VOL I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JAN 18 2019
S.C. SUPREME COURT

GEORGE A. JONES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001000

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

PAGES 1-500

INDEX

INDEX i

TRIAL TRANSCRIPT DATED FEBRUARY 2-5, 2010 1

FINAL ANDERS BRIEF OF APPELLANT 488

STATE V. JONES, OP. NO. 2012-UP-120
(S.C. CT. APP. FILED FEB. 29, 2012) 500

REMITTITUR 502

APPLICATION FOR POST-CONVICTION RELIEF (2012-CP-19-100) 503

MEMORANDUM OF LAW IN SUPPORT
OF POST-CONVICTION RELIEF APPLICATION 510

RETURN 526

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED NOV. 14, 2013 532

ORDER OF DISMISSAL 592

APPLICATION FOR POST-CONVICTION RELIEF (2017-CP-19-367) 604

RETURN AND PARTIAL MOTION TO DISMISS 633

POST-CONVICTION RELIEF HEARING TRANSCRIPT
DATED APRIL 18, 2018 645

APPLICANT'S EXHIBIT #1 (SUBSTITUTION OF COUNSEL) 670

APPLICANT'S EXHIBIT #2 (LEGAL MAIL) 671

APPLICANT'S EXHIBIT #3 (FORM 4) 673

APPLICANT'S EXHIBIT # 4 (SUPREME COURT 6/28/2017) 675

ORDER OF DISMISSAL GRANTING APPELLATE REVIEW
PURSUANT TO AUSTIN V. STATE 676

INDICTMENTS AND SENTENCE SHEETS 689

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD

COURT OF GENERAL SESSIONS

STATE)
)
V.)
)
GEORGE ALBERT JONES)
)
DEFENDANT.)

TRANSCRIPT OF RECORD

09-GS-19-349
09-GS-19-409

FEBRUARY 2 - 5, 2010
EDGEFIELD, SOUTH CAROLINA

B E F O R E:

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

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

ERVIN J. MAYE, ASSIST. SOLICITOR
H. FRANKLIN YOUNG, III, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

ADRIAN L. FALGIONE, ESQUIRE
ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD, RPR
CIRCUIT COURT REPORTER

I N D E X

WITNESS	PAGE
Opening Statement	
By Mr. Maye	102
By Mr. Falgione	110
Elizabeth Gordineer	
Direct Examination By Mr. Maye	116
Cross-Examination By Mr. Falgione	124
[redacted]	
Direct Examination By Mr. Maye	127
Cross-Examination By Mr. Falgione	144
Redirect Examination By Mr. Maye	152
Recross-Examination By Mr. Falgione	153
Lamaz Robinson	
Direct Examination By Mr. Maye	154
In Camera Direct By Mr. Maye	158
In Camera Cross By Mr. Falgione	160
Direct Examination Cont. By Mr. Maye	169
Cross-Examination By Mr. Falgione	171
Redirect Examination By Mr. Maye	173
Recross-Examination By Mr. Falgione	173
Re-Redirect Examination By Mr. Maye	174
Jeanie Miles	
Direct Examination By Mr. Maye	179
Cross-Examination By Mr. Falgione	182
George A. Williams	
Direct Examination By Mr. Maye	183
Cross-Examination By Mr. Falgione	185
Whitney Oshay Wasson	
Direct Examination By Mr. Maye	186
Cross-Examination By Mr. Falgione	189
Rebecca Lanford McKnight	
Direct Examination By Mr. Maye	191
Cross-Examination By Mr. Falgione	193
Eric Brenner (In Camera)	
Voir Dire By Mr. Maye	205
Voir Dire By Mr. Falgione	207
Eric Brenner	
Direct Examination By Mr. Maye	213
Cross-Examination By Mr. Falgione	248
Raymond Olszewski (In Camera)	
Voir Dire By Mr. Maye	266
Voir Dire By Mr. Falgione	269
Voir Dire Cont. By Mr. Maye	274
Voir Dire Cont. By Mr. Falgione	279
Direct Examination By Mr. Maye	282
Cross-Examination By Mr. Falgione	285

I N D E X

WITNESS	PAGE
Raymond Olszewski	
Direct Examination By Mr. Maye	299
Cross-Examination By Mr. Falgione	319
Redirect Examination By Mr. Maye	329
Recross-Examination By Mr. Falgione	335
Re-Redirect Examination By Mr. Maye	338
Desiree B. Council	
Direct Examination By Mr. Falgione	353
Cross-Examination By Mr. Maye	358
Redirect Examination By Mr. Falgione	361
Catherine Ethridge	
Direct Examination By Mr. Falgione	363
Cross-Examination By Mr. Maye	367
Redirect Examination By Mr. Falgione	368
Phillip Anderson Williams	
Direct Examination By Mr. Falgione	369
Cross-Examination By Mr. Maye	373
Redirect Examination By Mr. Falgione	375
Recross-Examination By Mr. Maye	376
James P. Calliham	
Direct Examination By Mr. Falgione	377
George Albert Jones	
Direct Examination By Mr. Falgione	383
Cross-Examination By Mr. Maye	392
In Camera Examination By Mr. Maye	406
Cross-Examination Cont. By Mr. Maye	414
Closing Argument	
By Mr. Falgione	427
By Mr. Maye	438
Charge of the Court	451
Verdict of the Jury	477
Sentence of the Court	485
Certificate of Reporter	487

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
S-1	Mullins Laboratory report		193
S-2	DVD		318
D-1	Photograph		153
D-2	Invoices		381
C-1	Psychological Evaluation Report	12	
C-2	Psychological of [redacted] Minor	12	
C-3	Psychological of Shannon Grim	12	
C-4	Edgefield Daily articles	201	
C-5	Raymond Olszewski's C.V.	275	
C-6	Jury Note	425	
C-7	[redacted] Minor ' Medical Records	468	
C-8	Shannon Grim's Medical Records	468	
C-9	Jury Note	475	

5

(The following proceedings were held on February 2, 2010.)

(The following proceedings were reported in chambers.)

THE COURT: Mr. Falgione, do you have a motion?

MR. FALGIONE: I do, Your Honor. I don't know if it properly needs to be captioned a motion. If so, it is. It's two oral motions.

The private investigator that has been provided to me served some subpoenas on our behalf for the psychiatric records of [redacted] Minor, who's the alleged victim in this matter, and her mother, Shawna Grims (sic), G-r-i-m-s. And it's my understanding that in order for the state agencies that those have been served upon to comply and present us with those records, it requires an order of the Court.

So here before us today, we have Ms. Lindler, on behalf of the Department of Mental Health, and we have Mr. Chandler, who, of course, represents DSS. It's my understanding these records were provided to DSS and we've issued Rule 5s and Bradys. Those records were not forthcoming from any other source so that's why we received -- why we issued those subpoenas on these two.

6

As of this date, we haven't seen them in order to be able to evaluate them. But we would not expect to have to hold the trial up, Your Honor, if the Court sees fit to allow us to have those records.

THE COURT: Does the State have any position?

MR. MAYE: Your Honor, as to the mother's mental health records, I don't intend to call her as a witness as of this time. I mean, she's going to be on my witness list, but I don't intend to call her.

I don't know what relevance the mother's psychological records would have in a trial where the victim is the daughter, [redacted]. I don't know why they would be seeking the mental health records of the mother or what relevance that would have to prepare the charges at hand.

THE COURT: How old is she?

MR. MAYE: The little girl was nine when that occurred. She's 11 now.

THE COURT: You say the mother is on the witness list?

MR. MAYE: She is on the witness list, Your Honor. I don't intend to call her right now.

THE COURT: Who reported it?

7

MR. MAYE: It was reported by a physician. The little girl was diagnosed with herpes and DSS was contacted. And the little girl disclosed that the father was the perpetrator when law enforcement became involved and DSS became involved.

THE COURT: Mr. Chandler, do you have anything?

MR. CHANDLER: Your Honor, in the DSS action, there were two basic causes of action, one against the mother, if I recall, I think it was neglect, and one against Mr. Jones for the sexual abuse.

A psychological was done by John C. Whitley, III, he's a Ph.D. in Augusta. I have a copy of that psychological.

There's some question of whether I could, when I was asked about the psychological yesterday -- if I give it to the State, which I think under, at least my code section, I could do that, HIPAA notwithstanding, it would immediately then be discoverable by the defendant. If the Court orders me, and I have copies of it, in order to protect my client with abundance of caution in light of all the intricacies of HIPAA, that's why I have the psychological and I have copies here if the Court orders me to distribute them. I'll give one to the State and one to the defendant.

8

THE COURT: All right. Are the two people who's records we're talking about, are they in the courtroom?

MR. MAYE: No. The mother is not present in the courtroom and the child is not either.

THE COURT: Do they know about the hearing?

MR. MAYE: They knew that we were trying this case, Your Honor. I was not really aware of the substance of this hearing this morning.

THE COURT: Where are they?

MR. MAYE: I think they're here.

OFFICER: They're in the attorney's room on the other side.

THE COURT: Find out if they want to be in here or not.

MR. MAYE: That's fine.

THE COURT: Mr. Maye, if Mr. Taylor is getting them, you stay in here.

Ms. Lindler, do you want to say anything?

MS. LINDLER: Your Honor, until there's a court order, I will not be willing to disclose any of the information about our clients.

THE COURT: Okay. Thank you.

(Pause.)

THE COURT: What information do you have, Mr.

9

Falgione, that leads you to believe that this is relevant?

MR. FALGIONE: Well, Your Honor, first of all, the reporting method, the mother is the one that took the child to the doctor. And without going too much into the defense in our strategy or the thoughts of counsel regarding how to defend on this case, certainly it's been acknowledged that there was a period of treatment for the mother for an extended period of time prior to this for a period of years. Certainly, that's been alluded to in certain records that we've received by way of discovery.

THE COURT: What about the child?

MR. FALGIONE: The child also had some evaluations done subsequent to this. I'm not aware of any previous evaluations or tests being given to the child prior to the alleged incident, which was alleged to have occurred in April of 2008.

Is that correct, Ervin?

MR. MAYE: Yes.

MR. FALGIONE: 2008?

MR. MAYE: Well, it occurred over a range. The indictment range would be --

MR. FALGIONE: April to June, I believe, is

10

what's in the warrant.

MR. MAYE: From June the 1st, 2007 to April the 1st of 2008 is the range he's indicted for.

THE COURT: So you believe the mother was treated before that?

MR. FALGIONE: That's indicated in records, yes, Your Honor.

THE COURT: And you believe the child was treated after that?

MR. FALGIONE: I do, Your Honor.

THE COURT: Do y'all want to put anything on the record?

MR. MAYE: I just -- I can't see any relevance to the mother. And I would oppose the child's records being released. If it was subsequent to the time of assault, I don't know what relevance that would have on these events.

MR. FALGIONE: Certainly, Your Honor, the veracity of both potential witnesses as relayed in those records may be -- not only would it be relevant, could actually be crucial. Without seeing the records and making that evaluation, we have no way of knowing.

THE COURT: All right. Well, at this point, whether it's relevant or not is not really the exact

11

inquiry. I'm going to order that the records -- that the subpoena be honored and the records be provided to the defense. However, I am going to direct that those records not be used outside the confines of this litigation and they are to be sealed after the case is resolved, okay.

MR. FALGIONE: I understand, Your Honor, certainly.

THE COURT: So whatever y'all have, we need to seal up with the Clerk.

Do you have anything, Mr. Chandler?

MR. CHANDLER: Your Honor, I would ask just for understanding that the record we're talking about with respect to DSS is the psychological done by Dr. Whitley, date of exam June 2, 2008.

MR. FALGIONE: Your Honor, if DSS has any other psychologicals, we would also want those, but we're not aware that they do have.

THE COURT: Okay. Ms. Lindler, do you have a copy of the records?

MS. LINDLER: Yes, Your Honor, I do.

MR. MAYE: Your Honor, our only request, you stated that they will be provided to the defense. If they're provided to the defense, I would like to have copies.

12

THE COURT: Sure. I'm sorry, that was not artfully stated. I apologize.

Anything else that we can take up now? Do y'all need to go?

MR. CHANDLER: Permission to go ahead and distribute the order with the bench and there will be a written order forthcoming.

THE COURT: Just leave them with me. Mark them as court's exhibits.

MR. CHANDLER: There's two, Your Honor.

THE COURT: Do y'all have to stay for the trial.

MS. LINDLER: We do not have to. I have two more health workers who would like to be for support.

(Court's Exhibit Numbers 1 through 3 were marked for identification purposes.)

THE COURT: Do you have something else?

MR. FALGIONE: Your Honor, I have also a motion in limine and a motion for the suppression of any evidence or statements about the HIV situation of Mr. Jones. I didn't know if you wanted to take that up now.

THE COURT: Have we got time?

MR. FALGIONE: As far as I'm concerned, the HIV

13

is the most important.

THE COURT: Go ahead.

MR. FALGIONE: Your Honor, I presented the written motion to Mr. Maye and also to your law clerk about this. This motion is based upon this charge that's pending against Mr. Jones. Of course, he's charged with a variety of things, one of which is exposing this alleged victim to the HIV virus.

And what I have done within this motion, Your Honor, I have taken directly from the records that have been provided to us of what the alleged victim's statement is and throughout her interrogations, the statements she's given the authorities and also interviews that she's had with ARC and others. And I believe these are correctly stated. And I'll be happy to provide the Court with a background for this.

But anyhow, this whole thing came about when Minor was diagnosed with genital herpes. And she -- that was done by the hospital. And the medical provider made that diagnosis and they called DSS. DSS called the Johnston Police and then they went over to the home, as it appears from the records, and took Minor and her mother, interviewed them there and then took them to the police station. And

14

she's been evaluated by a forensic evaluator, as well as those interrogations.

And in substance, Minor states throughout those that George Jones, my client, touched her wrong spot with his hands. She could feel his fingers inside her. And in her statements throughout, she's consistently stated that George Jones never touched her with any part of his body other than his finger, never took his clothes off during the alleged assault, never did anything with his mouth, did not get on top of her or lie next to her, never got anything wet on her or him, never had to clean up any fluids after this alleged assault and never threatened her, told her not to tell anyone about these alleged assaults.

So the charges pending against him now are criminal sexual conduct with a minor, performing lewd act on a minor, incest and exposing others to the HIV.

In order -- by statute, the elements of exposing someone to HIV under 44-29-145 is that they knowingly engage in a sexual intercourse, vaginal, anal or oral, with another person without first informing that person of his HIV infection.

The allegations of Minor as to this contact do

15

not meet that of sexual intercourse that I could find in anywhere in any of my research. And I've put down, I've mentioned some things within my motion, my written motion, Your Honor, that will take you to that.

So on that basis, Your Honor, I respectfully request that since there's no way these elements are present to any of -- anything that's been presented through discovery or otherwise, that the HIV charge be dismissed.

And more importantly, that no one mention that Mr. Jones has HIV. Because to do so, would poison that jury venire by informing them that he has what most would consider a loathsome disease, that would poison that jury pool to the point that Mr. Jones could not get a fair trial in this matter.

THE COURT: Mr. Maye.

MR. MAYE: Your Honor, this is premature in this case. The victim was interviewed. I provided a tape of a forensic interview. She said that each time that she was assaulted in this case, and it happened numerous times over more than a year, I've got a year range in this, but it happened when she was seven, eight, nine, it was an ongoing process, she said that each time that she was assaulted, that

16

he would put a pillow over her face, he would cover her face where she could not see.

This motion is premature in this case because he infected her with herpes in this case. And we do have a positive test for him for herpes.

She could not see what he was doing to her. The forensic examiner asked her if she saw him with his genitalia out, if she saw him with his clothes off and she consistently said no, but she had her face covered at each time that she was assaulted in this case.

I have -- there's abundant medical evidence in this case that we intend to put forward to the jury in this case, Your Honor, that would show that there was exchange of fluids. Obviously, she was infected by herpes, we maintain, by this defendant. And if she was exposed to that, we have medical testimony that she also would have been exposed to the HIV virus. He, by his own admission, told the officers in this case that he had HIV and was aware of it, had known since 1998.

We maintain that it's going to be a jury question and this is premature in this case. We think the medical evidence is going to be overwhelmingly that he intentionally exposed her to

17

HIV knowing that he was HIV positive in this case.

I don't think that just her statements in the discovery that's -- the taped statement that she gave in that forensic interview, that's certainly not all the evidence that we're going to put forward to the jury that he knowingly exposed her to HIV.

THE COURT: Mr. Falgione.

MR. FALGIONE: Well, Your Honor, there's been absolutely, and if I'm wrong, Ervin, please show me where I'm wrong, point me to it, but there's absolutely no evidence whatsoever, documentary, medical testimony or otherwise, that he had sexual intercourse with Minor and that's the crux of this.

THE COURT: How is it defined because -- is there a definition section on this?

MR. FALGIONE: No. I could not find it, Your Honor.

MR. MAYE: Your Honor, in this case, this victim is clearly infected with herpes. There was an exchange of fluids in this case. We maintain that he had intercourse with her.

This was a nine-year-old victim. Her face was covered. We maintain there's going to be circumstantial evidence in this case that he engaged in intercourse. And we maintain that's going to be

18

a direct jury issue for the jury to decide on the HIV.

I would maintain that this is completely premature prior to all of the evidence being proffered to the jury. We maintain that there's overwhelming circumstantial evidence that he had intercourse with her and exchanged fluids with her. He infected her with herpes. She said that she could not see.

This is a child victim who's very simplistic in her understanding of sex or how that virus might be passed. We maintain that the medical evidence in this case is going to be overwhelming evidence that he didn't only -- not only engaged in digital penetration, but he also engaged in intercourse.

MR. FALGIONE: Again, Your Honor, I'd like to know where that's coming from because I've reviewed all of the medical evidence that's been given to me and all of the statements that have been given to me and I can't find it.

Now, maybe -- if it's in there, I'd like to see it because I can't see in any of the tests that were performed or any of the medical testimony, that she had -- or he had sexual intercourse with this young lady, this young victim. If that's in there, I want

19

to see it, but there's nothing to that.

And, Your Honor, to put that before the jury and tag him with an infection of the HIV virus without any substantial -- any evidence whatsoever really, if there's -- if Mr. Maye can proffer some evidence to the Court to assist in making that determination, well, then I'd be all for that, let's proffer that, let's decide this now, but let's do it before it gets in front of the jury.

THE COURT: Why didn't they define sexual intercourse? Because they've got references to oral. Then you look at criminal sexual conduct, it defines sexual battery and it refers to sexual intercourse or any penetration however slight over a portion of one person's body to another, but it also refers to cunnilingus and...

MR. FALGIONE: Your Honor, if I may, I think in the absence of their definition, it reversed to the common law and the case law tells us that. And if you go to common law, I can give you Blacks definition, while not defining sexual intercourse, it defines carnal knowledge as sexual intercourse.

And it says, Blacks dictionary -- Blacks Law Dictionary states that while penetration is an essential element of carnal knowledge, if there is

20

the slightest penetration of the sexual organ of the female by the sexual organ of the male.

And there's no evidence whatsoever of that in this particular case that's been presented anywhere in any of the discovery.

THE COURT: Anything else?

MR. MAYE: Nothing else, Your Honor. We would just maintain that the fact that he infected her with herpes, he didn't do that digitally penetrating her. He used his penis. He covered this victim's face and I think that the jury -- I think there's adequate evidence to get that to the jury. We would just maintain it's a jury issue and this would be premature.

THE COURT: Do you have doctors that are going to testify?

MR. MAYE: I do have doctors that are going to testify as to the transmission of this that there would have had to have been some sort of fluid transfer in this case or something that transferred that virus to her. And I do have a medical expert that's coming in that regard. And we have the doctor that examined her in this case, Your Honor.

It's clear in this case that he infected her, we maintain and we intend to prove, he infected her

21

with herpes. And if he infected her with herpes, there would have also have been an opportunity, fortunately this child has not tested to be HIV positive, but it's far easier to get herpes, that's a far more contagious condition than the HIV is fortunately for the victim in this case we would maintain. We maintain the evidence that she has herpes is also evidence that he exposed her potentially to the HIV virus. And we maintain that the circumstantial evidence in this case is going to be that he did so by use of his genitalia.

MR. FALGIONE: Your Honor, if we may, because that is totally inconsistent with any medical testimony that I've seen in any other records or by way of private consultation to medical authorities, that in order to transmit herpes, you also would transmit body fluid and transmit AIDS as well or set forth the protocol for the transmission in HIV.

If Mr. Maye has such testimony, I want to see it proffered before we go down this road and this is decided. Because once this goes in front of the jury, Your Honor, this bell's going to be rung and there's no way to unring it even if that's wrong.

So for those reasons, Your Honor, we would ask that if there is such testimony, that it be

22

proffered and decided -- this issue decided by the Court now prior to putting it in front of a jury.

(Pause.)

THE COURT: Do you know who the doctors or medical experts are that are going to testify, Mr. Falgione?

MR. FALGIONE: I don't know which ones that Mr. Maye are going to put up, Your Honor. I'm reviewing -- the records that we've reviewed that have been presented to me were done by the Williams Testing Lab out of Aiken or Augusta; is that correct?

MR. MAYE: We have a DHEC physician that's an expert in infectious diseases, Dr. Eric Brenner, in this case, Your Honor, we would intend to call him. He wouldn't be available until Friday morning. Mr. Falgione has got medical issues that would result in him not being able to be here on Thursday. And I apologize for that, but I tried to inform your clerk of that earlier.

Your Honor, we just maintain that it's going to be a jury issue. Obviously, we maintain in this case that she was infected with herpes. She would have been --

THE COURT: That doctor's going to say in order for her to be infected with herpes, they had to have

23

sexual intercourse?

MR. MAYE: No, Your Honor, but we maintain that there's going to be circumstantial evidence in this case that he did perform intercourse on this child. Her face was covered. She could not see what he was doing. That occurred consistently throughout this process. And there was some exchange of fluid.

And we maintain there's going to be circumstantial evidence that intercourse took place. There was penetration not every time, but with the overwhelming majority of these, there was penetration that she could not see, she could not see what he used on her to penetrate her in this case, Your Honor.

