOREMAN: (Complies).

THE COURT: Thank you. It appears that the verdict has been properly completed. Mister Clerk, you may publish the verdict.

CLERK: The State of South Carolina versus David Scott Bagwell, Indictment Number 15-GS-39-0102, "We, the jury, unanimously find the Defendant, David Scott Bagwell, guilty of criminal sexual conduct in the first degree."

If this was your verdict and is still your verdict, so say all of you by raising your right hand.

(UNANIMOUS RESPONSE BY JURORS)

THE COURT: Anything related to the jury, from the State?

SOLICITOR JONES: No, sir, Your Honor.

THE COURT: Anything from the ---

JOHN DEJONG: Nothing on behalf of Mr. Bagwell, Your Honor.

THE COURT: Ladies and gentlemen, again I want to thank you for your service.

This concludes your services for this case. Unfortunately it does not conclude your service for the week. The jury panel is coming back in the morning at 9:00 o'clock and I need you to report back in this courtroom here at that time. We will be starting another case.

Thank you very much for your service. If somebody has an issue with tomorrow, I will step back there in just a minute.

(JURY EXITS COURTROOM)

THE COURT: I am going to step back there. Y'all get your paperwork ready.

(JURY DISMISSED)

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Are we ready for sentencing?

JOHN DEJONG: Yes, sir, Your Honor.

THE COURT: Well, first, are there any Motions?

SOLICITOR JONES: No, sir.

JOHN DEJONG: Nothing at this time, Your Honor.

THE COURT: All right. Mr. Bagwell, if

you will please stand.

DEFENDANT: (Complies).

THE COURT: Anything else before sentenceing, from the Defense?

JOHN DEJONG: No, Your Honor.

THE COURT: From the State?

SOLICITOR JONES: Would you like for me to read the rest of his rap sheet?

THE COURT: Was there more than what y'all have already ---

SOLICITOR JONES: I will just tell you:

2001, breach of trust;

2005, assault and battery third;

2008, financial card theft, two; and financial card fraud, and a petit larceny;

2014, domestic violence;

2017, HTO and I believe he is currently on probation for that.

THE COURT: Mr. Bagwell, the jury has found you Guilty of criminal sexual conduct with a minor in the first degree. I will be glad to hear from you or your attorney, anything that you want to tell me.

DEFENDANT: Well, I don't think I was fairly represented. I mean, I have a police,

report from Colleton that was for the exact dates of what she supposedly said I did, where she recants her statement, where she says that she lied because she was mad at me.

I did not do this to that little girl. I am not a child molester. I treated these kids like my kids for the five years that I raised them from babies. I'm not a child molester, sir.

THE COURT: Anything else?

DEFENDANT: I don't think that I was fairly represented when you've got somebody that wouldn't allow in certain evidence that would show my innocence. I mean, it got struck from the record like it was nothing. It's everything that I've clung to for three years, to my innocence. I did not do this.

THE COURT: I am sure that your attorney has advised you that you have the right to appeal this sentence within ten ---

DEFENDANT: She's mad at me because I met this woman and ---

THE COURT: Hold on. I was just saying that I am sure your attorney has advised you or will advise you that you have the right to

appeal the sentence within ten days from today. Your appeal must in writing and your attorney will explain that to you further. I'm just letting you know that.

I want to hear everything that you have to tell me, but -- it's my understanding that what we are talking about here is a sentence of twenty-five years to life.

JOHN DEJONG: That is my understanding, Your Honor.

THE COURT: And that any portion -- by all means, Mr. Bagwell, I didn't mean to cut you off. I want to hear anything that you want to tell me.

DEFENDANT: I have heard, have her mother on video (sic), that they are going to have me locked up for the rest of my life. Whether Mr. Dejong has that as part of the evidence -- or why it wasn't put in evidence, I don't know, but he's had it for three years now. It's been here on my same phone since all this happened.

I did not do this. Like I said, my ex-wife, Toni, the mother, she's mad because I met this woman and -- I wasn't happy with her

and all that. She called and got me on a CDV after I left. I come back to fix it and she said, 'if you come back, I'll drop the CDV.' I come back to her and the CDV went away. Then as soon as I moved into another place, she used my disability check to get into another place and the next day is when she had me arrested for another CDV. I spent the whole month -- I mean, the last three years of my life has been ruined by her. I have three kids, my friends and family, everybody has stopped talking to me because they think that I did this, but I didn't do this. I have never messed with a child. I don't know why all this didn't come out in the trial, I feel like I was misrepresented.

THE COURT: Mr. Bagwell, it's not my duty to determine the facts of this case, as I instructed the jury. My role at this point is merely the sentencing. Is there anything else that you want to tell me before I impose sentence? Or Mr. Dejong, anything that you would like to tell me?

JOHN DEJONG: Your Honor, you pretty much heard all of his personal information

when he was on the witness stand. He does have some issues with his post-trauma stress disorder and with being bipolar. He has been on medication. He also broke a hip in 2014. He was in the Rose Center in Orangeburg in May of 2014 for an attempted suicide.

Your Honor, the crime that he was accused of is a horrible crime. I understand that the penalty is very steep. There is nothing that I can do about that, the legislature has set that.

You've heard his prior record, Your Honor. He is now thirty-five years of age. I certainly think twenty-five is way more than a gracious plenty, but I can't do anything about that.

For the record, Your Honor, I have shared with him his right to appeal, that I would appeal any conviction. I have also shared with him his right to post-conviction relief.

THE COURT: Again, I didn't mean to cut the State off. Is there anything that the State wants to say?

SOLICITOR JONES: Nothing, Your Honor.

THE COURT: Anything else? (No

response). Okay. The sentence of the Court, Mr. Bagwell, is that you be confined to the South Carolina Department of Corrections for thirty (30) years.

(TRIAL CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the jury trial held in the within action heard on August 28-30, 2017, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina
October 29, 2017

883

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

10/12/2014

ARREST WARRANT NUMBER
2014A3910600120

ACTION OF GRAND JURY

TRUE BILL

FEB 10 2015

Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury
Date 8/30/17

DOCKET NO. 2015-GS-39- 0102
SBT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 10 2015 TERM 2015

THE STATE

vs.

DAVID SCOTT BAGWELL

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
) CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
COUNTY OF PICKENS)

At a Court of General Sessions, convened on FEB 10 2015 the Grand Jurors of Pickens County present upon their oath:

That DAVID SCOTT BAGWELL did in Pickens County, between the dates of August 28, 2013 and October 30, 2013, commit a sexual battery on [redacted] who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

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

SOLICITOR BAR #

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Pickens)
STATE VS.)
David Scott Bagwell)
AKA:)
Race: WHITE Sex: M Age: 35)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Branchville, SC 29432-2325)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2015GS3900102
A/W#: 2014A3910600120
Date of Offense: 10/30/2013
S.C. Code § : 16-03-0655(A)(1)
CDR Code #: 0385

RECEIVED
SEP 05 2017
SC Court of Appeals

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Sex, Crim Sex Cond, 1st Deg W/Min <11 Yr

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Jones, Christopher L. | 78892 SC Bar# | Defendant | DEJONG, JOHN W. | 01620 SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3.75
TOTAL		$ 128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk [signature]
Court Reporter: [signature]

Presiding Judge [signature]
Judge Code: 2755
Sentence Date: 8/30/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 5, 2018

By: RJ m

James Falk

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