And she's a simplistic -- we maintain there's circumstantial evidence of intercourse in there and we maintain that part of that is going to be the fact that she was infected with herpes and she could have also been infected with HIV. And he knew he was HIV positive. I don't think there's any dispute in that.

THE COURT: This statute is -- to be honest with you, I've never had to deal with this sort of issue before. I mean, I have to deal with what I have in front of me and that is this statute which

24

makes it unlawful to knowingly engage in sexual intercourse with another person without first informing that person of his HIV infection. And then it goes and it talks about prostitution and selling blood products and bodily fluids. And then it says forcibly engage in sexual intercourse, vaginal, anal or oral without the consent of the other person including one's legal spouse. And then it talks about sharing hypodermic needles.

And y'all have me in a box. You're not going to have your doctor here until Friday, so I can't hear what the doctor's going to say and I don't know this stuff. I don't know the medical angle on this. And you're telling me that the victim doesn't really know what happened.

MR. MAYE: The victim does know what she felt in this case, Your Honor. And we do know conclusively that she was infected with herpes, that's what caused the reporting --

THE COURT: That's why I asked you the question is that doctor going to say that she had to have had sexual intercourse in order to be infected with herpes and you said no.

MR. MAYE: She wouldn't have had to have had sexual intercourse Your Honor, but we maintain

25

there's circumstantial evidence that she did, the transmission of the virus in this case, Your Honor. We maintain that if she got herpes, she would have also had, if there was the exchange of fluids that would have resulted in her getting herpes in this case, that she also would have had the same opportunity or would have had an opportunity to have been infected with HIV.

And I maintain in this case she could not see what he was doing, but she knows that there was penetration in this case. We maintain there will be circumstantial evidence in this case that he engaged in intercourse, that he used something other than his finger.

THE COURT: What circumstantial evidence?

MR. MAYE: The fact that he infected her with herpes in this case, Your Honor.

THE COURT: We just dealt with that.

All right. You've got two options. And I'm not happy about a lot of the rulings that I have to make, but I've got to do my job or the system collapses.

I didn't write this statute. I think people need to look at this thing who can maybe make some changes to it. I don't know where it came from,

26

said it's been around since 1988. I don't know if it was patterned after one from another state or not. And it may be that if you understand the medical angle of this and the method of infection and things of that nature, that this is the way to go, the way it's written.

I've gotten reversed on several cases that were saying that I allow things go to the jury that were -- required the jury to speculate, that seems to me had more evidence than what you're telling me about.

So you've got two options either if we go forward with the trial and we start before I can hear the medical evidence, I'm going to have to grant the motion to dismiss.

MR. MAYE: I won't call it, Your Honor. I'll simplify that. He's already charged with committing sexual battery in this case, I won't call it.

THE COURT: The other option was wait until I hear the medical expert and then I can make a more informed ruling. If he doesn't call it, he doesn't call it.

You said he's charged with CSC with a minor and what?

MR. MAYE: Lewd act, CSC with a minor, there's adequate --

27

MR. FALGIONE: Is that a dismissal of that charge then, Your Honor?

MR. MAYE: I'm just not going to call it.

THE COURT: It's not a dismissal.

All right. Do you need some time --

MR. FALGIONE: Your Honor, I'm sorry, since he is not calling that, I ask that the second part of that motion be granted and no prosecution witnesses or any other witnesses --

THE COURT: Nobody's to refer to HIV.

MR. FALGIONE: Thank you, sir.

THE COURT: And make sure all of the witnesses know that, unless some way the door's opened. If the door's opened, don't -- the witnesses are not to say it out loud in front of the jury, they're to turn to me and say, there's a matter we need to address, or something like that.

MR. FALGIONE: Thank you, Your Honor.

THE COURT: It's 10:00 now and you hadn't had a chance to look at the records.

MR. FALGIONE: Whatever you want me to do, Your Honor. If you want to draw the jury and I'll look at the records during the lunch hour and then we start. Whatever the Court's pleasure is, Your Honor, I'll be happy to comply.

28

THE COURT: What other motions do you have? I'm not going to hear them, but what other motions do you have?

MR. FALGIONE: Your Honor, I've got a motion in limine to prevent some other instances. They are pretty standard in most instances. And I believe I presented Shannon with a copy of that.

MR. MAYE: Your Honor, the only thing I have any objection to is he's saying here that he doesn't want to refer to any proceeding in family court. One of the things that we intend to rely on in this case to prove paternity in this case, which is going to be one of the issues in this case with the incest charge, is we do have a family court order where he was determined to be the father of this child. We would intend to -- the Clerk of Court to introduce that.

MR. FALGIONE: Your Honor, we can take that off the table because Mr. Jones has given me the authority. And we've got a DNA test.

MR. MAYE: Is he going to stipulate that he is the --

MR. FALGIONE: He will stipulate that he is the father.

MR. MAYE: That will negate the -- if he's

going to stipulate, that will negate the DNA test and that will negate the family court. So if there's a stipulation of that, that will streamline our case substantially.

MR. FALGIONE: Your Honor, we would also move to sequester the witnesses at the appropriate time.

THE COURT: All right. Folks, we'll reconvene in the courtroom. Thank you.

(The hearing was concluded in chambers.)

(The following proceedings were reported in open court.)

THE COURT: I have a juror who indicated that she needed to talk to me.

If you'll come up, ma'am.

(Whereupon, the following bench conference was held with the juror on the record.)

THE COURT: What's your name, ma'am?

JUROR: Robyn Hartley.

THE COURT: 40, what's your situation?

JUROR: 42.

THE COURT: I'm sorry. You're right. Okay, 42.

JUROR: I don't know if it's relevant or not, but my husband is on probation and went through this court for that. We were in front of Solicitor Maye.

30

THE COURT: Would that affect your ability to be fair and impartial in a trial if Mr. Maye was prosecuting it?

JUROR: I would hope not.

THE COURT: Do you have some doubt?

JUROR: Well, it was an -- I've been here a lot.

THE COURT: Do you have some doubt?

JUROR: Yes, I do.

THE COURT: I'll set you aside on this trial, Ms. Hartley. Would that affect you on any other case if he's not involved in it?

JUROR: Possibly, yeah.

THE COURT: You're free to go. Do you need any kind of slip for work?

JUROR: No, sir.

THE COURT: Ms. Hartley's juror number 42. She's excused from jury duty.

(The bench conference was concluded.)

THE COURT: All right. Ladies and gentlemen, we're going to turn now from the general to the specific and we'll be focusing in on particular cases that the Solicitor is calling for trial.

What will happen is that I will ask you a series of questions. If any of these questions

31

apply to you or you have doubt about whether they apply to you, you'll need to stand. When I call upon you, listen carefully to the question I ask of you, but first we identify who's speaking, and then listen carefully to the question I ask of you and answer that question.

Remember that you're under oath, remember that you should give us the information. If you have any doubt about whether the question applies to you, let us decide whether that information is important or not. And if you ever prefer to discuss something down front, let me know that you want to come down front.

There may be times when I limit your responses. I may say, for example, just to answer a question yes or no. If you feel that you cannot adequately answer the question within the limitations that I place on you, please don't blurt out the answer in front of everybody, otherwise you defeat the purpose of my limitation, come down front and give me the full answer.

Now, folks, I'll tell you right off the bat we're going to have to go through this process and hopefully everything will be fine. We summoned 125 people for jury duty and we're down to 27. I guess

32

it's a statistical thing. We had problems with the grand jury. We summoned 50 and we wound up with 10, so we're having to redraw and having them come in on a Friday to organize them. Normally, we would have organized them yesterday. So I guess it's just how things develop.

The jury has to have at least 12 people on it and we usually like to have a couple of alternates, but if we can get a jury of 12, then we can proceed. There's no way to know that until we go through this whole process, so hopefully we'll be able to empanel a jury.

All right. Solicitor, call your cases.

MR. MAYE: State now calls for trial indictment 2009-GS-19-409, the State versus George Albert Jones, an indictment for criminal sexual conduct with a minor in the first degree. It's been true billed by the Grand Jury of Edgefield County. The State now calls this case for trial.

Indictment 2009-GS-19-349, the State versus George Albert Jones, an indictment for lewd act with a minor. It has also been true billed by the Grand Jury of Edgefield County. We now call both of these cases for trial by jury.

THE COURT: Let me see the lawyers.

33

(Whereupon, a bench conference was held off the record, in the presence of the jury panel, but out of the hearing of the jury panel.)

THE COURT: Ladies and gentlemen of the jury panel, please give me your attention. We're about to try two separate and distinct indictments. These indictments maintain their nature as being separate and distinct. They are merely being tried together for purposes of convenience.

Both indictments are captioned the State versus George Albert Jones. In one indictment, Mr. Jones is charged with criminal sexual conduct with a minor in the first degree. That indictment alleges that George Albert Jones, whose date of birth is alleged to be [redacted], did in Edgefield County on or between the dates of June 1, 2007 and April 1, 2008, engage in a sexual battery with [redacted] whose date of birth is alleged to be [redacted], the child being less than 11 years of age and Mr. Jones, the defendant, being older than the victim.

The other indictment alleges a lewd act upon a minor. That indictment charges that George Albert Jones, whose date of birth is alleged to be [redacted] being over 14 years of age, did in

34

Edgefield County on or between the dates of June 1, 2007 and April 1, 2008, willfully and lewdly commit a lewd and/or lascivious act upon or with the body of [redacted] whose date of birth is alleged to be [redacted], she being a child less than 16 years of age.

It's alleged that the defendant, George Albert Jones, did fondle and caress the body and/or touch the vaginal area of the victim with the intent of arousing, appealing to or gratifying lust, passions or sexual desires of the defendant.

Upon his arraignment on these charges, Mr. Jones has entered pleas of not guilty.

He is presumed to be innocent. It is incumbent upon the State of South Carolina having brought these charges against Mr. Jones to prove every essential element of each charge beyond a reasonable doubt.

An indictment is not evidence. An indictment is a charging paper. It's merely the formal means by which someone is charged and brought to trial. You cannot give the indictment, the charging paper, any evidentiary value at all.

I'm going to be asking you a series of questions. If any of them apply to you or you have

35

doubt about whether they apply to you, please stand and follow the procedure I outlined for you earlier.

Is George Albert Jones in the courtroom? Mr. Jones, I need for you to please stand, turn that way and face the jury.

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

Is there any member of the jury panel who is related by blood or marriage or connected by employment with the defendant, George Albert Jones; if so, please stand?

(Jurors stand.)

THE COURT: Your name, please?

JUROR: Irene Pixley.

THE COURT: Ms. Pixley is juror number 99. And what's your connection, ma'am?

JUROR: George is my third cousin.

THE COURT: Your third cousin?

JUROR: Yes, sir.

THE COURT: Do you know anything at all about this matter?

JUROR: A little.

THE COURT: Okay. Somebody's talked to you about it? Just say yes or no.

JUROR: Yes.

THE COURT: Do you feel that your relationship

36

with the family or anything that you may have been told about this case could in any way affect your ability to be a fair and impartial juror?

JUROR: No.

THE COURT: Come down front please, ma'am.

Lawyers may join me on the side. Mr. Jones may join me if he wishes.

(Whereupon, the following bench conference was held with the juror on the record.)

THE COURT: Ms. Pixley, what have you heard or has anybody talked to you about the case?

JUROR: My dad told me we're all third cousins.

THE COURT: Your father told you that?

JUROR: Uh-huh.

THE COURT: When?

JUROR: Since I remember myself that we was cousins.

THE COURT: Say that again.

JUROR: Since I knew myself, my father said we was cousins.

THE COURT: Okay. What about the case -- these cases?

JUROR: Oh, I don't know about the cases. I thought you said if we were related to him or something like that.

37

THE COURT: I did, but then I asked you if anybody had talked to you about the cases.

JUROR: They're going to, like, try him today or something?

THE COURT: Yes, ma'am.

JUROR: Oh, no, I thought you were saying if we're related.

THE COURT: The first question was are you related, but then I asked you if anybody had talked to you about it.

JUROR: Okay. No, sir. Huh-huh. Definitely, no, sir.

THE COURT: So you don't know anything about this?

JUROR: Huh-huh.

THE COURT: That's a no?

JUROR: That's a no.

THE COURT: Okay. You had no idea he was charged with these crimes?

JUROR: Well, when it first happened. I had heard nothing else about it, about when it was tried, nothing like that.

THE COURT: Well, what did somebody say way back then?

JUROR: That he had messed with some minor or

38

something.

THE COURT: Who told you that?

JUROR: I think my aunt.

THE COURT: Who is your aunt?

JUROR: I think she had the kid he had been messing with. I think she's the foster parent or something, named Catherine Ethridge. I think she had the kid.

THE COURT: You think she was the foster parent of the child?

JUROR: Uh-huh, after it happened.

THE COURT: After it happened?

JUROR: Uh-huh.

THE COURT: Do you remember anything she said or anybody said to you?

JUROR: Huh-huh.

THE COURT: Said she (sic) had messed with some children -- or that child?

JUROR: Huh?

THE COURT: Said she had messed with that child?

JUROR: Huh-huh, he.

THE COURT: He had --

JUROR: No. She said that's your cousin (inaudible) --

39

COURT REPORTER: I can't hear her.

THE COURT: She said what now?

JUROR: He was messing with them children.

THE COURT: You can put all of that aside and decide the case without regard to what he may think of your decision?

JUROR: What you mean by that?

THE COURT: When you're back there on that jury, you're supposed to be fair and impartial. Impartial means that you haven't got any friends to reward or any enemies to punish. When you're back there, is it going to enter your mind about what your family may think of your decision?

JUROR: Huh-huh. No, no. No matter what they might think, huh-huh.

THE COURT: What about what you were told, can you put that completely out of your mind?

JUROR: Oh, yes. Uh-huh.

THE COURT: You can decide the case based only on what's presented in the courtroom?

JUROR: I can decide that, uh-huh, put all that back, uh-huh.

THE COURT: Do you have any doubt about any of that?

JUROR: No, sir.

40

THE COURT: Okay. Have a seat back there. Don't discuss any of that with your fellow jurors, please.

(The bench conference with the juror was concluded and the following bench conference was held with the attorneys on the record.)

MR. MAYE: I don't know this, but I think Adrian's got some issue with the foster parents on this case. He's been talking to DSS about that. I don't know if that's going to come into play in this case or not.

THE COURT: Do y'all want her on this jury?

MR. FALGIONE: I think to be fair to everybody, we'll have to set her aside.

MR. MAYE: I think so, too.

(The bench conference was concluded.)

THE COURT: Ms. Pixley, the law is going to require me to set you aside on this case, but I appreciate you talking to me. It's just a requirement of the law. Don't discuss anything we've talked about up here with any of the other jurors, okay?

Come down front, please.

(Whereupon, the following bench conference was held with the juror on the record.)

41

THE COURT: What's your name, sir?

JUROR: Clifton Eugene Felder.

THE COURT: He's 29.

What's your situation, Mr. Felder?

JUROR: You mentioned employment, right?

THE COURT: Yes, sir.

JUROR: He did work for me in the past.

THE COURT: Mr. Jones had worked for you?

JUROR: Yes, sir, off and on.

THE COURT: How long ago was that?

JUROR: It's been three, four years, I think, three years, somewhere in there.

THE COURT: Do you know anything about this case?

JUROR: I just heard. It was mentioned to me that it happened, that's all I know.

THE COURT: Do you know who told you?

JUROR: My wife.

THE COURT: Do you remember what she said?

JUROR: She just told me that it had happened, that she -- that it had happened, yes, sir, but that was it.

THE COURT: She told you she believed it?

JUROR: No, sir. She didn't say one way or another, she just --

42

THE COURT: She said she thought that it had happened?

JUROR: Said she had heard that it happened, yes, sir.

THE COURT: Have you ever formed in your own mind or expressed to anyone else any opinions about Mr. Jones?

JUROR: No, sir, not concerning that that I know of.

THE COURT: Is there anything about your experience with him or relationship with him that would affect your ability to be fair and impartial as a juror?

JUROR: No, sir.

THE COURT: You can decide the case without regard to what he might think of your decision?

JUROR: Yes, sir.

THE COURT: It won't enter your mind in the jury room, be worried about what he might be thinking about your decision because of your relationship?

JUROR: No, sir, I don't consider it a relationship.

THE COURT: So how long did he work for you?

JUROR: Well, off and on, I guess probably

43

three years, but it may be a week here, couple days there, you know, it wasn't --

THE COURT: What did he do?

JUROR: Landscaping, grass and stuff.

THE COURT: The stuff that your wife told you, you understand if you're a juror, you're going to have to decide the case based on what's presented in the courtroom?

JUROR: Yes, sir.

THE COURT: Can you put aside all of that stuff your wife might have said?

JUROR: Yes, sir, because I don't remember it.

THE COURT: You're confident you can be fair and impartial in the case?

JUROR: Yes, sir.

THE COURT: Thank you.

Mr. Felder's juror number 29. He's eligible to serve.

(The bench conference was concluded.)

THE COURT: Do any of you know anything at all about this matter? Do you have any knowledge whatsoever about anything related to these allegations?

I'm not talking in any legal sense. I mean, in the broadest, generic sense, has anybody said

44

anything to you about this situation? Have you heard, seen or read anything about it through any media outlets? Have you heard any gossip, rumor, people talking, anything at all? If you've got any information that was given to you about these matters through any source, please stand.

(There was no response.)

THE COURT: All right. I'm going to read to you the names of potential witnesses for the State. If any of those people are in here now, I need for that person to stand as his or her name is called.

If the person is not present and I call out the name and you're not sure if it's somebody you may have a knowledge about or your situation may relate to what I'm asking about and you need more identifying information about that witness, just tell me and I'll try to get that for you from the lawyers.

The potential witnesses for the State include the following persons: Jennifer Clayton of SLED; Lamaz Robinson of the Johnston Police Department, thank you; Nikki Perry of SLED; [redacted] Minor [redacted]; Dr. Beth Gordineer who's a medical doctor; Rebecca McKnight; Leigh Bouknight of the Edgefield County Sheriff's Office; Brenda Williams who's a registered

45

nurse; Jeanie Miles of the Edgefield County Hospital; I'm going to give this a shot, Raymond Olszewski, his last name is spelled O-l-s-z-e-w-s-k-i, Jr., who is with ARC, A-R-C; Whitney Wasson; Ms. Newby, the Clerk of Court; George Williams; Shannon Grim; Faye Burton of the Edgefield County Hospital; Dr. Dale Gordineer who's a medical doctor; Lieutenant Polly Hall of the Edgefield County Sheriff's Office; Selena Kinard of SLED; and Dr. Eric Brenner, B-r-e-n-n-e-r, who is with DHEC.

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

(There was no response.)

THE COURT: All right. The State will be represented by Mr. Ervin Maye. He's an assistant solicitor with the Eleventh Judicial Circuit Solicitor's Office.

Thank you, Mr. Maye. Is Mr. Young going to help you?

MR. MAYE: Mr. Young may be involved, Your Honor.

THE COURT: Mr. Frank Young of the Eleventh Judicial Circuit Solicitor's Office.

46

Thank you.

The defense will be represented by Mr. Adrian Falgione.

Thank you, Mr. Falgione.

All right. Ladies and gentlemen, I've asked you if you are related by blood or marriage to any of the potential witnesses for the State. I've introduced the defendant to you. I've asked you if you're related by blood or marriage to him or connected by employment.

What I need for you to do now is this. If you've got any connection of any kind with any of these people, you need to disclose it to us. Also, if you have any connection of any kind with any of the entities involved, including the Edgefield County Hospital, the doctors, the sheriff's office, SLED, DHEC, the ARC, Clerk of Court's Office, any connection of any kind with any of the entities, the Solicitor's office, the law firm of Mr. Falgione, you need to disclose that to us, that would include being a neighbor, a friend, attending the same church or civic clubs, it's wide open, please stand.

(Jurors stand.)

THE COURT: Yes, ma'am.

JUROR: I'm Cindy Ray. I work at the Edgefield

47

County Hospital.

THE COURT: Ms. Ray is juror number 101. She's employed at the Edgefield County Hospital. She's a registered nurse.

Ms. Ray, is there anything at all about your connection with the hospital or any of the people who work there, including the potential witnesses, that affect your ability to be fair and impartial in this case?

JUROR: No.

THE COURT: Can you decide the case without regard to what any of them may think?

JUROR: Yes, sir.

THE COURT: Do you understand that if you're a juror in the case, that you'll be asked to evaluate the credibility, the believability of every witness who testifies?

JUROR: Yes, sir.

THE COURT: I need you to answer these questions yes or no. If you need to go beyond that, come down front please.

Have you ever formed in your own mind or have you ever expressed any opinion to anyone else as to whether any of those particular witnesses are believable people or not?

48

JUROR: Have I --

THE COURT: Have you ever formed in your own mind or have you ever expressed to anyone else an opinion as to whether any of those potential witnesses who work at the hospital or have a connection to the hospital are believable? Just say yes or no. If you need to go beyond that, come down front.

JUROR: No.

THE COURT: So you never evaluated in your own mind whether Dr. Gordineer, Beth Gordineer or Dale Gordineer, Jeanie Miles, Faye Burton, I don't know where Brenda Williams works, you've never formed any opinion as to whether they're believable or not?

JUROR: I think --

THE COURT: Wait, don't say it.

JUROR: I'm not sure I understand.

THE COURT: If you're a juror over there, there are going to be witnesses who come up here and testify. If you have a preconceived notion as to whether those witnesses are believable or not, I have to set you aside. If you've got any doubt about whether there may be a preconceived notion that that witness is believable or not, I've got to set you aside. Jurors have got to be fair and

49

impartial.

You need to come down front. I'm afraid we're going to start talking about stuff we don't need to be talking about.

(Whereupon, the following bench conferences were held with jurors on the record.)

THE COURT: Did I clarify that any at all? Have you ever developed an opinion as to whether any of those people are believable people?

JUROR: I think they're honest people.

THE COURT: We live in a small town, so I understand.

JUROR: I think they're honest people.

THE COURT: And like I said, I hate to be so formal, but that's what I have to do. I'm going to have to set you aside. Don't discuss any of that with the other jurors, all right?

JUROR: Okay.

THE COURT: Thank you, ma'am.

Ms. Ray is juror 101 she's set aside on this trial.

I had two others. Why don't y'all just come down front.

What's your name, ma'am?

JUROR: Martine Mealing.

50

THE COURT: Ms. Mealing is 74. What's your situation, ma'am?

JUROR: I just know Shannon Grim and Leigh Bouknight.

THE COURT: How do you know them?

JUROR: We grew up in the same town.

THE COURT: Grew up in the same town?

JUROR: Uh-huh. They're a bit older than me. I just remember them.

THE COURT: Have you ever formed in your own mind or expressed to anyone else an opinion as to whether they're believable or not?

JUROR: No.

THE COURT: So you've never formulated any opinion as to whether Mr. Grim -- is it Mr. Grim?

JUROR: Ms. Grim, Shannon.

THE COURT: Or Ms. Bouknight are believable people?

JUROR: Uh-huh.

THE COURT: I'm sorry?

JUROR: No.

THE COURT: Can you decide the case without regard to what they may think of your decision?

JUROR: Yes.

THE COURT: Is there anything at all about your

51

connection with them, your experience with them that affects your ability to be a fair and impartial juror in the case?

JUROR: No.

THE COURT: Any doubt in your mind about any of that?

JUROR: No.

THE COURT: Thank you very much.

Ms. Mealing is juror number 74. She's eligible to serve.

Yes, ma'am.

JUROR: Shirley Mitchem.

THE COURT: 80. What's your situation, Ms. Mitchem?

JUROR: Did I hear you say Shirley Newby, the list?

THE COURT: It's probably just something about records, I don't know.

MR. MAYE: I'm not going to call her. We've negated that. She was on my list, but we've negated that.

MR. FALGIONE: I'm sorry, who was that?

THE COURT: The Clerk of Court.

They say they're not going to call her.

JUROR: Okay.

52

THE COURT: Thank you, ma'am.

Ms. Mitchem is juror number 80. The witness that she was responding to, the State says they're not going to call.

Yes, ma'am.

JUROR: Juror number 15.

THE COURT: Ms. Buist, what's your situation?

JUROR: I'm a pharmacist and I fill prescriptions for both Dr. Dale and Elizabeth Gordineer.

THE COURT: Would that in any way affect your ability to be fair and impartial in this case?

JUROR: Based on believability, I would believe them.

THE COURT: Okay. I'll set you aside on this case. Don't discuss any of that with your fellow jurors, okay?

JUROR: Okay.

THE COURT: Ms. Buist is juror number 15. She's set aside on this trial.

(The bench conferences were concluded.)

THE COURT: Are any of you or any of your immediate family members or any of your close, personal friends employed in any field of law enforcement, that would include police, SLED,

53

Solicitor's office, attorney general's office, the FBI, any state or federal law enforcement entity or prosecutor's office or any military police; if so, please stand?

(Jurors stand.)

THE COURT: What's your name, ma'am?

JUROR: Mamie Jennings.

THE COURT: Ms. Jennings is juror number 51. What's your situation?

JUROR: Albert Tanks is my brother-in-law.

THE COURT: He's the chief in Trenton.

Is there anything about that relationship or his experiences or your experiences with him that affects your ability to be a fair and impartial juror in the case?

JUROR: No.

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

JUROR: No.

THE COURT: Thank you, ma'am.

Number 51, Ms. Jennings, is eligible to serve.

Yes, ma'am, tell me your name again.

JUROR: Martine Mealing.

THE COURT: Ms. Mealing is juror number 74. What's your situation?

54

JUROR: My cousin works for the Trenton Correctional Facility.

THE COURT: A corrections officer?

JUROR: Yes, sir.

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

JUROR: No.

THE COURT: Any doubt in your mind?

JUROR: No.

THE COURT: Thank you.

Juror number 74, Ms. Mealing, is eligible to serve.

Yes, sir.

JUROR: Timothy Mosley, juror number 84.

THE COURT: Mr. Mosley is juror number 84.

What's your situation?

JUROR: I am a 14 year veteran of Metropolitan Police Department in Washington, D.C., plus I have several relatives who are members of Edgefield County Sheriff's Department and other departments in this area.

THE COURT: You worked in Washington?

JUROR: Yes, sir.

THE COURT: For 14 years with the police

55

department?

JUROR: Yes, sir.

THE COURT: And you have relatives now who work with the sheriff's office?

JUROR: Yes, sir.

THE COURT: How close relatives?

JUROR: Second cousin by marriage, I believe, yeah -- first cousins.

THE COURT: Who would they be?

JUROR: Officer Kitener -- excuse me -- Deputy Kitener and I think his wife worked for the dispatchers.

THE COURT: Is there anything at all about your experiences or your relationship with those people or the sheriff's office that affects your ability to be a fair and impartial juror in the case?

JUROR: No, sir.

THE COURT: Can you decide the cases without regard to what they may think of your decision?

JUROR: Yes, sir.

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

JUROR: No, sir.

THE COURT: Do you have any doubt at all about your ability to be a fair and impartial juror in the

56

case?

JUROR: No, sir.

THE COURT: Thank you.

Mr. Mosley is juror number 84. He's eligible to serve.

Yes, sir.

JUROR: Clifton Felder, juror 29.

THE COURT: Mr. Felder is juror number 29.

What's your situation?

JUROR: Sister-in-law is a correctional officer in Trenton, sir.

THE COURT: Is there anything about that that affects your ability to be a fair and impartial juror in the case?

JUROR: No, sir.

THE COURT: Any doubt in your mind?

JUROR: No, sir.

THE COURT: Thank you.

Mr. Felder is juror number 29. He's eligible to serve.

Yes, ma'am.

JUROR: Connie Barnhill, juror number 4.

THE COURT: Ms. Barnhill is juror number 4. Speak up for me, please.

JUROR: I have a nephew that's a FBI agent.

57

THE COURT: Is he stationed in South Carolina?

JUROR: In North Carolina.

THE COURT: Anything about that relationship or experience that affects your ability to be a fair and impartial juror in this case?

JUROR: No.

THE COURT: Any doubt in your mind?

JUROR: No.

THE COURT: Ms. Barnhill is juror number 4. She's eligible to serve.

Yes, sir, what's your name?

JUROR: Michael Jefferson.

THE COURT: Mr. Jefferson is juror number 50. What's your situation, please?

JUROR: I have a second cousin who I believe is still in law enforcement, Callahan, is an officer here in Edgefield.

THE COURT: With the police department or sheriff's department?

JUROR: I believe the police. I'm not exactly sure.

OFFICER ROBINSON: He works for McCormick County, Judge.

THE COURT: They say he works in McCormick County. Anything at all about that relationship

58

that affects your ability to be a fair and impartial juror in the case?

JUROR: No, sir.

THE COURT: Any doubt in your mind?

JUROR: No, sir.

THE COURT: Thank you.

Mr. Jefferson's juror number 50. He's eligible to serve.

Yes, sir, what's your name?

JUROR: Charlie Hartley, juror number 40. I have two brothers. They're corrections officers.

THE COURT: Mr. Hartley is juror number 40. You've got two brothers?

JUROR: Yes, sir.

THE COURT: They're corrections officers?

JUROR: Yes. They (inaudible) --

THE COURT: I'm sorry, what?

JUROR: Yes, sir, both of them work as a corrections officer. One is a captain and the other one is employed.

OFFICER ROBINSON: Both works with the corrections office. One of them is a captain and one of them is...

JUROR: He ain't no rank, but he works in Trenton.

59

THE COURT: They work at Trenton?

JUROR: The captain do. The other works in Lower Savannah.

THE COURT: Lower Savannah. So one works -- the captain works at Trenton and the other one works at Lower Savannah?

JUROR: Yes, sir.

THE COURT: Anything about those relationships that affect your ability to be a fair and impartial juror in this case?

JUROR: No, sir.

THE COURT: Any doubt in your mind?

JUROR: No, sir.

THE COURT: Mr. Hartley is juror number 40. He's eligible serve.

Are any of you members of or financial contributors to any organizations that has as one of its primary purposes, the support of law enforcement or providing aid to victims, that would be organizations such as Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Crime, any shelter for abused or neglected persons, any type of organization, if you're a member of it or financial contributor to it, please stand?

60

(There was no response.)

THE COURT: Have any of you worked at Johnston Elementary School or J.E.T. Middle School during the years 2006 through the present day; if so, please stand?

(There was no response.)

THE COURT: Do any of you have a child who attended Johnston Elementary School or J.E.T. Middle School from 2006 through the current day; if so, please stand?

(Juror stands.)

THE COURT: Yes, sir.

JUROR: Clifton Felder, juror 29.

THE COURT: Mr. Felder is juror number 29. What's your situation, please?

JUROR: Daughter at J.E.T., grandson at Johnston Elementary.

THE COURT: Do you know [redacted]

JUROR: [redacted] the name is familiar, but I'm not a hundred percent sure, but I know the name.

THE COURT: How old is the child that's at J.E.T.?

JUROR: She's 16 now. You said 2006?

THE COURT: Right. She's 16 now?

JUROR: Yes, sir.

61

THE COURT: She's 16. She would have been born in '93 or '94?

JUROR: '93, yes, sir.

THE COURT: All right. The date of birth on [redacted] is [redacted]. How old is the other child?

JUROR: Eight.

THE COURT: So that child would have been born in 2001 or 2002?

JUROR: 2001, sir.

THE COURT: To the best of your knowledge right now, do you have any connection of any kind with [redacted] or any member of her family?

JUROR: No, sir, not at this time.

THE COURT: Thank you, sir. I think that covers what they're trying to find out.

JUROR: Yes, sir.

THE COURT: Anybody else who has a child attending J.E.T. or Johnston Elementary in 2006 through the current year?

(There was no response.)

THE COURT: Have any of you worked for or had contact with the Department of Social Services concerning children's issues or ARC, which is an acronym for Assessment and Resource Center, or the

62

child's advocacy center, which is in Richland County, South Carolina? Any of you have any connection of any kind with any of those entities or have you ever had any contact or dealings with them; if so, please stand?

(There was no response.)

THE COURT: Do any of you have any immediate family members who are employed by DSS; if so, please stand?

(There was no response.)

THE COURT: I'm going to lump together several questions. And we're not going to talk about these openly. I need you to come down front and talk about these.

Now, I'm going to be very inclusive and some of these obviously relate to very personal matters, but I need for you to respond to these if they apply to you or you have any doubt about whether they apply to you.

If any of you or any of your immediate family members have ever been the victim of any type of crime, you'll need to talk to me about it. If any of you or any of your immediate family members have ever been the victim of any crime involving a sexual act or attempted sexual act, you'll need to talk to

63

me about it. If any of you, any of your immediate family members or any of your close, personal friends, to the best of your knowledge, ever been infected with a sexually transmitted disease through sexual contact with an infected person or other contact with an infected person, you'll need to talk to me about that. If any of those apply to you, please come down and form a line for me.

Now, if I set you aside, you don't need to talk to me anymore.

(Whereupon, the following bench conferences were held with jurors on the record.)

THE COURT: What's your name, ma'am?

JUROR: I'm Lynda Gribek, 33.

THE COURT: What's your situation?

JUROR: My sister, when she was 12, was sexually abused.

THE COURT: Was this a stranger, family member or a friend?

JUROR: No, it's my husband.

THE COURT: And what's your -- what's the situation with your husband now? Are y'all still together?

JUROR: We've been divorced after that and he's remarried. And I don't know what you need to know

64

about that.

THE COURT: You're remarried, too?

JUROR: Yes.

THE COURT: I got thrown off a little bit. I thought you were talking about your current husband.

JUROR: I'm sorry. I did say husband. I should have said ex-husband.

THE COURT: That's okay. I've got former husband down here. Ms. Gribek, you understand the allegations in this case?

JUROR: I do.

THE COURT: Is there anything at all about your experience or relationship with your sister or your former husband that would affect your ability to be a fair and impartial juror in this case?

JUROR: I don't think -- I don't believe so because that was such a unique situation and it was consensual between the two. It wasn't really rape officially, legally of course because she was 12 and he was only 18 at the time, but still.

THE COURT: Do you have any doubt about your ability to set all of that aside and be fair and impartial?

JUROR: No, I don't.

THE COURT: Thank you, ma'am. Just have a seat

65

back there.

Ms. Gribek is juror number 33. She's eligible to serve.

Yes, sir, what's your name?

JUROR: Samuel Stevens, 113.

THE COURT: Okay. Mr. Stevens, 113, what's your situation?

JUROR: I have a cousin who was convicted of a sexual crime.

THE COURT: Was that in Edgefield County?

JUROR: Yes, sir.

THE COURT: How long ago?

JUROR: I believe about maybe five years ago the last time.

THE COURT: It's been more than one time.

JUROR: Yes.

THE COURT: Do you know who prosecuted him, was it the Solicitor's -- I mean, the sheriff's office?

JUROR: I'm not sure.

THE COURT: What's your cousin's name?

JUROR: Vernon Phillips.

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

66

JUROR: No.

THE COURT: Any doubt in your mind?

JUROR: Yes, sir.

THE COURT: There is?

JUROR: No, no doubt.

THE COURT: If he was prosecuted by the same people who will be prosecuting this case, would that affect your ability to be fair and impartial?

JUROR: No.

THE COURT: Any doubt in your mind about that?

JUROR: No.

THE COURT: Thank you, sir.

Mr. Stevens is 113. He's eligible to serve.

Yes, ma'am, your name, please?

JUROR: Sherry Jones.

THE COURT: 55. Yes, ma'am.

JUROR: My sister was abused as a child.

THE COURT: Roughly what age child?

JUROR: She was about 11.

THE COURT: Was this a family member?

JUROR: Uh-huh.

THE COURT: And was the family member prosecuted?

JUROR: (Juror shook head.)

THE COURT: Is there -- you understand the

67

basic allegations in this case?

JUROR: (Juror nodded head.)

THE COURT: Is there anything at all about your experience or your sister -- or with your sister that would affect your ability to be fair and impartial as a juror?

JUROR: No.

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

JUROR: No.

THE COURT: So you're confident you can put all of that aside and decide the case without regard to what happened to your sister?

JUROR: Yes.

THE COURT: Thank you.

Ms. Jones is juror number 55. She's eligible to serve.

Tell me your name again.

JUROR: Lynda Gribek, 33.

THE COURT: Yes, ma'am.

JUROR: That same sister was murdered three years later when she was 15 years old. And we have to go to Columbia to, whatever you do, object to the parole of this -- the gentleman -- the man that killed her.

68

THE COURT: Did that happen in Edgefield County?

JUROR: It's Sudlow Lake and I'm trying to decide whether that's Edgefield County or Aiken. I don't know. It was Sudlow Lake Road and 72.

THE COURT: Who was the person that killed your sister?

JUROR: William Coal. He wasn't found for four years, but he lived on Sudlow Lake Road. Two 15-year-olds shot at the same time, but the boy lived and my sister was killed.

THE COURT: Is there anything about that situation that affects your ability to be fair and impartial?

JUROR: No, I don't think so.

THE COURT: Do you have any doubt?

JUROR: I can be objective.

THE COURT: Do you have any doubt at all?

JUROR: No, sir.

THE COURT: Thank you, ma'am.

Ms. Gribek is 33. She's eligible to serve.

(The bench conferences were concluded.)

THE COURT: Is there anything at all about the nature of these allegations, the allegations of criminal sexual conduct with a minor and a lewd act

69

upon a minor, is there anything at all about the nature of the allegations that affects your ability to be a fair and impartial juror in the case; if so, please stand?

(There was no response.)

THE COURT: Have any of your formed or expressed any opinions about the case; if so, please stand?

(There was no response.)

THE COURT: Are any of you aware of any interest, bias or prejudice that you might have for or against the State, for or against the defendant, for or against anyone or any entity involved in the case; if so, please stand?

(There was no response.)

THE COURT: Can each of you give both the State of South Carolina and the defendant, Mr. George A. Jones, a fair and impartial trial? If you know of any reason why you cannot, please stand now.

(There was no response.)

THE COURT: Further questions from the State?

MR. MAYE: None from the State.

THE COURT: Further questions from the defense?

MR. FALGIONE: No, Your Honor.

THE COURT: Thank you. The jury panel is

70

qualified.

All right. Let me just put this on the record. I can explain it to the lawyers while I explain it to the jury. Edgefield County is in the Case Management System, so we're one of the rural counties that has the newer technology. And the counties in the Case Management System draw juries generally by drawing them using a computer to randomly select jurors.

We -- how many are left from that original list?

THE CLERK: Twenty-four.

THE COURT: Y'all gave me a list of 29 people.

THE CLERK: Right.

THE COURT: How many of those 29 are no longer in there?

THE CLERK: Five.

THE COURT: So I'm down to 24?

THE CLERK: Yes, sir.

THE COURT: But you've got three others that we can add?

THE CLERK: Four.

THE COURT: Y'all bear with me, folks, this is new.

(Pause.)

71

THE COURT: For some reason, the computer will not pull four of you this time. It's never done that before so we're going to have to do it the old fashioned way, put every eligible juror in the hopper and we'll draw the old fashioned way.

When I say it's old fashioned, that's really not fair. If you're in our circuit and you're in Lexington or Edgefield County, the computer picks them. If you're in Saluda or McCormick County, they do it this way.

All right. The strikes, as I understand it, are ten for the defense and five for the State.

Now, ladies and gentlemen, the way that this will work, the Clerk's going to draw a name from that hopper. If it is your name, you need to gather your personal belongings, come down front, go to the nearest aisle or either the center aisle or that aisle on the side, come around and -- Mr. Dunn, show them where to stand.

I need you to come around and stand where Mr. Dunn is going to stand, face back in the direction from whence you came so you'll have your back to me. When you get down here, the Clerk's going to ask questions of the State's attorney and the defense attorney. And based on their responses,

72

you'll be told whether to have a seat in the jury box or return to your seat in the courtroom, that's why you need to bring your personal belongings because your next stop may be over there.

All right. Assuming there's no objection to the Clerk drawing the name, we'll proceed to strike a jury. The jury panel's qualified. Strikes are ten for the defense, five for the State.

Madame Clerk, give us a jury.

THE CLERK: Juror number 86, Alice M. Moyer.

(Whereupon, Alice M. Moyer, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror from this trial.

THE COURT: Return to your seat, ma'am.

THE CLERK: Juror number 33, Lynda D. Gribek.

(Whereupon, Lynda B. Gribek, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse her from this

73

trial.

THE COURT: Please have a seat back in the courtroom.

THE CLERK: Juror number 120, Shirley M. Tucker.

(Whereupon, Shirley M. Tucker, a black female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse Ms. Tucker from this trial.

THE COURT: Return to your seat in the courtroom please, ma'am.

THE CLERK: Juror number 4, Connie C. Barnhill.

(Whereupon, Connie C. Barnhill, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box please, ma'am.

THE CLERK: Juror number 84, Timothy E. Mosley.

(Whereupon, Timothy E. Mosley, a black male,

74

was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please, sir.

THE CLERK: Juror number 50, Michael M. Jefferson.

(Whereupon, Michael M. Jefferson, a black male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please excuse the juror from the trial of this case.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 106, Kara F. Sanders.

(Whereupon, Kara F. Sanders, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

75

THE CLERK: Juror 23, Ruth Drumming.

(Whereupon, Ruth Drumming, a black female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please excuse the juror from the trial of this case.

THE COURT: Return to your seat in the courtroom please, ma'am.

THE CLERK: Juror 28, Duane A. Faust.

(Whereupon, Duane A. Faust, a white male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 113, Samuel E. Stevens.

(Whereupon, Samuel E. Stevens, a black male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please excuse the juror from the trial of this case.

THE COURT: Return to your seat in the courtroom please, sir.

76

THE CLERK: Juror 51, Mamie R. Jennings.

(Whereupon, Mamie R. Jennings, a black female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box please, ma'am.

THE CLERK: Juror 43, Martha B. Herlong.

(Whereupon, Martha B. Herlong, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 125, Mary C. Yarborough.

(Whereupon, Mary C. Yarborough, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

77

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 17, Gail S. Butler.

(Whereupon, Gail S. Butler, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 100, Victor B. Powell.

(Whereupon, Victor B. Powell, a white male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: I'm sorry. Could I have the juror number again, please?

THE CLERK: Juror 100, Victor B. Powell.

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror 55, Sherry G. Jones.

(Whereupon, Sherry G. Jones, a white female,

78

was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 26, Shirley Mitchem.

(Whereupon, Shirley Mitchem, a black female, was called forward.)

THE COURT: 26?

MR. MAYE: She's number 80. She was 26 on the list. She's juror number 80.

Please present the juror.

THE CLERK: What sayeth for the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box please, ma'am.

THE CLERK: Juror number 21, Louis F. Davis, III.

(Whereupon, Louis F. Davis, III, a white male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

79

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 29, Clifton Felder.

(Whereupon, Clifton E. Felder, a black male, was called forward.)

THE CLERK: What sayeth the state?

MR. MAYE: Please excuse the juror from the trial of this case.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror 83, Sessalee L. Moores.

(Whereupon, Sessalee L. Moores, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please excuse the juror from the trial of this case.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror number 9, Mitch Blalock.

(Whereupon, Mitch A. Blalock, a white male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

80

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

THE CLERK: Juror number 40, Charlie Hartley.

(Whereupon, Charlie Hartley, a black male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror 76, Debra F. Messina.

(Whereupon, Debra F. Messina, a white female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror number 92, James L. Oliver.

(Whereupon, James L. Oliver, a white male, was called forward.)

THE CLERK: What sayeth the State?

81

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror 74, Martine A. Mealing.

(Whereupon, Martine A. Mealing, a black female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror number 66, Yuvonne D. Lovett.

(Whereupon, Yuvonne D. Lovett, a black female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

THE CLERK: Juror number 93, Ellen M. Padgett.

(Whereupon, Ellen M. Padgett, a white

82

female, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please seat the juror.

THE COURT: Have a seat in the jury box, please.

We'll draw an alternate if we have enough people. Strikes are one for the State, two for the defense.

THE CLERK: Juror number 8, P. Mark Billings.

(Whereupon, P. Mark Billings, a white male, was called forward.)

THE CLERK: What sayeth the State?

MR. MAYE: Please present the juror.

THE CLERK: What sayeth the defense?

MR. FALGIONE: Please excuse the juror.

THE COURT: Return to your seat in the courtroom, please.

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

MR. MAYE: None from the State, Your Honor.

THE COURT: Defense?

MR. FALGIONE: No, Your Honor, nothing from the

83

defense.

THE COURT: Thank you.

Mr. Oliver, you're going to be the foreman of the jury. When you come back in, be the last one in and sit in that chair in the front on this side on the end, all right?

The rest of you folks can sit anywhere you like in the jury box except in that chair. I ask you when you come in, if you have a favorite chair, please don't make people walk across you. We had an incident in Lexington where a lady broke her ankle and I don't want that happening to any of you, so just, if you would, just file all the way down. Follow the bailiff's instructions as you come in and go out and everything should be fine.

I'm going to have to send you back into the jury room for a little while and then I'll bring you back out here, give you some instructions and let you go to lunch on your own. Do not discuss this case in any way. Don't talk about the people involved in it, the type of case or cases that it's alleged to involve, don't talk about the case in any manner whatsoever.

If you would please, I need you to watch your step. For some reason, people forget that there's

84

two steps here and steps over here. Be very careful. Watch your step. If you'll follow the bailiff, he'll escort you back to the jury room.

(The jury retires to the jury room.)

THE COURT: Do you want them on standby?

MR. MAYE: I'd like them to call back. It's early in the week.

THE COURT: All right. Ladies and gentlemen, as I explained to you this morning, I told you that we'd go until about one o'clock and we did. And I told you that if you were not selected on the first case, that what would happen is that we'd put you on a telephone call-in system.

Now, I need to ask that you give me about ten more minutes of your time and then I'm going to let you go for the balance of the day. And I'm going to tell you before I start into this, that I'm going to insult your intelligence. I'm sorry about that.

I learned a long time ago that if I say these things that I'm about to tell you, we don't seem to have any problems, but if I leave them out and I'm tempted every so often just not to say anything because I think so much of it's common sense, it's inevitable that if I don't say these things, we have problems. And particularly with the low numbers

85

that I've got to work with this week, I mean we just barely got 12 people seated in that jury box, it's real important that you understand these things.

Now, a little bit about the history. When I was practicing law, the way that judges dealt with juries is they brought the juries in every morning and every afternoon and the jurors just sat there. And at some point, the judge may say, okay, we're going to draw a jury; at some point, a judge may say go to lunch, come back after lunch; at some point, the judge will say, all right, you all can go home and come back tomorrow.

About the time that I was coming on the bench, like I told y'all, that was 18 years ago, most people had come to realize that while that's real convenient for the court, that's not real convenient for the jurors. And most counties had started going to a call-in system and it's very simple. Basically, you're going to be calling in to a number tonight after 6:00 and you'll find out then whether we need you to come back in tomorrow.

If everything goes like I think it will, we won't have time to bring you back for any other cases. As soon as I know that I can turn you loose, I promise you that I'll put on that machine that you

86

are through for the week.

I know six o'clock is not the best time for many of you to find out what to tell your employers about the next day, but we've tried to move this up earlier in the day. Other judges that I've talked to have done the same thing with the same results. Typically, six o'clock is about the time that I'm leaving the courthouse to go to my office, so that's usually when I have a firm handle on what it is that the jury needs to know. So I apologize that we can't push it back a little sooner.

But what you'll do is call in tonight after 6:00. You'll hear a message, the message may say, call back tomorrow night after 6:00. It may say, you're through for the week. It may say, call back at some other time. It may say, come in. If I knew what to tell you at this moment, I would tell you. I don't know.

Now, I'm going to run through this pretty quickly, but forgive me in advance, please, this is going to insult your intelligence. This call-in system works great. The jurors tend to love it, but it only works if you call. I've had jurors in the past when I would say what I think is likely to happen, like I just told you that I don't think I'll

87

be bringing you back in, they just don't call.

Which gets me to point number two, if you're supposed to be here and you're not, I send somebody to get you. That's, again, not a threat, that's just so you'll understand that anybody who was summoned for jury duty who did not show up, and I don't think we had anybody this week, we don't let them just off the hook, we send the sheriff out to talk to them and bring them in. So please understand that you have to be here if you're supposed to.

Which gets me to point number three and that is that if you have some true emergency that arises that prevents you from being here, please have somebody call and let the clerk's office know so that we are not out looking for you. I'm more than willing to meet you more than halfway on this if I know what's going on, but I can't deal with it if I don't know what's going on and I'll have people looking for you.

Which gets me to the next point, you only get that little juror pay, which I call Happy Meal money, you only get that little juror pay for the days you're actually up here. So if you can otherwise go to work, go to work.

88

I have had in other counties, never in Edgefield County, thank goodness, situations where we've had people who get paid by their employers when they're on jury duty and they would be in a jury panel that I might turn loose on Tuesday or Wednesday, but they tell their boss that they're still on jury duty and then at the end of the week, they expect me to give them a slip protecting them for the whole week. That won't happen. So if anybody tries to plant that bug in your ear, that's not a good idea.

Now, if you work a third shift job or you're a long distance truck driver or something like that, I can't have you coming in dead on your feet so if you'll stay and talk to me, I'll tell you what we normally do about people who have those types of occupations.

Again, I promise you, I know I'm being repetitive, but I promise you as soon as I know that I can turn you loose, I will.

The last thing I want to say is thank you. I haven't said it before and I'm not the type of person who's going to sit up here and repeat thank you's to jurors, but I, in all sincerity, I mean this, we're very blessed and very fortunate that we

89

live in a society where our disputes are resolved in this fashion. And the only way that works is if people like you take away from everything else they had to do in their lives to come in and serve as jurors and decide these matters and let us move on.

So while I'm not going to sit up here and repeatedly thank you for doing your duty, I am very much aware of the fact that the only reason this system works is because of you. So thank you.

All right. That card you got this morning, one side of it's got a telephone number on it. Everybody still got a card? If you don't, get one before you go. Call in tonight after 6:00, follow the instructions.

Anybody got any questions before I let you go?

Yes, ma'am.

JUROR: For those of us who were set aside, are we done for the week?

THE COURT: No, ma'am.

Here's the main reason I think -- and, again, I don't control the calling of the cases, so I don't know if they've got a one day trial sitting out there or what they may have, but if anything happens, if one of those jurors get sick, this case is over until the next term of court because I ain't

90

got but 12 and I can't go forward with less than 12. So they don't want to waste a whole term of court and that's why you're being kept on the hook I suspect. I'm just kind of reading between the lines.

As soon as they get far enough into the week that they know that they can't try anything else, they'll tell me to turn you loose and that's what I'll tell the Clerk, but that's why you're being kept on the hook.

And, folks, if that happens and I can't try anything, court will shut down, it'll just stop. We might be able to do a little thing here or a little thing there, but if we don't have a certainty that you're out there to try cases, it'll stop.

Anybody else have a question?

(There was no response.)

THE COURT: All right. Well, I told you one o'clock. I'm pretty good at guessing time this week. Good luck to you. Thank you.

(The remaining jury panel was excused.)

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, I'm going to let you go to lunch in a few minutes. You're on your own for lunch. I'm going to need you

91

back in the jury room at 2:30. When you come back, I need you to report directly to that jury room, don't come through the courtroom, just go straight back there. And the bailiffs will be back there and they'll escort you into the jury room.

Before I let you go, ladies and gentlemen, I've got to explain some things to you. When you take your oath as a trial jury later, you're going to be promising us that you'll decide the case based on the evidence and the law. And those things are going to come to you in the courtroom.

We want you to use your common sense. We're not telling you to leave your common sense at home. But it's real important that you not discuss this case in any way with anybody else until this week is over and you've been seated on any jury you might possibly be seated on. So don't discuss this case with family members, friends, anybody else. Don't let anybody discuss it with you. If anybody attempts to discuss it with you, report that to me so that I can deal with it.

So to give you an example of what I mean, it's okay for you to tell a family member or a friend that you're on a jury, but you can't tell them who's in the case or what it's alleged to be about or

92

anything at all related to the case.

Also, I never know if media is going to pick up a trial or not. The only time I usually know that is if they ask to set up television cameras or something, so I don't know that there will be any media coverage of this trial, but if there is any, you need to avoid it. And if you are inadvertently exposed to any media coverage, get away from it and report to me at the first opportunity what you may have seen, heard or read through the media.

Now, we do have a couple of Internet sources in this county that frequently cover court and I don't know that they're covering things. I may not ever see anybody in the courtroom. So what I do in Edgefield County is I give you an instruction that you're not to look at any local Internet media site, any local blog, anything like that that typically covers activities in court during the duration of this trial. Don't let yourselves be exposed to any of that.

Now, I also need to explain to you that you're not to do any independent investigation. And after I finish with my explanation, I have to read to you what the Chief Justice said we have to tell you.

You're not to do any independent investigation.

93

For example, you're not to go on the Internet and try to look up law. Once you find out where this is alleged to have happened, you're not to go out there and look around. Don't do any independent investigation.

You're perfectly equipped to do the job that you're going to be called upon to do and you don't need to do any independent investigation to look up definitions or law or try to find out anything about the cases. In fact, that's completely inappropriate.

Now, the Chief Justice has advised us that we must give you this instruction that deals with that issue, as well as cell phones and computers. You are not to discuss the case with anyone else including other jurors except as authorized by the court. So don't discuss this case even among yourselves until I tell you to begin your deliberations, that's at the very end of the trial. Don't discuss anything about the case.

That's hard to do because you 12 folks may feel you have little in common except that you all live in Edgefield County and you all got picked on this case, so the logical thing you're going to want to talk about during any breaks is what just happened

94

in the courtroom. You have to resist that temptation. Don't talk about this case among yourselves until I tell you to. Don't talk about the case with anybody else until the week is over.

You're not to read or listen to any news reports about the case. You're not to use a computer, a cell phone or any other electronic device or communication capabilities while attending the trial or during any deliberations. You can use those devices during breaks, lunch breaks or extended breaks, but you cannot use them to obtain or disclose information that's prohibited by the court.

You're not to use a computer, a cell phone or any communication device or any electronic device or any other method to obtain or disclose information about the case when you're not in court.

Now, when the Chief Justice uses the term "information about the case", what she means is that it includes such things as the following, but it's not limited to these things: You can't discuss or find out or talk about or communicate anything about any information about a party, a witness, an attorney or a court officer, any news accounts of the case, information collected through juror

95

research on any topics raised or testimony offered by any witness, information collected through juror research on any other topic that the juror might think would be helpful in deciding the case.

Again, I believe all of those things are common sense. Don't talk about the case, don't let yourself be exposed to anyone talking about the case or any media coverage and report to me if there's a problem.

Okay. When you go out, Mr. Dunn's going to show you how to report back in. There are elevators back there. There's a stairwell back there, but I need you back in the jury room at 2:30.

I promise you we'll be out here working. I'll get you close to 2:30 as I possibly can. Thank you.

(The jury was excused for lunch.)

THE COURT: All right. I've got a civil matter scheduled at two o'clock. I need y'all back in place at 2:15. Thank you.

(Whereupon, there was a luncheon recess.)

THE COURT: All right. Did we cover all of the pretrial motions?

MR. FALGIONE: Just my motion to sequester the witnesses, Your Honor, I'd request that.

MR. MAYE: I'd certainly honor that. And when

96

we begin taking testimony, I'll make sure they're sequestered.

THE COURT: Is the State ready for the jury?

MR. MAYE: The State's ready.

THE COURT: Defense?

MR. FALGIONE: Yes, Your Honor.

THE COURT: Would you ask them to bring the jury in?

(The jury returns to the courtroom.)

THE COURT: All right. Members of the jury, the first order of business is that I must have you placed under the oath of a trial jury. So I need for you to stand, raise your right hand, the Clerk will administer your oath.

(The jury was duly sworn by the Clerk of Court at 2:35 p.m.)

THE COURT: All right. Ladies and gentlemen, I'm going to start by giving you some information about how the case will begin. I won't go through the whole thing, but I'll tell you how we'll get started and then I'm going to give you some instructions you have to follow throughout the trial.

The first thing that will happen is that the attorneys will make their opening statements to you.

97

In opening statements, the attorneys are not permitted to engage in what we call argument. Opening statements may be an introduction, an outline, an overview, but they cannot extend into what we call argument.

When the opening statements are finished, then I will call upon the State to present its evidence. The State brought these charges against Mr. Jones. And as I explained to you earlier, each of these charges is separate and distinct. It has to be evaluated on its own merit or lack of merit.

And the State has the entire burden of proof. Mr. Jones is presumed to be innocent on both charges. He has no obligation to prove anything at all. The State has the entire burden of proof and has to prove every essential element of each offense charged beyond a reasonable doubt. So I will call upon the Solicitor to present evidence in an attempt to meet that burden.

When the State is finished presenting its case in chief, the State will advise me that they rest or that it rests and at that point, I'll have to send you out of the courtroom so that I can discuss some legal issues with the attorneys. When you come back after that break, I'll tell you where we go from

98

there, but that's how we'll get started with the case.

Now, it's really important that you understand some things. First, that oath that you just took was one in which you've promised us that you're going to decide these cases based on the evidence and the law. So you need to know where those things come from.

The evidence comes from the sworn testimony of witnesses. Evidence may also come in the form of exhibits. An exhibit is anything tangible that's marked in the record. It can be a map, a chart, a record, photograph, anything tangible that's marked in the record. Evidence then comes from the witness' testimony and the exhibits admitted during the trial.

What the lawyers say is not evidence. I want you to pay close attention to them, but understand that what comes out of the mouths of lawyers is not evidence. The evidence comes from the witnesses and the exhibits.

There is one exception to that rule about what the lawyers saying not being evidence. If we come upon it, I'll tell you about it, otherwise I won't burden you with it.

99

The law comes from me. It's my job to decide the law that applies to the case and tell it to you at the end of the trial.

Now, it's also very important that you understand that there are two judges in this courtroom. I'm the judge of the law. As I just explained to you, I decide the law that applies to the case. I tell it to you at the end of the trial. I also preside over the case. I make legal rulings as the case goes along. I'm the judge of the law.

You're the other judge. You must understand that you are the only judge of the facts. Only you get to decide such things as whether evidence is believable or not. Only you get to decide what weight, if any, should be put on evidence. That's entirely your prerogative and I will not invade your province.

Now, while you've promised us that you're going to decide the case that's based on the evidence and the law and you have to do that, I'm not telling you to leave your common sense at home. As I mentioned to you earlier, we want you to use your common sense, your sense of logic and reason and your good judgment. It just makes good common sense that you keep an open mind about these cases and that you

100

don't make up your mind until you've heard all of the evidence and you know what law applies to the case.

So there's a rule that I've mentioned to you, but I've got to repeat it again and that rule is you are not to discuss these cases in any way until I tell you to begin your deliberations, that's among yourselves. Don't discuss these cases with family members, friends, anybody at all until the case is completely over and you've been seated on any jury that you might be seated on this week. If anybody attempts to contact you and discuss the cases with you, report that to me so I can deal with it.

If there's any media coverage of the trial, get away from it, report what you saw, heard or read through the media to me at the first opportunity.

I gave you instructions about what things you can do and cannot do as far as independent investigation, that you're not to do any independent investigation. I gave you restrictions on the use of computers and cell phones and I'm not going to read back through that again. You remember that.

Now, these indictments, they don't have any evidentiary value. They're charging papers. You cannot give them evidentiary value. They're not

101

evidence. The evidence comes from the witnesses and the exhibits.

The last thing I want to say to you folks before I turn it over to the lawyers is I want to thank you. I often say to juries that I don't repeatedly say thank you because I think that cheapens it.

I know you've got other places to be and other things to do. I also know that it's very important that we, as citizens of this country, come into a room like this and decide our disputes in this fashion. We're very blessed to have this system and the only reason it works is because of you.

So I'm not going to sit up here and give you a lot of platitudes. I'm not going to sit up here and cheapen the thank you, but I do wish to sincerely thank you in case I don't seem to say it enough. I know the only reason this works is because you're doing your job.

I invite your close attention, ladies and gentlemen. And we'll take some breaks as we go along. We may take more breaks than what you would like. I never know in a trial if we're going to take one break or 101 breaks, but if you have to walk back and forth to that room a lot, just chalk

102

it up to good exercise and let us do our job. But if you need a break, if you need anything, let the bailiff know and we'll do our best to attend to your comfort.

All right. Once again, I invite your close attention and ask that you listen to the opening statements of the State and defense.

Mr. Solicitor.

MR. MAYE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

OPENING STATEMENT

MR. MAYE: Ladies and gentlemen, it's already 2:44 in the afternoon on Tuesday. And I know that all of you, the 12 of you, that are going to go back in that jury room and deliberate at the conclusion of this case, I know that when you got that jury summons in the mail, I doubt anybody leapt for joy and got loud because it is a burden to have to come down here. You've got to give up whatever you were doing, whether it's going to work, being with your family, being at home, you've been taken away from whatever you would have normally been doing this week, but this is vital and important for everybody here in the community.

103

Because the 12 of you, as you sit, you are judges of the facts in this case just as surely as Judge Keesley is sitting up there on that bench with his robe on. He presides over this. And at the conclusion of all the evidence in this case, the Judge is going to charge you with what the law is and he presides over this. But you 12 are the judges of the facts in this case.

And I submit to you this is not a complicated case. And what the State of South Carolina is going to prove up here before you over the next few days is absolutely an act of the ultimate betrayal between a father and a daughter.

She's over here at the State's table with me. This young lady who is seated right here, her name is [redacted]. She's 11 years old now. Back on April the 6th of 2008, she was nine years old. She was taken to see Dr. Beth Gordineer, who practiced at that time up here at the Edgefield Medical Clinic, because she was having some extremely excruciating symptoms, vaginal symptoms of her genitalia.

She went to the doctor. Dr. Gordineer, her being a nine-year-old child, she suspected that she had some kind of infection in this case. She

104

started going about doing what she could because this child was in excruciating pain, trying to figure out what was wrong with this nine-year-old little girl that was up there with her vaginal area in acute distress.

Dr. Gordineer, based on her experience and training, diagnosed this young lady, saw the lesions, the sores that she had on her genitals, performed the tests that she needed to do to be served in this case and diagnosed this nine-year-old young lady with genital herpes.

I submit to you, ladies and gentlemen, we're going to prove to you that's how this all came out and pointed the finger right back at George Jones, the gentleman that's seated over here in the black jacket with his lawyer, Mr. Falgione, in this case. Because this child up there diagnosed with herpes, and you're going to hear from the doctors in this case, you're going to hear from medical experts, the way you get herpes is through sexual contact, whether or not that's intercourse or messing with yourself or getting body fluids on yourself, is through sexual contact.

And Dr. Gordineer is going to get up here and tell you in this case that's how she sees it. She's

105

never seen it in a child nine years of age. It's from sexual contact. And I submit to you there won't be any doubt at all this child got herpes because she was being molested and abused.

When they asked Minor how she got this or what had happened or who was abusing her, she immediately disclosed that it was her father, George Jones. And you're going to hear about what was going on in their family situation.

George Jones -- Shannon Grim, is this child's mother, Minor ' mother. George Jones blew in and out and came and stayed over there when he felt like it. You're going to learn he just blew in and out as he felt like it, posted up in the couch at their house. Minor lived there with her little brother, Terrance, and her mother. He would come in and out.

Minor is going to get up here under oath and tell you from the stand in this case about how her father, after her mother would go to sleep -- you're going to learn that she suffered from back pain. She took medication. Minor herself is going to tell you she went to sleep, she was hard to wake up. She was in the bed at night. Her brother was in the bedroom. George Jones would blow in and post up on

106

the couch in their house and sleep on the couch in the den area.

During the nighttime, he would get this young lady, Minor and he would bring her in there. And I submit the facts in this case are going to show you, to hide the shame of what he was doing in this case, he would have her hold a pillow over her face and cover up her face, the State submits to you in this case to cover up the shame of what he was doing, and he would molest this young lady. And she's going to tell you as she lay there on that couch, over and over again, he would repeatedly violate her.

Now, whether or not she had her face covered up, whether or not he used his penis, whether or not he used his fingers in this case, it doesn't matter because the State doesn't have to prove that in this case.

He's charged with criminal sexual conduct with a minor in the first degree. And if you're having a penetration of any type, whether it's digitally with fingers, with penis, with any object, any penetration of her vaginal area, her being less than 11 years of age at that time, and I told you at the conclusion of this case, the Judge is going to charge you with what the law is in this case and the

107

bottom line is an adult person, a person older than she is, can't penetrate and violate this young lady.

And I submit to you we've got the burden of proof in this case in proving criminal sexual conduct with a minor in the first degree and we welcome it. We're going to prove it beyond all doubt in this case.

She's going to tell you -- we just went back -- she's going to tell you that this started when she was seven, eight, nine years old. We just went back about ten months and gave you a range in that indictment. He was indicted between June the 1st of 2007 and April the 1st of 2008.

And [redacted] is going to get up here on the stand and she's going to tell you at many times when he blew in there and stayed on the couch, he violated her, he penetrated her, he messed with her, he fondled her. And not every time did he penetrate her and he's charged in this case, two separate indictments, two separate charges that you'll have for your consideration in this case.

Any time that he penetrated her, any time he put his fingers inside of her, his penis inside of her or whatever he used in this case to infect and transmit herpes to this young lady, any of those

108

times that he penetrated her, the State maintains he's guilty of criminal sexual conduct with a minor.

The times that he just fondled her and touched her genitals and didn't put anything inside of her, he's charged with a lewd act, committing a lewd act on a minor any of those times that he did not penetrate her. And the Judge is going to go into great detail at the conclusion of this case telling you what all of the elements are.

We've got to prove in this case, she's going to get up and tell you that it happened in Edgefield County, tell you that George Jones did this to her, tell you that she was penetrated in this case, we're going to go through all of the elements, we're going to prove it up here in this stand as these witnesses testify before you under oath.

Because just as soon as Dr. Gordineer realized what this child had, she immediately contacted DSS and immediately law enforcement was contacted because the only way you can get this is through sexual contact. So they knew good and well that this young lady at nine years of age, somebody was abusing her.

Investigator Lamaz Robinson, who's seated here at the table with me, is an investigator with the

109

Johnston Police Department. He was assigned about two days later to start investigating this case and I submit to you he did that. He went around and talked with witnesses. He talked with Minor He talked with her mother. He talked with George Jones. And he started investigating and working and processing this case.

One of the things that he looked at in this case was whether or not he, George Jones, had herpes himself to transmit. And I submit to you he took care of that too, had him tested and he does have it. It's documented. He's had it in the past.

I submit to you you'll hear from the medical expert, the expert testimony in this case, from the doctors, is that when you get herpes, you've got it for life, never goes away. This young lady will have it till the day that she dies. Never goes away. It flares up in ugly lesions. And the first times you get it, it is excruciatingly painful. Over the rest of the course of life, sometimes with suppressive therapy with modern medication, they can keep it in check, but it's always subject to flare-up during times of stress, but it causes open lesions and it can cause that the whole rest of your life.

110

But there's a test that they can do to your blood in this case to determine whether or not you've ever had it. I submit to you that's been carried out in this case and he does have it.

I submit to you that the most important evidence that you'll hear in this case is Minor [redacted] is going to get on that stand and she's going to tell you how she stayed there in her own house, that she suffered the absolute ultimate betrayal of being abuse by George Jones, her father.

At the conclusion of all the evidence in this case, all that I ask that the 12 of you do is come back with a verdict that speaks the truth and judge justice for everybody involved in this case, for Minor [redacted], for everyone here in Edgefield County.

I appreciate your close attention and we'll get to putting the facts up just as soon as we can. Thank you.

THE COURT: Thank you, Mr. Maye.

Mr. Falgione, you're recognized for your opening statement.

MR. FALGIONE: Thank you, Your Honor. May it please the Court.

Good afternoon. Wow, wasn't that hard to hear? Doesn't that just grab your heart strings? I want

111

you to open your mind for just one minute, think what it's like to hear that when you're Minor father, the daughter you care about, and you know you didn't do it. Think about that.

You're here today, and I hope you'll appreciate this truly awesome oath that you have taken because you have a tremendous, tremendous task.

Now, Solicitor Maye made one statement and I want you to think about this and I want you question this. I want you to keep this in the forefront of your mind. Solicitor Maye said, The only way to get herpes is through sexual contact. Real definite about that, wants to say that the only way to get herpes is through sexual contact.

You'll have to test that. You have to test a whole lot of things because your oath requires you to do almost a superhuman thing in this particular case because you have to set aside your natural sympathy for this little girl.

Something bad happened to Minor A little girl like that shouldn't have genital herpes. We all know that. We all agree with that. That's not what this case is about. This case is about whether or not George Jones, my client, molested Minor

Now, in order to do your job, you have to set

112

aside all of the sympathy you feel for Minor all of the sympathy you may feel for George Jones and your natural tendencies as a father, as a mother of children, as a brother to not just grab a pitch fork and run through the streets and say, We're going to take care of the guy that they said did this, because you can't do that. You swore an oath to abide by the law. And the law requires the State to prove absolutely every element, everything that they've said beyond a reasonable doubt.

Now, that's beyond a reasonable doubt. See, that's different than a civil case. A civil case you've only got to prove what you're saying is more likely than not or 50 percent, 51 percent true and you win. That's in a civil case. And why is that? That's because you're talking about money in a civil case.

Why do we have this higher standard in a criminal case? It's because you're talking about punishing someone. You're talking about putting him in jail. You're talking about taking away their freedom. So you want to make sure that what has been told to you and what you base your decision on is true beyond a reasonable doubt.

Well, how are you going to do that? You're

113

going to do that by asking yourself with every statement that comes off of this witness stand no matter who the witness is, with every document that's presented, with everything that the State puts in front of you, is that the only explanation for this? Because if there's another explanation, then they haven't proven it beyond a reasonable doubt. And to abide by that oath that you took to this Court, to yourselves and to God a little bit ago, you have to do that.

Now, we have that standard because in this country, anybody can accuse anyone of anything. And as a result of that, a warrant goes out, an indictment goes out, you're put in jail until they come in front of the triers of fact, which are what you are.

We're going to hear a lot of things in here that gosh knows I wish we didn't have to hear. None of us enjoy this, none of us. And we all feel bad for Minor There isn't any question about that, everybody in this courtroom. It's not something you ever want to have happen, but this is about the criminal charge.

Now, as George Jones sits there, the burden of proof stays with this State. They've brought this

114

charge. They've got to prove everything, prove it to your satisfaction beyond a reasonable doubt.

George Jones, as he sits there, the law will tell you, has a coat of innocence on him. In other words, he's surrounded by innocence and he only loses that if the State proves absolutely everything they say beyond a reasonable doubt. So, as a result, George Jones doesn't have to prove anything. And that's a hard thing to understand because as people, we say, well, if you didn't do it, prove it to me. That's not the standard. That's not what happens in a courtroom. This isn't Judge Judy. This is real. This is awesome. And you are the part of it. You are the standard parish for this.

So George Jones doesn't have to take the witness stand. He doesn't have to put up any witnesses. He doesn't have to do anything. The burden is on the State. Don't ever lift that burden because people are going to be pulling at your sympathetic heart strings to do that. And if you shortcut what the law requires, what your oath requires and what reasonable doubt requires, justice will not be served in this courtroom for anyone, not [redacted], not George Jones and you won't feel good about that verdict either. Thank you.

115

THE COURT: Thank you Mr. Falgione.

Ladies and gentlemen, we're going to take a very brief break, get a few things set up, get you back in here. Don't discuss the case. Follow Mr. Dunn, please.

(The jury retires to the jury room.)

THE COURT: If y'all need to move anybody out of the courtroom, now is the time. We're at ease.

(Brief Recess.)

THE COURT: Is the State ready?

MR. MAYE: The State's ready. Dr. Gordineer is my first witness. She's on her way into the courtroom right now, Your Honor.

THE COURT: Defense ready?

MR. FALGIONE: Yes, Your Honor.

THE COURT: Bring the jury for me, please.

(The jury returns to the courtroom.)

THE COURT: Solicitor, call your first witness, please.

MR. MAYE: The State calls Dr. Beth Gordineer.

ELIZABETH GORDINEER,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name, please.

THE WITNESS: Elizabeth Gordineer,

G-o-r-d-i-n-e-e-r.

DIRECT EXAMINATION

BY MR. MAYE:

Q Dr. Gordineer, introduce yourself to the ladies and gentlemen of the jury, tell them where you're originally from, what area of the country you're originally from, tell them about your background, your medical training and how you ended up practicing medicine here in Edgefield County.

A I'm Elizabeth Gordineer. I was born and raised in New Jersey, moved down to South Carolina in Charleston with my husband, he was in the Navy, went to medical school down in Charleston, wanted to practice in a small town and got recruited to Edgefield. I've been here since 1995.

Q Since '95. Who had you been in practice with, what other doctors -- do you work here locally in a clinic?

A I do. I work at Peach Tree Medical Center, which is associated with Edgefield County Hospital.

Q Prior to that, were you at Edgefield Family Practice --

A For a medical clinic, right, and --

Q -- with Dr. Rainsford, Dr. Nicholson and all of them?

A Yes, I was. And then I spent a year actually just working in the emergency room before opening the other practice.

Q But you are a medical doctor. And tell the ladies and gentlemen of the jury about your training --

A Right.

Q -- and where you said you went to school at. MUSC?

A Right at MUSC, graduated from there in 1993, it's so long ago, I forgot, and did my residency training in family practice.

Q Have you been working primarily as a family practice doctor?

A Right.

Q Have you been doing that day in, day out ever since you went to work and completed your residency?

A Right. I do family practice and then the emergency room, also.

Q Are you currently still associated with the hospital here in Edgefield?

A Yes.

Q Okay. Doctor, let me direct your attention back to about April the 6th of 2008 and the days before and up to that time period. Do you know

[redacted] the victim in this case?

A Yes, I do.

Q Okay. Tell the ladies and gentlemen of the jury about your initial involvement in this case, what you saw and observed and what happened as she came to you for care and treatment.

A I was working in the emergency room in April 2008 and she came in complaining with painful urination. She had been there several days before and had been treated with an antibiotic for a urinary tract infection. I was concerned because that's just not a typical complaint of a nine-year-old to still have that much pain with urination. So I went ahead and did an exam and checked her genital area and there was obvious genital ulcers consistent with what looked to be herpes.

Q Doctor, you treated that illness. Have you been exposed to that illness in medical school, your residency and working in family practice over the years?

A Right. I see it quite often and it's fairly classic, so when you see it, you pretty much know what it is. Although, it's very unusual -- I mean, you just don't see it in a nine-year-old.

Q When she initially came in, you, as a family practitioner, a nine-year-old coming in, would that be typical, when they have that kind of symptoms, to think maybe they have a urinary tract infection?

A Well, usually with painful urination, yeah, you would think of a urinary tract infection, but once they've been treated for several days on antibiotics, they still should not have that much pain and discomfort, it should be getting better. So anytime there's that much pain, you really need to investigate what's going on.

Q Was she in a tremendous amount of pain when you saw her?

A She was. She was extremely uncomfortable, in a lot of pain.

Q Okay. Did you have it tested to confirm your conclusions that --

A Yes --

Q -- it was herpetic lesions or herpes?

A Right. I did a herpes culture and it came back as type two, which is genital herpes.

Q Seeing that in a nine-year-old, what did that make you do or what did that compel you to do?

A As soon as you see that, you know there's some sort of child abuse because a nine-year-old just

does not get herpes without some sort of sexual contact. And I spoke with her mother. And as soon as the herpes -- talked to her about what had occurred. And then when we got confirmation that it was herpes, we called DSS.

Q And so you report it to DSS?

A Yes.

Q You're a mandatory reporter on that type of abuse, aren't you?

A Right. You have to report it, yes. It's the law.

Q Okay. And as well as ethically, as a physician --

A Right. Right --

Q -- you said that you would report it --

A -- you would report it anyway, but yes.

Q -- whether or not you're a mandatory reporter or not?

A Right.

Q Since that time, you have had contact with law enforcement involved in this case?

A Right.

Q Let me ask you this. Tell the ladies and gentlemen of the jury about the initial outbreak of herpes and how that progresses, what is that that

you're looking for and how does that manifest itself or how does it appear.

A Well, usually the first outbreak is the worst and it's very painful and you get the most amount of ulcers. After that, you can still get some outbreaks that usually become a little bit less or not as many lesions, but if your immune system, or you're sick, gets suppressed, you still can have another very bad outbreak. So it's a lifelong illness. There's no cure to herpes.

Q There's no cure. It never goes away?

A It never goes away. It lives in the nerve endings. And then again, like I said, if you get stressed or if you're ill, it more than likely will come back out.

Q When you're talking about sexual contact, what range of behaviors can transmit herpes and how contagious is it?

A It's extremely contagious. And as long as there's some sort of contact, sexual contact, you can transmit that virus. It just has to be, you know, touching of some sort where there is some exposure to the virus.

Q Would it have to be genital to genital in order to conduct --

A No. No, it doesn't have to be.

Q Could someone masturbate, have fluids on their hand, could it be transmitted in that regard?

A It probably could be, yes, it can. As long as there's the virus and the virus touches another surface, you can transmit it.

Q Have you ever seen that in a nine-year-old before in your practice?

A I've never seen it in a nine-year-old.

Q What's the course of therapy? I know it's incurable, but what do you do when a nine-year-old girl shows up, what do you do for them?

A There's a class of drugs that are antivirals that will, if you catch it early enough, you can cure -- you can get rid of the pain and the ulcers a little more quickly. And then you can actually, if somebody is having frequent outbreaks, put them on suppressive therapy which means they take it everyday. And if you take it everyday, you will prevent or at least reduce the number of outbreaks that can occur.

So there is treatment. Again, it doesn't cure it, it just suppresses the illness so that it's either not as bad or clears up a little more quickly because the ulcers can hang around for a while.

It's just not something you get for a day or two, it's something you get for several weeks.

Q So, ultimately, it's incurable and you have it for life?

A For life.

Q Can you infect someone or can it be transmitted at times when it's not flared up?

A Yes. You -- studies show they think that it can be passed when there's not open lesions. It's always been thought before it had to be passed when there's open lesions, but now the thought is you can pass it before you have a noticeable ulcer. So you can transmit it when you don't realize that you're actually having an outbreak.

Q So the bottom line is if you've got herpes, any kind of contact sexually like that or when we're talking about sexual contact, any kind of touching when you've got that virus on you, you can transmit it?

A Right. If that virus is being active, you can transmit it.

Q Doctor, is that a memorable experience for most people when they have it for the first outbreak, is it excruciatingly painful?

A It is usually very, very painful. It's usually

very memorable.

MR. MAYE: Answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Hi, Doctor.

A Hi.

Q Doctor, you're not an expert in sexually transmitted diseases, are you?

A I don't know what that title means, but I see a lot of sexually transmitted diseases.

Q But you're not --

A I'm not an infectious --

Q You don't hold yourself out as an expert, haven't been qualified as an expert in court?

A No. I'm not in infectious disease.

Q And you're a family practitioner, aren't you?

A A family practitioner, yes.

Q Okay. Now, let's talk a little bit about herpes itself. Aren't there two types of herpes?

A Yes.

Q There's complex one and complex two?
A Yes.
Q Okay. And isn't it true that over 90 percent of the public has some type of herpes?
A Yes. Most of them have type one, which is an oral herpes. Type two is known to be the genital herpes.
Q Okay. Now, let's stop there for a minute because could it be possible to have type one herpes in a genital region?
A It is and it would type as a type one not a type two.
Q Correct. And, in fact, the herpes virus can be transmitted other ways other than sexually, sexual intercourse or sexual touching, can't it?
A I don't know what you're -- give me an example and I'll tell you.
Q Well, for instance, if I have herpes and I have a wash cloth and I scrub my private parts where the genital herpes are and then I touch you, I can transmit genital herpes to you in that fashion, couldn't I?
A I've never seen a study that shows that.
Q Okay.
A If you have a study, I'll read it and tell you

about it, but I've not seen that.

Q Okay. You've just never heard that?

A I've never seen it in a study. And, in fact, most of the time, we'll tell people you can't get things off of toilet seats, you can't get things from seating in the chair after somebody.

Q What actually transmits the herpes virus in your opinion?

A Well, I'm not an expert, so my opinion may not matter to you on that.

Q Very good. Let me ask you this. Did you test [redacted] mother for herpes when you tested her?

A Once I turned the case over to DSS, then any of the further testing wasn't in my hands.

Q Okay. So the only test, the only herpes test, you performed was on [redacted]

A When she had active lesions, yes, when I saw her in the emergency room.

MR. FALGIONE: Thank you, Doctor.

THE COURT: Redirect.

MR. MAYE: Nothing else. Thank you.

THE COURT: Thank you, Doctor. You're free to go.

Call your next witness.

MR. MAYE: The State calls [redacted].

THE COURT: Would you come up here please, ma'am.

Any issue about competency?

(There was no response.)

THE COURT: Hearing none.

[redacted],

having been duly sworn, testified as follows:

THE COURT: I need you to slide up close to those microphones. It's a great big room. I need you to speak up real loud for us, all right.

Solicitor.

DIRECT EXAMINATION

BY MR. MAYE:

Q [redacted] let me let you do this. Look over here to the ladies and gentlemen of the jury and introduce yourself to the ladies and gentlemen of the jury, tell them how old you are.

A Hi, I'm [redacted] And I'm 11 years old.

Q Okay, [redacted] what's your full name?

A [redacted].

Q [redacted] when's your birthday?

A [redacted]

Q Okay. And you're how old now?

A Eleven.

Q Tell the ladies and gentlemen of the jury who

this -- well, she's not in here right now -- who's your mother?

A Shannon Demetrius Grim.

Q Who's your father?

A George Albert Jones.

Q Is George Jones present here in the courtroom?

A Yes.

Q Can you point him out?

A (Indicating).

Q Are you talking about the fellow in the black coat here seated next to Mr. Falgione?

A Yes.

Q That's your father, George Jones?

A (Witness nodded head.)

MR. MAYE: Your Honor, I'd just like for the record to reflect she's identified the defendant in this case.

THE COURT: It's so noted.

BY MR. MAYE:

Q [redacted] let's go back to when you were nine and eight and seven. Tell the ladies and gentlemen of the jury where you were living at that time.

A In Edgefield County.

Q You were living in Edgefield County, okay. Where specifically here in Edgefield County were you

living?

A Johnston, South Carolina.

Q Okay. Do you know what your address was here where you were living?

A [redacted]

Q [redacted]?

A (Witness nodded head.)

Q Who was living there in that household with you? What were the living circumstances? Who stayed there with you at that time?

A Me and my mama and my brother.

Q Okay. Now, what's your brother's name?

A Terrance.

Q Terrance, okay. Now, tell the ladies and gentlemen of the jury what type of place, is this a house, is this a trailer, tell them what it is.

A It's a regular house.

Q Okay. Who stayed where in the house where y'all were living there on [redacted]?

A What do you mean?

Q Where did you sleep -- at night, where did you sleep? Tell them about the rooms in the house, where did you sleep?

A I slept in the room with my brother.

Q You usually slept with your brother?

A We had separate beds.

Q Okay. But y'all shared a bedroom; is that right?

A (Witness nodded head.)

Q Where did your mama sleep?

A In her room.

Q During that period of time, when you're seven, eight, nine, tell the jury about your dad, George Jones, coming over, when would he come and where would he stay when he came to see y'all?

A He would sleep on the couch.

Q Okay. He would stay on the couch?

A (Witness nodded head.)

Q Did he live with y'all all the time or part of the time?

A Part of the time.

Q Okay. How often would he usually come stay?

A Like every so often.

Q Would he be there sometimes and then not be there sometimes?

A (Witness nodded head.)

Q But when he came and stayed and he stayed overnight, where did he stay?

A He stayed in the living room.

Q Is that where he slept?

A (Witness nodded head.)
Q Where in the living room did he sleep?
A On the big couch.
Q On the couch, okay. Minor let's talk about a couple things. Now, you were nine back when this came out, but you're 11 now?
A (Witness nodded head.)
Q Now, let's talk about this. Now, you know the difference in between real and make believe?
A (Witness nodded head.)
Q You do, okay. How about cartoons? What's your favorite cartoons?
A Sponge Bob.
Q Now, tell me, is that real or is that make believe, the cartoon?
A Make believe.
Q So, Minor the events that we're going to talk to you about in this case, now do you know the difference, is this real, did that really happen or is that make believe?
A It's real.
Q Do you know the difference in between telling the truth and telling a lie?
A (Witness nodded head.)
Q Okay. If I held up this pen right here and

told you this pen right here is red, would that be the truth or would that be a lie?

A A lie.

Q Okay. Because what color is that pen?

A Gray.

Q Okay. You know that you've taken an oath up here to tell the truth, right?

A (Witness nodded head.)

THE COURT: Get her to say her answers.

BY MR. MAYE:

Q Is that correct, yes?

A Yes.

Q Okay. Minor back in April of 2008, did you start to have problems with your private area? What do you call that? What term do you use for that, your privates?

A Wrong spot.

Q Your wrong spot, okay. Stand up and show the ladies and gentlemen of the jury, just point out where you would be talking about with your wrong spot.

A Right there (indicating).

Q Your private parts, okay. Minor what was happening or what was bothering you about your private parts when you went to the doctor and you

went to see Dr. Gordineer?

A It was itching and burning.

Q Was it hurting bad?

A (Witness nodded head.)

THE COURT: What did she say?

THE WITNESS: Yes.

BY MR. MAYE:

Q Was it itching and burning and hurting?

A Yes.

Q Was it bothering you to the point that you told somebody that it was itching and burning and hurting you?

A Yes.

Q Who did you tell that it was bothering you so bad?

A My mom.

Q You told your mom. What did your mom do as a result of you telling her that your private parts were itching and burning and hurting you? What did y'all do?

A She took me to the doctor.

Q She took you to the doctor. Was that Dr. Gordineer, the lady that was just here testifying?

A Yes.

Q Okay. [redacted] after it came out what you had --

that you had herpes, did you have an occasion to talk to DSS and Investigator Robinson in this case? Did you talk with them about it?

A Yes.

Q Minor tell the ladies and gentlemen of the jury what George Jones had been doing to you during the time preceding you having this problem and going to see Dr. Gordineer, what happened?

A Like, when everybody was sleep and my mom was sleep because she had took her pills and --

Q Now, wait a second. Because your mom had taken her pills --

A And it made her sleepy.

Q What kind of -- what was your mom taking pills for; do you know, Minor

A Because her back hurting.

Q Did she take those pills frequently?

A Yes.

Q Once she took the pills, how did that make her -- could you wake her up or how did that make her once she took her pills?

A Like, she was hard to wake up.

Q She was hard to wake up?

A (Witness nodded head.)

Q Where did she sleep in the house again? After

she would take her pills and go to sleep, where would she be?

A In her bed.

Q Okay. What would George Jones, your dad, what would he do to you after she went to sleep, what happened?

A He would go into me and my brother's room and get me out of my bed and take me into the living room.

Q He would get you. Okay, now, where would your brother be when he would take you into the living room?

A Sleep.

Q He would be asleep, okay. What would happen when he would take you back in the living room, where would he take you and what would happen?

A He tell me to lay down on the couch.

Q Okay.

A And put a pillow on my head.

Q And put a pillow over your head. Now, where was that pillow at? What kind of pillow are you talking about?

A Like a pillow that go on your bed.

Q Okay. So he would get you and take you in there and tell you to put a pillow over your head?

A Yes.
Q Was that every time he would get you like that?
A Yes.
Q He would tell you to put the pillow over your face every time?
A Yes.
Q Okay. Once you would put the pillow over your face, what would happen then? What would he do?
A He would tell me to pull down my pants.
Q Okay. How would you usually be dressed when you went to bed like that? What did you usually wear when you were sleeping, Minor
A Like my nightclothes.
Q Okay. What all did you have on? Did you have on underwear and that sort of thing?
A Yes.
Q So he would have you -- what would he tell you to do with your clothes when you came in there?
A Pull down my pants.
Q How about your panties that you had on, what would he say about that?
A Pull down them, too.
Q Okay. Then what would he have you do with the pillow when that happened?
A Hold it on my face.

Q Okay. Could you see what he was doing when you had your face covered up with the pillow?

A No.

Q Okay. Tell the ladies and gentlemen of the jury what would happen and what you would feel and what would happen to you and what he would do to you when you laid there once you had your pants and your panties down and your face covered with a pillow, what would happen?

A It's, like, I would feel, like, like a finger or something in my wrong spot.

Q In your wrong spot?

A (Witness nodded head.)

Q Now, [redacted] let me ask you this. When you talk about in your wrong spot, are you talking about inside of you, inside of your wrong spot? Would it actually go inside of you?

A (Witness nodded head.)

THE COURT: Say your answer out loud, please.

THE WITNESS: Yes.

THE COURT: Thank you.

BY MR. MAYE:

Q He would put it inside of you. Would it hurt?

A Yes.

Q Could you see what he was using to put inside

of you while you had the pillow over your face?

A No.

Q But what did you feel? What did it feel like, Minor

A Like it hurt it.

Q Like it hurt?

A (Witness nodded head.)

Q What did the object feel like? Was it hard or what did it feel like?

A Hard.

Q Okay. Minor let me ask you this. Every time he would bring you in there and have you put the pillow over your face, did he always put something inside of you or did he sometimes do other things?

A He would sometimes do other things.

Q What other things would he do other than just put himself or put something inside of you?

A Like rub on the outside of my private spot.

Q He would rub on the outside of your private spot sometimes and then sometimes he would go inside or put something inside of your private parts?

A Yes.

Q But it was hard and you don't know what it was?

A No.

Q Okay. Most of the time which one of those two

did he do to you when it happened, did he put something inside of you or not? Which happened more frequently, Minor

A Put something inside of me.

Q But some of the times he did not, but most of the time he put something inside of you?

A Yes.

Q Minor how long would this go on? How long would he put something inside of you and how long would it hurt? How long would this go on?

A I don't remember.

Q Minor when did this first start happening? About how old were you when this first started happening?

A Like seven or eight.

Q Okay. When did it continue -- or how long did it continue till or when did it finally stop?

A Like, when I was nine.

Q When you found out that you were sick and you went to Dr. Gordineer, that's when it stopped, wasn't it?

A Yes.

Q Minor did he do this to you just a few times or a lot of times over that time period?

A A lot.

Q Minor did you ever tell anybody? Did you ever tell your mom or your brother? Did you ever tell anybody that this was happening, that he was doing this to you when your brother and your mom were asleep and weren't in the room?

A No.

Q Why didn't you tell anybody, Minor

A Because I was scared.

Q Minor did anybody else other than your dad, George Jones, did anybody else ever do anything like this to you during that time period?

A No.

Q Is he the only one that's ever touched you like that or touched your wrong spot or put something inside of your wrong spot other than maybe the doctor?

A Yes.

Q Okay. Did anybody else ever do that other than him?

A No.

Q Okay. Minor, let me ask you this. Nobody else did this other than George Jones and how many times do you think he did it? Could you guess how many times? Do you know?

A Like 10 or 20 times.

Q Okay. And it happened over the timeframe from when you were about seven until you were about nine, right?

A Yes.

Q [redacted] has anybody ever asked you to say anything that was not true in this case? Has anybody ever asked you to make up anything or tell anything that wasn't true?

A No.

Q [redacted] let me ask you this. You've already told the ladies and gentlemen of the jury in this case that sometimes he would rub your private parts and sometimes he would put something inside of you and it would hurt. Did he ever ask you about doing anything else that made you feel uncomfortable and what was that?

A He asked me did I want to learn how to tongue kiss.

Q Okay. What did you tell him when he asked you about that?

A No, because my mama said I shouldn't kiss nobody in the mouth.

Q Okay. So you told him no when he asked you about kissing him -- tongue kissing him in the mouth?

A Yes.

Q After he would get finished messing with you or touching you, what would you do? What would he have you do? What would you do with the pillow? What did he have you do or tell you to do then?

A Take the pillow off my head and pull up my pants.

Q Okay. What would you do afterwards? Where would you go afterwards?

A Back in my bed.

Q At any of the times that he was ever doing this to you, did you ever see your mom come in the room or did you ever see Terrance come in the room or anybody else?

A No, cause the pillow was over my head.

Q You never saw anything because the pillow was over your head. Was there anybody else in the room when he was doing this that could have been putting anything inside of you or touching you other than George Jones when you had your face covered up with a pillow?

A I don't think so.

Q You don't think anybody else was in there. Did you ever see anybody else in the room at that time when you took the pillow off your face?

A No.

Q [redacted] who was touching you and who was putting something inside of you?

A My dad.

Q [redacted] this is going to sound like a silly question, but I've got to ask you this. Is your dad older than you are?

A Yes.

Q The spot, where you lived at that time where all the times that he touched you, whether or not it was on the outside or whether or not he put something inside of you, what county did that happen in?

A Edgefield County.

Q Where did it happen? Where were you staying then?

A [redacted].

Q In Johnston?

A (Witness nodded head.)

MR. MAYE: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

MR. MAYE: [redacted] will you answer any questions the defense has for you. Thank you.

THE COURT: Cross.

MR. FALGIONE: If it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Hi, Minor Minor how many people have you gone over your testimony today in this courtroom with getting you ready for today, how many times have you told that story?

A What do you mean?

Q How many people have you talked to about testifying here today and going over the questions that Mr. Maye asked you?

A A lot.

Q A lot?

A Like three.

Q Three. And how many times have you gone over all of that, five or six, or 10 or 12 or how many times?

A Like a lot.

Q A lot [redacted], let's talk about the house where you live on [redacted] okay. How many bedrooms are in that house?

A Two.

Q And you and your brother, Terrance, stay in one, right?

A Yes.
Q And your mama has a bed in one?
A Yes.
Q And then it opens into a big living room or a living room, doesn't it?
A Yes.
Q Okay. Now, isn't it true that your dad, George Jones, and your mother -- you've seen your dad, George Jones, and your mother sleeping together in the same bed, haven't you?
A Yes.
Q And, in fact, you woke them up and wanted to get in the same bed with them, correct, didn't you?
A Yes.
Q Okay. And that's happened before, hasn't it?
A Yes.
Q And all of these people that you've talked to, Minor about this, have they called George Jones your dad or they just called him George Jones?
A Both.
Q Okay. Most of the time George Jones?
A (Witness nodded head.)
Q Is that what they said?
A Yes.
Q Okay. And when you talked about him today, you

talked about George Jones, didn't you?

A Yes.

Q Okay. Now, Minor did you ever take baths with your mother?

A What does that mean?

Q I'm sorry?

A What does that mean?

Q Get in the same bath water in the bathtub with your mother, take baths with her?

A When I was smaller.

Q Okay. You did, didn't you?

A Yes.

Q And did you all share wash clothes and those kinds of thing?

A They'd be washed. We used different.

Q Okay. Did you use the same bathroom in the same house?

A Yes.

Q Okay. Now, Minor, when you talked about these things that you say George Jones did, your dad, isn't it true that when you were first asked if he had done anything, that you told the investigators he didn't; isn't that true? At first, you denied anything that -- your dad doing anything to you?

A Because I was scared.

Q Okay. But it's true, at first, you said he didn't do anything to you, didn't you?
A At first.
Q At first. And isn't it true that even after that, you told the investigators and everybody that George Jones, your dad, never told you not to tell anybody about it or he never threatened you, did he?
A What do you mean?
Q Well, isn't it true that when you were asked if your daddy ever told you not to tell anybody about these things, these bad things happening, you told them, no? He never said that, did he?
A He did --
Q I'm confusing you, Minor Let me restate that, okay, because it's kind of confusing and I want to make sure you understand. Isn't it true that your dad, George Jones, never told you not to tell anybody else about these things, did he?
A No.
Q Okay. That's true, isn't it?
A He did tell me not to tell anybody.
Q He told you not to tell anybody?
A Yes.
Q Okay. And did you tell the investigators and the officials that?

A Yes.

Q Who did you tell that?

A First, I think I told -- I don't remember who I told first.

Q Okay. Now, Minor is it true that your daddy always had, George Jones, always had his clothes on when all of this was happening that you were telling Mr. Maye about?

A I think, yes.

Q Okay. And is it also true that in your version of this, your daddy never told you, never tried to get you to touch him; is that right?

A Yes.

Q Okay. Is it also true that in telling the officials, you also said that your daddy -- you never felt anything wet, your daddy never had to clean up any sheets or any liquids from any place around there; is that right?

A Yes.

Q Now, Minor did the bedroom door for your bedroom always have to stay open because the room was so small and you had the beds in there?

A Yes.

Q You can't shut the bedroom door to your bedroom, can you?

A No, we always keep it open.
Q All right. And is the bedroom door to your mama's bed and the bedroom that George would be in, was that always open, too?
A Yes.
Q And there was no door on the living room, was there, Minor?
A No.
Q Okay. Now, Minor, how many -- do you know how many different investigators and people that you've talked to since you went to the doctor that night or that day?
A No.
Q Okay. Has it been quite a few?
A Yes.
Q Now, Minor I want to understand, make sure I understand exactly what was going on here, okay. Now, did you say that George Jones would come and get you and take you over to the couch and then put a pillow over your face?
A Yes.
Q And then he would ask you to take your underclothes off; is that right?
A Yes.
Q Were you holding the pillow over your face with

your hands?

A Yes.

Q Minor have you ever told, what we would call, lies before? Have you ever told a lie?

A I have before.

Q You have before. Do you know Ms. Catherine Ethridge?

A Yes.

Q Who's Ms. Catherine Ethridge?

A She was me and my brother's foster mom.

Q Did you stay with Ms. Ethridge for a while?

A Yes.

Q Minor, did anyone ever scold you?

A What do you mean?

Q Pardon me?

A What do you mean?

Q Did anyone ever raise their voice to you or tell you that you and Terrance shouldn't be in the same bed together? Did anyone ever tell you that?

A Yes.

Q Okay. And did anyone ever tell you to stay away from your cousin?

A No.

Q Okay. How many -- who else is in your family besides you and your brother? Do you have any other

brothers and sisters?

A Yes.

Q And what are their names?

A I got a sister named Zambira.

Q I'm sorry, say it again.

A I have a sister named Zambira.

Q Okay. And where does she live?

A With my aunt.

Q Okay. With your grandmother?

A No, with my aunt.

Q Your aunt, okay. Do you have any other brothers and sisters that you know of?

A Yes.

Q And what are their names?

A Santasha, Justin and Darnell.

Q Okay. But your daddy is not their daddy, right?

A Yes.

Q Okay.

A But he's -- oh, yeah. Yeah.

MR. FALGIONE: Okay. Thank you.

THE COURT: Redirect.

MR. MAYE: Just a couple.

****

****

REDIRECT EXAMINATION

BY MR. MAYE:

Q Minor has anybody ever asked you to tell any lies in this case?

A No.

Q Has anybody ever suggested to you to say anything other than the truth in this case?

A No.

Q Have you told the truth every time you've talked about this?

A Yes.

Q Who touched you outside of your private parts and inside of your private parts?

A My dad.

MR. FALGIONE: Your Honor, we're going well beyond redirect. At that point, we already -- I've not objected to all of the leading and everything because of the tender age of this young lady, but we need to stay if we're on the redirect.

THE COURT: Overruled.

BY MR. MAYE:

Q Did your cousin or anybody else ever touch you in this case wrong -- your wrong spot?

A No.

Q Who touched your wrong spot?

A George.

MR. MAYE: Nothing else.

THE COURT: Recross.

MR. FALGIONE: Beg the Court's indulgence for one moment, Your Honor.

THE COURT: Yes, sir.

(Pause.)

RECROSS-EXAMINATION

BY MR. FALGIONE:

Q [redacted] is that a photo of your house?

A Yes.

Q Thank you.

MR. FALGIONE: Your Honor, I'd like to enter that into evidence as Defendant's Exhibit Number 1.

THE COURT: Any objection?

MR. MAYE: None.

THE COURT: Mark it in the record, Madame Court Reporter.

(Defendant's Exhibit Number 1, photograph, admitted into evidence.)

MR. FALGIONE: Thank you, [redacted]

THE COURT: Anything else of the witness?

MR. MAYE: Nothing else. We ask that she be released to come down.

THE COURT: Thank you, ma'am. You can step

down.

Call your next witness.

MR. MAYE: Your Honor, I'm going to let them take her back with her mom.

THE COURT: All right.

(Pause.)

THE COURT: Who's your next witness?

MR. MAYE: The State calls Investigator Lamaz Robinson from Johnston Town Police Department.

LAMAZ ROBINSON,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name for the record.

THE WITNESS: Lamaz Robinson, R-o-b-i-n-s-o-n.

DIRECT EXAMINATION

BY MR. MAYE:

Q Investigator Robinson, introduce yourself to the ladies and gentlemen of the jury, tell them where you're from, tell them about your background in law enforcement, tell them where you're employed and in what capacity.

A I'm from Saluda, South Carolina. I've been employed now with Johnston Police Department going on five years. I did a year with the Saluda County Sheriff's Office. I'm employed in the capacity as

an investigator for the Town of Johnston Police Department.

Q Investigator Robinson, tell the ladies and gentlemen of the jury how you got involved in this case, what triggered your involvement as an investigator for Johnston.

A On, I think, it was April the 9th, 2009, I received a phone call from the on-call officer who had received --

Q What year?

A I'm sorry, 2008. I received a phone call from the on-duty officer who had actually received a phone call from the Department of Social Services here in Edgefield County stating that they were investigating a child sexual abuse case and wanted officers to meet with them. At that time, they referred the case over to me. I was off duty. I was called in and summonsed to the scene to address this issue.

Q Investigator Robinson, you've worked as a road detective. What's your background? What all capacities have you worked in law enforcement?

A I was a jailer for a year and then I went to road patrol for approximately two and a half years and then I was promoted to the capacity of

investigator for the last past three years.

Q Once there was a report of child sexual abuse, is it y'all's policy then that an investigator becomes involved in Johnston?

A Yes, sir.

Q Tell the ladies and gentlemen of the jury what you did based on your work as an investigator and what you did once you learned that there had been a report of abuse.

A Once I got to the scene, which was at [redacted] I spoke with the DSS caseworker who was already on the scene when I arrived there and gathered information that she had gathered from the doctors who she had spoken to in this case. At that point in time, I interviewed with the mother of this victim, Minor. I interviewed with Minor and also interviewed the brother in the case, along with the Department of Social Service worker.

At that point in time, I learned some information that Minor had disclosed that her father was the one who was causing these acts of things against her. I learned from the DSS case worker that she had genital herpes that was diagnosed through Dr. Gordineer and that the father was living in the house on and off.

At that point in time, I took both children into emergency protective custody and placed them into DSS custody until a hearing could be conducted to family court to have those children returned.

Q Why did you take her into emergency protective custody?

A I took them into emergency protective custody at the time due to the fact that the father was still there. I had some doubt in my mind that he could return. He was not under arrest at the point in time. He had been to the residence earlier that day and I took them into emergency protective custody to protect them. And if I take one child, the law requires that I have to take all of the children that's in the home.

Q Did you have an occasion to interview the defendant in this case, George Jones?

A I did. I interviewed this defendant on April the 11th, 2008, at the Edgefield County Sheriff's Department.

Q Okay. Did you advise him of his rights at that time prior to talking to him?

A I did.

Q Did you perform a written waiver of rights form with him and do you have that?

A I did. I did it in writing and verbally.

Q Do you have that written waiver of rights form?

A Yes, sir.

THE COURT: Hold on a second. Do I need to do a Denno hearing?

MR. FALGIONE: Your Honor, I'm sorry, I cannot hear --

THE COURT: Do I need to do a Denno hearing?

MR. MAYE: Out of an abundance of caution, we better do that.

MR. FALGIONE: I would say so, Your Honor.

THE COURT: Ladies and gentlemen, please step back in the jury room. Don't discuss the case.

(The jury retires to the jury room.)

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MR. MAYE:

Q Go through his rights just as you give them to him in writing on that day.

A His rights were: I have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer and have that lawyer here with you now to advise and help me before and during questioning. You have the right to have that lawyer with you before and during

questioning and -- but if you can't afford one, one will be provided at no cost. If you decide to answer any questions now without a lawyer here, you still have the right to stop answering questions whenever you want to. I also have the right to stop answering questions until I have talked with a lawyer.

I asked him, Did he understand those rights. And he stated that he did and that he was willing to talk to myself and Deputy Lee Bouknight, who was also interviewing him because he was on a suicide watch.

Q Was he in custody at that time?

A Yes he was.

Q Did you threaten him in any way?

A No, sir.

Q Did you coerce him or try to influence his decision to talk to you at that time?

A No, sir.

Q Did you make him any promises?

A No, sir.

Q Okay. Did you do anything at all to influence his decision of whether or not to talk to you or not?

A No, sir.

Q After you advised him of his rights in writing and he indicated that he understood his rights, did you ask him if he had herpes?

A I did.

Q What was his answer exactly as he told you when you asked him if he had herpes?

A He stated that he didn't remember.

MR. MAYE: Your Honor, that's all I have for Jackson versus Denno. That's all I was going to offer.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Investigator Robinson, did you indicate that George Jones was on suicide watch when you had this conversation with him?

A Yes, sir.

Q Didn't that cause you some concern?

A No, sir.

Q Okay. What were the indicia that caused him to be placed on a suicide watch?

A From my understanding of the jail, he was on that watch because of the charges that he was charged with.

Q Had he exhibited behavior that caused them to

put him on a suicide watch?

A Not to my understanding.

Q Do you put everybody on suicide watch that's charged with criminal sexual conduct with a minor?

A I don't. That's up to the jail. The jail classify people as they see fit. I have nothing to do with that.

Q Did George Jones, was he sweating or showing -- perspiring, showing any indications that he was perhaps having any withdrawals or any mental difficulties at the time you had this conversation with him?

A No, sir.

Q None at all?

A No, sir. He would not answer some of my questions. When I asked him questions, he would just sit there with no answer and then later on --

Q Is that contained within your report?

A Yes, sir.

Q What are the questions that you asked him that he refused to answer?

A Well, he referred to the fact of the ten-year-old cousin being part of this, that he had said that he was playing with -- that Minor was playing with the ten-year-old cousin. I asked him,

What did that have to do with the case? He wouldn't give me an answer on that.

Other things that I remember as I refer back to it, when he was asked about the fact of him speaking with Mr. Kneece and about some conditions of his health, the only thing he recalled was, I don't remember. And that's what he also said about herpes, I didn't remember -- I don't remember.

Q So he answered your question, but he gave you an answer that you didn't accept, the answer, I don't remember?

A I didn't expect (sic) that answer. According to the --

Q At what point did this interview cease?

A When he asked for a lawyer.

MR. FALGIONE: Your Honor, I'd respectfully submit that wasn't a free and knowing, voluntary waiver of his rights given the fact that he was under a suicide watch at the time.

THE COURT: Do you have any evidence to offer?

MR. FALGIONE: I have nothing beyond that, Your Honor.

THE COURT: Does the State want to be heard?

MR. MAYE: Just briefly. I don't -- he asked him if he had herpes, he stated that he didn't

remember. That's all I intended to go into.

Obviously, I'm not going to -- regard to him directly not saying anything about HIV, I'm directly informing this officer, no matter what the Court's ruling is, don't say anything about that. And anything about his right to remain silent or his refusing to answer questions, I think is burden shifting and I don't intend to ask it. That's all I intend to ask him.

He asked him if he had herpes and he stated he didn't remember. That's all I intend to ask him. I think anything other than that would probably run afoul of his right to remain silent.

THE COURT: All right. The objection is based on the argument that the statement -- the purported statement was not free and voluntary, so that's the issue before me.

Anything else?

MR. FALGIONE: Your Honor, I beg the Court's indulgence, but something was just put before me that I wasn't aware of. If I could ask the witness, Your Honor?

THE COURT: Go ahead.

BY MR. FALGIONE:

Q Investigator Robinson, on April 11th, 2008, you

met with George Jones at the Edgefield County Jail; is that not true?

A Say that again.

Q On April the 11th of 2008, you met with George Jones at the Edgefield County Jail?

A Yes, sir.

Q Okay. And, at that time, isn't it true that Mr. Jones told you that he had AIDS or HIV, but no other STDs?

A He did tell me he was HIV positive.

Q Yeah, but -- and he also told you he had no other STDs at that point?

A The question that was asked first was, Do you have herpes? The answer to that question was, I don't remember. And then we later discussed about him being HIV positive and he stated that he was diagnosed in late 1998. Then the question was asked did he have any other disease. And he stated that he did not have any other diseases.

MR. FALGIONE: Thank you, Investigator.

That's all, Your Honor. I have no follow-up.

MR. MAYE: Your Honor, the only thing that I would ask in this regard, I don't want to dance on a limb, I want to do this outside the presence of the jury, to give a full telling of this, Investigator

165

Robinson, the way he said this, he asked him if he had herpes. He said, I don't remember. He then asked him if he had -- he then turned to asking him about HIV. The third question was, Do you have any other STDs, after he had already asked him if he had herpes and was he HIV positive.

If they're going to ask him, isn't it true that he told you that he didn't have any STDs, the officer's going to be entitled to go through that full litany. And like I said, I don't want to -- I know we've got an admonition not to talk about him being HIV positive, but if he's going to ask him that, it's going to warrant a full answer from the officer. And I just want to make sure we get that outside the presence of the jury.

MR. FALGIONE: Your Honor, that's not opening the door. I would respectfully suggest that counsel does not ask him anything about the herpes or STDs or HIV period. To allow counsel to lead down that line of questioning, forcing us to ask the question to get the full statement out and then saying that opens the door to HIV is not the way this should occur and that's an unfair prejudicial statement --

MR. MAYE: I don't want to do that. I don't want him to talk about HIV at all, but like I said,

166

it's going to be in the -- it would have to be placed back into context and I caution this officer not to talk about HIV.

I'm not maintaining this opens the door, but I would maintain that it would give him an opportunity to fully answer the question, I asked him first if he had herpes, he said, I can't remember. Then I asked him if he had any other STDs and he said, No, which I would maintain would be a fair response in this case. I just want to make sure that I don't have this offer for answering about HIV. I'm not maintaining that they're opening the door on that, I just don't want it to happen.

(Pause.)

THE COURT: As I was trying to state it earlier, I have an issue before me on Jackson versus Denno. Based upon what's been presented to the Court, I find that the State has met its requisite degree of proof that has established by clear and convincing evidence that the defendant was duly warned of his constitutional rights and his rights under Miranda versus Arizona.

Specifically, he was advised that he had the right to remain silent; that any statement he did make could be used against him in court; that he had

167

the right to an attorney; if he could not afford one, one would be appointed for him at no charge; that he had the right to have counsel with him during all questioning and all interrogations; and that he had the right to stop answering questions at any time and ask for an attorney at any time.

The statement given was not the product of improper influence, not the product of any promise, threat, hope of reward, any inappropriate conduct on the part of the officer. The Court finds that this was an incustodial interrogation, so Miranda warnings would apply. The question then becomes whether the statement would be admissible.

As far as the Denno issue about whether it's freely and voluntarily given and whether there were proper Miranda warnings that were triggered and were properly given, I rule with the State on those issues. The statement was free and voluntary. It was the product of the defendant's own free will. I don't have anything in here except the suicide watch issue, which I'm going to address in a moment. That would be pure speculation on my part. So as far as Denno goes, it would be admissible.

The question then is whether it's admissible. And I'm trying -- maybe I'm reading between the

168

lines a little bit, but what I'm hearing is there's a question about relevancy and then there's a question about Rule 403.

The relevant evidence under Rule 401 is any evidence that has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403 provides that even if evidence is relevant, it should be excluded by the court if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.

The only thing that's been proffered is a request to be allowed to say the defendant said, I don't remember, when asked if he had herpes or not. And I don't know what his situation was and it's going to be speculative on my part.

First of all, I'm not sure that's really relevant. If it is relevant, I am convinced that it should be excluded because its probative value is substantially outweighed by the danger of unfair prejudice. It's going to start us down a road

that's going to open a door that we don't need to be opening.

So the Denno hearing I rule with the State, but it's excluded under Rule 403. There's no need to go into this. It's a nebulous statement. It doesn't really mean anything.

All right. We're going to take a brief recess.

You can step down if you like. Don't discuss your testimony with anybody.

(Brief Recess.)

THE COURT: Is the State ready for the jury?

MR. MAYE: The State's ready.

THE COURT: Defense?

MR. FALGIONE: We are, Your Honor.

THE COURT: Bring the jury in.

(The jury returns to the courtroom.)

THE COURT: All right. Disregard the last question, ladies and gentlemen, the statement of the witness.

All right. Solicitor, you may continue.

BY MR. MAYE:

Q Investigator Robinson, upon learning that the victim in this case had herpes, did you take steps to have George Jones, the defendant, in this case tested to see if he had herpes?

A I did. I went in to the circuit court judge and obtained Schmerber orders to have the subject tested for those diseases.

Q Were you present when a blood draw for this test was done and what date was that?

A I was and that was actually drawn on July the 17th.

Q Of what year?

A 2009.

Q Who drew blood for the tests for herpes on George Jones?

A Jeanie Miles of the Edgefield County Hospital in the laboratory division.

Q Did you do anything to change or alter it or did you observe anybody do anything to change or alter that substance or that sample of blood in your presence?

A No, sir.

Q Okay. Who actually kept it once it was drawn on July 17th, 2009?

A Ms. Miles kept it at the Edgefield County Hospital.

Q Where was that blood sent for testing on the herpes test?

A To Mullins Laboratory of Augusta, Georgia.

Q Investigator Robinson, let me ask you this. After you completed your investigation in this case, did you cause the two charges for which he's charged here today? Did you seek warrants on those and did you actually charge him for lewd act and for criminal sexual conduct with a minor in the first degree?

A I did.

MR. MAYE: Answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Who's Sergeant Harris, Investigator Robinson?

A Who is Sergeant Harris?

Q Yes.

A He works for the detention center.

Q Okay. Were you aware that Sergeant Harris had taken George Jones out to have a test for STD, specifically herpes, prior to your test?

A I was aware that he was going to get tested from the first court order that was assigned. I didn't know who transported him, though.

Q Do you know what the results of that test were?
A I did not receive those results. Those went to the Solicitor.
Q But do you know what the results were?
A I do.
Q What were they?
A They was positive.
Q Those results were not positive for herpes, were they?
A They didn't actually conduct a herpes test from my understanding.
Q Just so we're clear as we said there, that test that was given to George Jones when Sergeant Harris transported him, you're not sure if that included a herpes test or not?
A I was told that it did not include a herpes test, that's why I had to get the second court order.
Q You are aware that those first test results came back negative, though, aren't you?
A No, I'm not aware because I wasn't aware that a herpes test was conducted.
Q Okay. I'll withdraw that question.
Sergeant Harris (sic), George Jones denied the allegations that you charged him with, didn't he?

A He did.

MR. FALGIONE: Thank you.

THE COURT: Redirect.

MR. MAYE: Just one.

REDIRECT EXAMINATION

BY MR. MAYE:

Q Investigator Robinson, couldn't perform that first test on him because the first test would have been for active lesions?

A That's correct.

Q So you sought a blood test?

A That's correct.

Q Okay. Because the only way they could do the first test, if they're active lesions and they weren't able to do that at the time?

A According to the information that I gathered, that's correct.

Q So you sought a blood test?

A That's correct.

MR. MAYE: Okay.

THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. FALGIONE:

Q So, Sergeant Robinson, you were aware about that first test, weren't you?

A What I just said is that I was aware that the first test could not be done because they said that they couldn't conduct that test.

Q You were aware that test was performed, weren't you?

A It was never performed.

Q You're not aware about the negative findings then; is that right?

A That's correct. My understanding, it was never performed.

MR. FALGIONE: Okay. Thank you.

THE COURT: Anything further of the witness?

MR. MAYE: Just one.

RE-REDIRECT EXAMINATION

BY MR. MAYE:

Q There were never any negative findings to that test at all, were there?

A No, sir. I never knew about the test --

Q They couldn't do it?

A Right.

THE COURT: Re-recross?

MR. FALGIONE: Nothing, Your Honor.

THE COURT: Thank you, sir. You may step down. Call your next witness.

MR. MAYE: Your Honor, the next witnesses that

175

we have we tried to schedule this week with our break and all, they may be in the morning the next witnesses that we have. We have all of the chain witnesses. We have one issue that we might need to take up outside the jury that might expedite that.

THE COURT: Okay. What time are they going to be here?

MR. MAYE: Whatever you say, Your Honor.

THE COURT: 9:30 all right?

MR. MAYE: That's fine with me.

MR. FALGIONE: Whatever the pleasure of the Court, Your Honor.

THE COURT: Ladies and gentlemen, I'm advised we've been through everybody we can do today, so I need you in the jury room in the morning at 9:30.

Now, folks, if you have some true emergency that arises that prevents you from being here, please make sure you have somebody contact us and let us know what's going on because we cannot go forward until all 12 of you are here. I hope that doesn't occur, but in case it should, please let us know.

Remember all of those admonitions that I gave you about not discussing the case with anyone or letting anyone discuss it with you and all of those

176

admonitions about independent investigation and media coverage.

I look to see you at 9:30 in the morning. Thank you. Follow the bailiff, please.

(The jury was excused for the day.)

THE COURT: What is the issue that we might be able to address?

MR. MAYE: Your Honor, most of the witnesses that I have, we sought the serological test for herpes, I've got the nurse from the hospital that drew it; George Williams, the courier, that took it to Mullins Laboratory; the young lady that received it at Mullins; and the person that actually tested it. I didn't know whether or not they were going to stipulate to that chain of custody. We had some discussion on that earlier. And I'm awaiting any response on that.

I won't have to bring all of those witnesses if they're going to stipulate to chain of custody. I'll just bring the chemist that actually performed the test, but that's up to the defense in this case. I'll bring them all, it just completely depends on what they have to say.

THE COURT: All right. Mr. Falgione.

MR. FALGIONE: Your Honor, on behalf of my

177

client, I'm afraid I cannot just stipulate to that to expedite the trial.

MR. MAYE: That's no problem. I'll have them here in the morning, Your Honor.

THE COURT: Court's in recess on this case until 9:30.

Have you got something else?

MR. MAYE: Your Honor, we do not -- we'll have those chain of custody witnesses and brief. And then the best I can do this week is I have my expert witnesses and the person from the ARC are coming Friday morning.

So I know that that's going to be a pretty good break, but that's -- I'm not going to have many more witnesses beyond that, the chain witnesses and putting this in and then an expert and the ARC person on Friday morning, which is the best we could do in planning on it. Because we did not go forward on the HIV and the paternity issues involving incest, I mean, you can see how many witnesses we had, I had 19 witnesses, but that's negated, not calling those has negated calling a number of those.

I anticipated going through DNA, paternity tomorrow, all of those issues with chain of custodies on multiple draws and I don't have those

178

now because we're not putting that up, so that's gutted a lot of what we have for tomorrow. We've got chain of custody witnesses that are coming in the morning only on the herpes test, then I have an expert and the doctor from the ARC.

THE COURT: Court's in recess until 9:30 in the morning.

(The proceedings were concluded for February 2, 2010.)

(The following proceedings were held on February 3, 2010.)

THE COURT: Are you ready?

MR. MAYE: Yes. Thank you, Your Honor.

THE COURT: Is the defense ready?

MR. FALGIONE: Yes, Your Honor.

THE COURT: Bring in the jury, please.

(The jury enters the courtroom at 9:35 a.m.)

MR. MAYE: Your Honor, the State would call Jeanie Miles to the stand.

THE COURT: Good morning, ladies and gentlemen. Would you come up, please?

JEANIE MILES,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last, please.

THE WITNESS: My name is Jeanie Miles, M-i-l-e-s.

DIRECT EXAMINATION

BY MR. MAYE:

Q Ms. Miles, tell the ladies and gentlemen of the jury where you're employed.

A I work at Edgefield County Hospital Lab.

Q Okay. In what capacity are you employed there? What do you do?

A I'm a phlebotomist.

Q What is a phlebotomist?

A I actually draw the blood.

Q Let me ask you this. Did you collect the blood sample for the purpose of conducting a herpes test on the defendant in this case, George Jones?

A Yes, I did.

Q Did you draw that sample July 17th of 2009 in the presence of Officer Robinson from the Johnston Town Police Department?

A Yes, I did.

Q Do you remember doing that?

A Uh-huh.

Q Let me ask you this. I'm going to show you -- do you remember what time approximately that you drew that sample or have you been able to ascertain

from records what time you actually drew that sample?

A It's like 1:22 p.m.

Q What did you do with that sample in order to ensure that the sample that you draw is the sample that goes on to the laboratory? And what, if anything, did you do with that sample once you drew it?

A Okay. Once the patient comes in, we verify the patient's name by the patient's birthday and I actually draw the patient's blood. So after the --

Q Did you do that?

A I did that. And after the blood is in the tube, we take it actually into another part of the lab, which we process it. It has to clot. And then we put it in a thing called centrifuge and it spins it down and the serum comes on the top. We remove the serum, put it in another tube. And we put it in a biohazard bag and put it in the refrigerator. And it stays there until pickup time and we have pickup time everyday from Mullins Lab.

Q Did you change or alter it in any way other than how you were trained to do in order to conduct and carry out these tests?

A No, sir.

Q It was secured, what, in a test tube or a vial at that point in time?

A It was in a tube and then put in a biohazard bag and then put in the refrigerator.

Q How often do they come around and pickup and collect those samples? And who tests them for y'all? Who was doing the pickup at that time for Edgefield --

A Mullins Lab tests for us and they come twice a day. We have a lady come at 12:00 noon and then we have somebody come in the evening around 5:00.

Q Around five o'clock?

A Uh-huh, 5:30.

Q So about what time would you have placed it in the refrigerated area in the biohazard bag?

A I would have approximately finished everything at least by two o'clock.

MR. MAYE: Okay. Answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes.

****

****

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Ms. Miles, you didn't do any testing of this blood, did you?

A No, sir.

Q Okay. And George Jones cooperated when you drew his blood, didn't he?

A Yes, sir.

Q Did you draw any blood from Shannon Grim? Did you draw any blood from Shannon Grim for testing?

A I don't remember Shannon Grim.

MR. FALGIONE: Thank you, ma'am.

No further questions, Your Honor.

THE COURT: Redirect.

MR. MAYE: Nothing. Thank you.

THE COURT: Thank you, ma'am. You may step down.

Is she free to go?

MR. MAYE: Yes, absolutely. Thank you.

THE COURT: You're free to go. Thank you, ma'am.

MR. MAYE: The State would call George Williams.

****

****

GEORGE A. WILLIAMS,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last, please.

THE WITNESS: Full name is George A. Williams.

DIRECT EXAMINATION

BY MR. MAYE:

Q Mr. Williams, please introduce yourself to the jury, tell them where you're employed, what capacity.

A I'm employed at Mullins Laboratory in Augusta, Georgia.

Q And what do you do for Mullins Lab?

A I'm a medical carrier.

Q You're a medical carrier?

A Yes, sir.

Q Okay. Let me ask you this. Did you pick up from the Edgefield County Hospital July 17th of 2009 a blood sample for the purpose of your laboratory conducting a test from the Edgefield County Hospital?

A Yes, I did.

Q Okay. Approximately when did you pick that up? And what's your procedure for picking up items from the hospital at Edgefield, or, at that time back in

July of 2009, what was the procedure?

A Well, I arrived at the hospital around 5:00, 5:30 in the evening. And when I go in, they have the specimens in the refrigerator, in an incubator. And they have all the names written down in a book and I put my initials by it and the date that I picked it up. And then I put it in a carrying bag. I put it in my car in a cooler and that's where it stays until I reach the end of my route back at the lab.

Q When did you take that sample from Mr. Jones to the lab or when did you deliver it to Mullins Laboratory and who did you turn it over to at that point in time?

A I turned -- well, when I got to the lab, it was around 12:00, 12:30 a.m., 12:40 a.m. It takes a few minutes for it to get checked in. I put it in the bin at the courier table and then the assesseners (sic), that's the ones who log it into the system, they actually go up there and enter it in the system.

Q Who was the person that logged this item in?

A Her name was Whitney.

Q Whitney?

A Yes.

Q Did you do anything to change or alter that in any way while you had it? Did you tamper with the sample in any way?

A No, sir.

Q Was there any indication from any of the packaging or vials that anybody tampered or changed or altered it in any way when you had it?

A No, sir.

MR. MAYE: Thank you. Answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Mr. Williams, if I understand right, you're the driver. You picked up the sample and drove it to Mullins Lab; is that correct?

A Yes, it is.

Q You didn't do any test on that blood?

A No, sir.

Q Okay. And you arrived at 12:30 a.m. on what day?

A That was on the 18th at that point.

Q I'm sorry?

A That was on July the 18th.

Q July the 18th. Thank you, sir.

A Yes, sir.

MR. MAYE: The State would call Whitney Wasson next. I'd ask that he be released.

Thank you, Mr. Williams.

THE COURT: You may step down.

WHITNEY OSHAY WASSON,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last, please.

THE WITNESS: My name is Whitney Oshay Wasson, W-a-s-s-o-n.

DIRECT EXAMINATION

BY MR. MAYE:

Q Ms. Wasson, would you tell the ladies and gentlemen of the jury where you're employed -- where you were employed back July 18th of 2009?

A I was employed at Mullins Laboratory.

Q You still work at Mullins now?

A I do.

Q Let me ask you this. In the very early morning hours of July the 18th of 2009, did you receive a blood sample from George Jones and did you enter it into the system there at Mullins?

A I did.

Q Okay. Do you know what time it was that you received or logged that into the system?

A It was at 12:44 a.m.

Q Did you verify that the information or that the test sample that you had matched the name of George Jones? What did you do to ensure the quality control and the control of that sample once it entered the laboratory there?

A We receive the blood sample and we receive a requisition that has the patient's name and information and the test that the doctor wants on it. And we verify that the name on the tube matches the name on the paperwork.

Q Did you do that in this case with the sample of Mr. Jones?

A I did and the name matched.

Q Did you actually begin the process for testing in this case through manipulation or taking out the vial and all? And please tell the ladies and gentlemen of the jury, if you did that, how you do that or how the process for testing begins?

A Yes, sir. After I verify the information is correct and I have the information in the computer, I take the specimen and I put it on the machine. It is called an Olympus Aliquitor.

THE COURT: It's called what?

THE WITNESS: An Olympus Aliquitor.

THE COURT: Spell the last word.

THE WITNESS: A-l-i-q-u-i-t-o-r. And we put in -- we put the specimen in a rack and then from there, it's completely automated. The specimen goes into the machine. The machine takes off the cap of the specimen and it goes on a conveyer belt around a pipet. An automated pipet goes in, takes out the serum and puts it in a dotter tube to be put in a rack that goes on the machine where the tests are actually run.

BY MR. MAYE:

Q So it's an automated process and you -- did you follow all of the necessary protocols to ensure that the sample that you received from Mr. Jones was actually the sample that went on the machine to start; did you verify that?

A Yes, sir. Before we put it on there, we make sure that the name on the tube matches the name on the label because when we log it into our system, it prints out a bar code, so it has a specific number and bar code linked to that patient and the test that they want. And as long as that all matches, everything from there is automated and everything

automated will be correct for it.

Q Is that the protocol that you use with every sample that you get in the laboratory?

A Yes, sir.

Q Did you follow and carry out the protocol as you were supposed to and you're trained to in this case?

A Yes, sir.

MR. MAYE: Answer any questions that the defense has for you.

THE COURT: Cross-examination.

MR. FALGIONE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Ms. Wasson, other than putting a sample on this automated rack, you didn't perform any testing whatsoever of this blood, did you?

A No, sir.

Q And where did you get your training to put this sample on that rack?

A We're trained when we come into work there. We go through a training period of three months. And after that, then they -- you get to do things on your own, but for three months, they show you how to do things, they check and make sure you're doing

everything correctly. And then, of course, after the three months, they make sure you're still doing things correctly, but if you do something incorrectly, it comes back on you.

So for three months, you're taught, make sure the names match, make sure there's nothing wrong with it that's going to mess up the machine and, you know, make sure everything's done correctly.

Q So, basically, you received your training on the job, correct?

A Yes, sir.

Q And your function was to put this -- receive this sample, check the names and put it on this machine?

A Yes, sir.

MR. FALGIONE: Okay. Thank you, ma'am.

THE COURT: Redirect.

MR. MAYE: Nothing. Thank you. I'd ask that she be released.

Ms. Wasson, you can leave and I'd ask that you ask Ms. McKnight to step in.

THE COURT: Thank you, ma'am. You're free to go.

MR. MAYE: The State would call Becky McKnight.

****

REBECCA LANFORD MCKNIGHT,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name, please.

THE WITNESS: My name is Rebecca Lanford McKnight, M-c-K-n-i-g-h-t.

DIRECT EXAMINATION

BY MR. MAYE:

Q Ms. McKnight, if you would, tell the ladies and gentlemen of the jury where you're employed, in what capacity, what your training is.

A I'm employed at Mullins Laboratory. I'm a med tech there and I have a certification of HHS.

Q Okay. So you're a certified medical technologist?

A Yes.

Q And you work for Mullins Laboratory. Let me ask you this. Did you carry out and complete a testing process on a blood sample from a patient from Edgefield Hospital, George Jones?

A I did.

Q Could you please tell the ladies and gentlemen of the jury what you did and what findings you made as a result of the tests that you conducted and carried out?

A We receive the specimens off a Aliquitor. We then take our specimens over to the machine and place it on the machine. It reads the bar code. It knows by that bar code what tests to do, what the patient's name is, all the pertinent information and it runs the tests. And then when the results come off the machine, we take them from the machine and enter them into our computer and release them.

Q Let me ask you this. The sample from George Jones, who in the lab had initiated the initial process, received it and put it in in this case, who in your laboratory?

A That would be Whitney.

Q Okay. Whitney who?

A Wasson.

Q Did you receive a test result for a request for a herpes 1/2 IgG screen, a herpes test? Did you receive a test result on that?

A I did.

Q What was that test result? Was it positive?

A It was, it was positive.

Q Was it borderline positive or was it a positive test?

A It was positive.

Q Do you have a written report that you

generated?

A I do.

Q Is this a fair and accurate representation of the test that was run on the blood sample from George Jones by Mullins Laboratory?

A It is.

(Pause.)

MR. MAYE: Your Honor, I move to admit this into evidence as a State's Exhibit.

THE COURT: Any objection?

MR. FALGIONE: Without objection, Your Honor.

THE COURT: Mark it in evidence, please.

(State's Exhibit Number 1, Mullins Laboratory report, admitted into evidence.)

MR. MAYE: Please answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Ms. McKnight, have you attended any medical school?

A I did. I attended Augusta Technical College

and completed their course in medical technician, was certified through NCA. Approximately five years later, I took a test through the HHS that certified me as a medical technologist.

Q Let me be a little more specific on that. Have you attended any nursing classes?

A I'm not a nurse.

Q You're not a nurse. And haven't received any training as a doctor, have you?

A No.

Q Are you familiar with the herpes virus?

A Only through testing.

Q Okay. Did anyone at Mullins Lab do any further testing after you rendered those test results?

A No. Once it's final, that's it.

Q Okay. If you would, please look at your exhibit, your test results that the court reporter is handing you now.

A (Witness complies.)

Q Do you know that there are two types of herpes, a type 1 and type 2?

A Correct.

Q Does your test delineate which type of herpes was found in this blood sample? Was it type 1 or --

A No. This is for herpes 1 slash 2 IgG.

Q Okay. Are you aware that over 90 percent of the population has herpes 1 -- test positive for herpes 1 virus; are you aware of that?

A I don't need to be aware of that. I just do the testing.

Q All right. So if I understand correctly, your test just shows that the herpes virus was present, but it doesn't specify which is type -- if it's type 1 or type 2; is that correct?

A Correct.

Q Isn't it true that the only way to distinguish and tell whether it's type 1 or type 2 is to culture that virus and run further tests?

A You would have to ask a doctor that question.

MR. FALGIONE: Okay. Thank you, ma'am.

I have no further questions, Your Honor.

THE COURT: Redirect.

MR. MAYE: Nothing. Thank you.

THE COURT: Thank you, ma'am. You're free to go.

Who's the next witness?

MR. MAYE: Your Honor, based on the previously discussed scheduling issues that we have, that's all we have for today.

THE COURT: Ladies and gentlemen, let me

196

explain to you what I understand to be the situation. As I told you yesterday, I had granted protection on Thursday to someone who is essential to the case and it's a matter that I deemed then and still deem to be a necessary matter for that person to attend to that trumps court. It inconveniences you, it inconveniences me, but it's something that needs to be done.

Because of that, they tried to do their scheduling. And what I understand to be the situation is that there's some medical people who could not be here any day except Friday.

I was not aware when I let you go yesterday, that we were in this situation that you'd only be hearing 30 minutes of testimony today. I didn't know that, but that's what it is.

So we're going to recess and ask you to come back Friday at 9:00 a.m. I'm sorry. This is pretty rare. I can't really ever remember this happening before, but that's what it is, we'll just have to deal with it.

Now, we're going to stay and try to do guilty pleas and probation matters and things like that, but there's no sense in you being here.

I have to give you a couple of other

197

instructions before you go. I think a few of you may be taking notes and if you are, that's fine with me. I'm supposed to give you an instruction about notes, so here it is:

Some judges don't allow jurors to take notes. The judges who do not allow jurors to take notes typically give as their reason that they're concerned that when you go back to deliberate on the case, that the jurors who have written things down, that those jurors will be given an undue amount of deference by the other jurors, in other words, that the written recollection will be given more sway, more influence than the mental recollection.

I don't buy into that at all. I think that's a bunch of bull. You know what you're firmly convinced you remember and what you're not. And so it's fine with me if you take notes. In fact, I encourage you to take notes, if you like.

They do tell us if we let you take notes, that we have three rules. The first rule is that during these breaks, you have to leave the notes with the court. Generally, if it's a short break, you just sit them in your chair upside down. During long breaks, you give them to the bailiff. We do not look at your notes. We don't read them. We just

198

lock them up somewhere. They'll give them back to you when you start back on Friday.

The second thing is that when you go back to your jury room to deliberate on the case, you will have the notes with you then, but you cannot physically show them to another juror. You may look at your notes and then you may say whatever you like, but you can't physically show them to them. You can't say, See, I wrote it down here.

And the third thing is is that after the trial is over, the notes have to be destroyed. If they're on something that you need to keep, we take a black magic marker and we mark all over it. If it's on something you don't need to keep, we tear it into little pieces or shred it.

So if you're taking notes, I need you to write your name on somewhere and give them to the bailiff on your way out and they'll lock them up and they'll give them back to you. I promise you nobody will read your notes.

Folks, I've explained it to you as I understand it, so that's where we are. I need you back Friday at 9:00 a.m. in the jury room. Thank you.

(The jury was excused for the day.)

THE COURT: We're at ease.

199

MR. MAYE: Your Honor, I apologize. Like I said, I had a full day's worth of witnesses. Those were out-of-state witnesses. I had them subpoenaed for this morning. I apologize. It's an unusual situation.

THE COURT: Doesn't bother me. I get paid. The jurors are the ones that worry me a little bit.

MR. MAYE: Thank you, Your Honor.

THE COURT: Thank you.

(The proceedings were concluded for February 3, 2010.)

(The following proceedings were held on February 5, 2010.)

THE COURT: All right. Mr. Falgione, you have something?

MR. FALGIONE: Yes, Your Honor. May it please the Court.

Your Honor, following our dismissal of the court -- or dismissal of the proceedings for the day, I think it was Tuesday evening, I returned to my office and I typed in, I believe, it was www.edgefielddaily.com, which I was informed by some in the local community is pretty much the daily newspaper for the Edgefield area. And within that day's postings on that particular website, there was

200

reference to this trial.

There was also reference that was titled up at the end of the article, What the jury does not know. And it went into totally inadmissible items of evidence that the Court had -- would rule was inadmissible and it's extremely prejudicial to Mr. Jones, my client.

My concern, Your Honor, and I appreciate the Court's instruction to this jury prior to dismissing them that they were not to visit any Internet cites or to look at a daily newspaper or any of those kinds of things, but my concern is that this information is so widespread within this community, that the possibility that this jury has been tainted by that is extremely high, not only through their -- even though a well-meaning juror probably, and I'm sure all these are, probably adhered to the Court's instructions, the possibility that this information was brought forward to them by a member of the family or an acquaintance or anyone out in the community causes me a great deal of concern.

Of course, if any of that information did come before them, Your Honor, we would move for a mistrial on the fact -- on the basis that Mr. Jones will be denied his right to a fair trial in these

201

proceedings.

Your Honor, if I may, we therefore would request that the jurors be polled individually and at length as to any contact, any -- by friends, relatives or other or any possible knowledge of this particular blog and of those proceedings.

THE COURT: He's got something else up this morning.

MR. FALGIONE: Your Honor, I believe we have a copy of that particular blog and I would like to put it into the record.

THE COURT: I'm printing it now.

MR. FALGIONE: Thank you, Your Honor.

(Pause.)

THE COURT: All right. I'm going to make court's exhibits three articles. One was posted today about the trial continuing. One was posted February 3rd, 2010 and one was posted April 12th, 2008. The one in April of 2008, there's a link to that article in the article that Mr. Falgione was talking about.

(Court's Exhibit Number 4, Edgefield Daily articles, was marked for identification.)

THE COURT: We're still two jurors short.

MR. MAYE: Your Honor, I know this is strictly

202

a matter for the Court. The only thing that I would note is that this is, you know, I don't know how widely circulated this is. There's certainly, at this stage, nothing to indicate that the jury's been tainted other than speculation.

The only thing that I would request is, I don't know if the jury would be leaving here at lunch or anything else, to directly single out a single news source would almost be an exclamation point to where the information is. And I know that the Court's given repeated instructions to the jury not to do exactly what would result in any taint that not to review --

THE COURT: I'm not going to refer to any specific media source unless there's a problem.

MR. MAYE: That's all I wanted to do because I was afraid that might create more problems if you referred to a specific source.

THE COURT: They're not leaving here. And if we don't take their cell phones up, we're going to take them up now.

Do we take up their cell phones?

THE CLERK: No, sir.

MR. FALGIONE: I'm sorry, Your Honor, I didn't hear. Do we take up the blackberries and cell

203

phones?

THE COURT: No, but we're about to.

The only thing I can say is that I went to lunch Wednesday and somebody came up to me and asked me about it. We're at ease.

(Brief Recess.)

(The jury enters the courtroom at 9:17 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen. The first thing I have to do is to go over with you some questions and the only way you can get in trouble is if you're not truthful with me now. So I need you to be 100 percent truthful.

During any of these breaks, including the last recess, which was -- you didn't come yesterday, have any of you been exposed to, in any way, any media coverage, any reports, any discussions, oral, written, Internet or otherwise, that in any way relate to this trial? If you have, raise your hand.

(There was no response.)

THE COURT: Has anybody said anything to you about any reports about this trial, oral, written, Internet, any source? Anybody said anything to you about the trial; if so, raise your hand.

(There was no response.)

THE COURT: So if you have any information

204

about this trial from any source, anybody talking to you, you reading anything, you hearing anything through any media outlet firsthand, secondhand, thirdhand or fourth hand, if you've heard or been exposed to anything related to this trial, you need to tell me, raise your hand.

All right. No hands are raised.

Call your next witness.

MR. MAYE: The State would call Dr. Eric Brenner.

(Pause.)

MR. FALGIONE: Your Honor, may I approach the bench?

THE COURT: Sure.

(Whereupon, a bench conference was held off the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, I'm going to need to ask you to step into the jury room just a minute. You won't be back there long. If you have notes, leave them in your chair would be the best thing.

And I had to make an inquiry this morning. I wasn't sure exactly what we were doing in Edgefield. If you have cell phones, we need you to turn those

into the bailiff. We'll give them back to you at the end of the trial, okay. Thank you.

(The jury retires to the jury room.)

THE COURT: Do you have something?

MR. FALGIONE: Your Honor, Mr. Ervin's indicated he's going to offer this next witness as an expert in infectious diseases. I'd ask that his proffer be made prior to bringing it before the jury.

THE COURT: All right. Swear the witness, please.

ERIC BRENNER,

having been duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name.

THE WITNESS: My name is Eric Brenner. Brenner is B-r-e-n-n-e-r.

VOIR DIRE

BY MR. MAYE:

Q Dr. Brenner, would you tell the Court what your educational background is or what your experience and training is professionally?

A Yes, sir. My undergraduate degree is from the University of California at Berkeley, but my medical training was from Dartmouth Medical School, which is

in New Hampshire. And following that, I trained in internal medicine in San Francisco, also got training in infectious diseases in Columbia at USC. And then since then, have 30 years of public health infectious disease experience.

Q Okay. Are you on the faculty and do you teach in the School of Public Health at the University of South Carolina?

A I do. At the School of Public Health, I'm in the Department of Epidemiology and Biostatistics and I teach infectious disease, epidemiology there. I also work halftime at DHEC.

Q So you work for the Department of Health and Environmental Control as well?

A I do. I'm about halftime with USC and halftime with DHEC.

Q Do you consult with DHEC and the World Health Organization and the other organizations that are concerned with the transmission of infectious disease in the public, in the general population?

A I do. I work as an epidemiologist, so my interest is not so much with individual patients, but with infectious diseases in the community such as a state or even a whole country.

MR. MAYE: Your Honor, I'd certainly offer any

cross-examination. I intend to offer him as an expert in the area of infectious disease, epidemiology, which he helped me with and told me is the study of diseases in the population is epidemiology. So I'd certainly offer him for cross-examination as to his area of expertise.

THE COURT: Voir dire.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

VOIR DIRE

BY MR. FALGIONE:

Q Dr. Brenner, you have more than a Ph.D., you actually have a medical degree?

A I don't have a Ph.D., but I do have -- my degree is an M.D. degree.

Q Have you ever been offered as an expert witness in any court in South Carolina?

A I never have. This is my first appearance in a court.

Q Have you ever been offered as an expert in any area of medicine in any court in the United States?

A Never in court, no.

Q In the area of infectious disease, are you holding yourself out as an expert in the area of

herpes type 1 and type 2?

A Not at all. I'm more of a generalist dealing a lot with tuberculosis, influenza, STDs of which herpes is one, but many diseases in general, but I'm not specifically an expert in herpes or STDs.

Q So is it fair to say that your opinions would be more in the realm of generalizations of infectious diseases as opposed to specifically herpes?

A Except for the fact that my training and experience let me or give me -- let me have access to literature and data. I'm quite experienced in reviewing those as they relate to really any infectious disease.

Q Okay. What data have you reviewed regarding the transmission of the herpes virus?

A I consulted standard textbooks, standard reference books, some of which I have on the desk right here, reviewed information available from different Internet sources especially something called PubMed, which is a U.S. government web site giving access to the National Library of Medicine database of published articles.

Q Have you reviewed Wikipedia regarding herpes or any of those generalized Internets?

A Did not look specifically at Wikipedia, although I'm familiar with it.

Q Okay. Did you review the specific allegations of this case that's before the court?

A Not in great detail. I have some general knowledge about the case which is being discussed here.

Q Is it fair to say you're not prepared to offer an expert opinion regarding the specifics of this case?

A I'm not prepared to discuss the clinical exam which the child had when she was seen at the hospital. I'm prepared to discuss aspects about herpes virus transmission, what's known about that, how much herpes infection is present in the U.S. population, what's known about different kinds of tests that can be used to diagnosis herpes.

Q What is your understanding of the amount of herpes type 1 virus that's employ in the U.S. population?

MR. MAYE: Your Honor, I think this is outside the scope of examining for his voir dire. I mean, it basically gets into deposing this witness. This is outside the examination of his qualifications and I would object to that. If he's got something as to

his qualifications as an expert. That's my objection.

MR. FALGIONE: Your Honor, I asked that question to try and determine the breadth of knowledge of the good doctor.

THE COURT: Overruled. Go ahead. You may continue.

BY MR. FALGIONE:

Q Doctor, what's your understanding of the amount of, for lack of a better word, amount of type 1 herpes that's present in the U.S. population at any given time?

A Yes. If you look at information from antibody testing, you'll find a large proportion of the U.S. population has been infected with type 1, which is the kind that produces cold sores around the mouth. Depending on the population and the age group, you might find data ranging from 60, 70, 80, 90 percent. A large majority of people have been infected with herpes simplex type 1.

Q Is it your understanding that herpes simplex type 1 is relegated only to cold sores or has it transmuted to genital herpes as well?

A In general, herpes type 1 gives infections around the mouth and type 2 gives mostly genital

lesions, but there can be some crossing also, so -- especially in recent years, it's been found to have type 2 infections also can be around the mouth and type 1 infections in the genital area.

MR. FALGIONE: Thank you, Doctor.

THE COURT: Anything further of the witness, Solicitor?

MR. MAYE: Nothing, Your Honor. I'd offer him as an expert in infectious disease, epidemiology.

THE COURT: And what's your position?

MR. FALGIONE: Your Honor, I respect the good doctor, but I have to oppose his qualifications as an expert in this case so much as he's -- if he opines an opinion regarding the specifics of the transmitability (sic) of the herpes virus in this particular case or any of those because he's not been recognized as an expert on that particular area at any one point. And Dr. Brenner has indicated that his knowledge is a general knowledge nonspecific to the facts of this case or even to the herpes viruses that we have in this particular case. He has a general broad-based, STD based knowledge, which is not appropriate for this case.

THE COURT: The Court finds that the witness is qualified in the fields of epidemiology and

212

infectious disease and may render opinions as an expert under Rule 702 and subsequent rules in the South Carolina Rules of Evidence. There may be an objection to a specific opinion, but he's qualified as an expert. I think most of your challenges go to weight not admissibility.

MR. FALGIONE: Thank you, Your Honor.

MR. MAYE: Thank you, Your Honor.

THE COURT: Doctor, you can stay right there, but you're going to have to be sworn in again when the jury comes in, all right.

Bring the jury in, please, sir.

While they're sending for the jury, the Court poled the jury and no one responded. I believe them with regard to the Internet posting. And I've taken all of the precautions I know to take. We'll bring their lunch in.

MR. FALGIONE: Thank you, Your Honor.

(The jury returns to the courtroom.)

THE COURT: Madame Clerk, please swear the witness.

ERIC BRENNER,

having been duly sworn, testified as follows:

THE CLERK: State your full name and spell your last, please.

THE WITNESS: My name is Eric Brenner. Last name is spelled B-r-e-n-n-e-r.

DIRECT EXAMINATION

BY MR. MAYE:

Q Dr. Brenner, if you would, just tell the ladies and gentlemen of the jury where you're employed, a little bit about your background and training and what you specifically do.

A Yes, certainly. I live in Columbia and work halftime with the University of South Carolina at the School of Public Health and specifically there with the Department of Epidemiology and Biostatistics. I teach epidemiology of infectious disease. Epidemiology means the study of disease not in one person but in populations.

And I also work halftime at the State Department of Health and Environmental Control, that's DHEC, with their disease control program, in fact, with the Bureau of Disease Control.

Q What kind of educational background do you have? Where did you receive your training? What degrees do you have?

A I have a bachelors degree from the University of California at Berkeley, but my medical school training was at Dartmouth College, which is in --

Dartmouth Medical School in New Hampshire. And after that, I had some training in internal medicine in San Francisco and then infectious disease in Columbia, South Carolina at the USC Medical School.

Q Okay. Do you teach over at USC? Do you teach in your area of expertise?

A I do. I teach several infectious disease courses every year.

MR. MAYE: Your Honor, at this time, I'm going to offer the doctor as an expert in the area of infectious disease and epidemiology.

THE COURT: Any voir dire?

MR. FALGIONE: No, Your Honor.

THE COURT: Subject to previous objection?

MR. FALGIONE: Exactly, Your Honor.

THE COURT: All right. Subject to previous objection, the witness is qualified as an expert and may render opinions in the fields of epidemiology and infectious disease.

You may continue, Solicitor.

BY MR. MAYE:

Q Dr. Brenner, if you would, tell the ladies and gentlemen of the jury what is the herpes virus and how does that differ from other more common viruses that people might generally be exposed to.

A Certainly. Well, we're all familiar with the concept of germs, little invisible things which cause disease, but the two basic families of germs are bacteria and viruses. And viruses are even much smaller than bacteria and cause many of the diseases that we're familiar with in the community. Right now we've been talking a lot about flu, so -- influenza that's caused by virus. Measles and mumps and chickenpox are caused by viruses. Polio is caused by virus.

But there's a particular family of viruses called herpes viruses, which is itself is a whole family of viruses. Actually, everybody is familiar with at least one of the herpes viruses, which is the chickenpox virus and two others which may be discussed today are herpes, sometimes called herpes simplex virus, HSV, but we can call it HSV which comes in two flavors, HSV 1 and HSV 2.

And the main point about these are -- herpes viruses which makes them a bit different from some other viruses is that once you have an infection with a herpes virus, it's not something you get over.

When you have flu or influenza or a common cold due to a virus, you're sick for a while and then

your body gets rid of the virus and you don't have that virus in the body anymore. But with any of the herpes viruses, the chickenpox virus or herpes simplex type 1 or 2, once you have an infection, that virus stays with you for your whole life. It's not always making you sick, but can pop out again once in a while.

The example which probably most people would be most familiar with would be chickenpox. And we all know children who have had chickenpox or pox marks on their bodies.

What many people don't know is that after the child has recovered from chickenpox, that virus stays in the body and years later pops out again as something called shingles, which you may have heard of, which gives a rash sometimes around the trunk of the body, that's just the chickenpox virus which has stayed in that person's body since they were little.

With herpes viruses, you also have an initial infection and then can possibly have later infections. And the herpes simplex type 1 virus causes infections usually around the mouth, around the lips and the tongue, sometimes inside the mouth and the cheek, so right around the mouth. And many people recognize those as things we call cold sores.

And if you've known people who have cold sores or has them yourselves, you know sometimes you get them and they go away and they may come back again, that's the herpes simplex virus type 1, which most people pick up when they're young, even children, and then throughout life occasionally get these cold sores.

Q What about type 2, how does that differ from type 1?

A The type 2 works very similarly to type 1 except it's more commonly not seen around the mouth, but it's found in the genital area both in men and in women. And a first infection can be fairly extensive and somewhat painful and uncomfortable and then the virus seems to go away, but then throughout life people can have other episodes or recurrences of herpes, again, with some lesions on the genitals either men or women. So in that way, it's similar to type 1, it comes and goes, but remember type 1 is above the belt and type 2 is really below the belt.

Q Let me ask you this, sir. What is the difference in between the severity, the pain, those sorts of things with an initial outbreak of type 2 -- or initial outbreak of herpes versus as you go on into adulthood, how does that change? Does it die

out over time or does it become less frequent, how does that work?

A Well, first of all, not everyone reacts to infections exactly the same way. You're even familiar with the flu. You know, some people have a mild case of flu and just miss a couple days of school or work. Some people have a more severe case, if you're sick enough, you have to go to the hospital or see a doctor. And some people can be so sick, they wind up hospitalized or even dying.

Likewise, with herpes simplex viruses, you may have a mild case or even a case with no symptoms or mild symptoms or more severe symptoms. What often happens, not always because it can vary from person to person, but the initial, that is the first time, say, you have HSV type 2 infecting the genitals in a man or woman, the first time is often more severe. And the reason is that your body doesn't have any defenses against this virus. It's never seen that virus before.

So the first infection can have lots of sores, imagine lots of cold sores but in your genital area, can be very uncomfortable. In fact, you can have swollen lymph nodes, you can also have fever and malaise, you can really be quite sick, then it tends

to go away.

And when you have recurrences later on, those tend to be not as severe and milder. So you would have so many little lesions, it's like a rash, you would have so many little blisters there, it just might be a few. And so the recurrences are not as bad as the initial infection usually.

Q Is it possible for someone as they go on into adulthood to almost never have an outbreak after a period of time? I mean, can you just go on as an adult, at some point in time, and just almost never have an outbreak of the active lesions?

A Absolutely. It's like we were discussing the flu, you know, different people have mild cases or severe cases. With herpes viruses, some people may have very frequent recurrences maybe in the course of a year, could even happen monthly, again this would be quite unpleasant, and other people may have very few recurrences. So it's a little bit variable. We don't always know why, but some people don't have lesions very often.

Q But you've already testified this is incurable, you have it for life. Once you've got it, you've got it?

A That's correct.

Q Do you have to have active sores or active lesions to be able to transmit it to somebody? Or, when you don't have any symptoms or sores, open sores, can you still transmit it to someone else?

A That's a good question. It would concern patients a lot and their families or their sex partners. On the one hand, you might think if you have lots of sores, you would be more infectious, in some ways you are because the sores have lots of virus in them. But it turns out that a lot of transmission, both of type 1 and type 2, occurs when people don't even have any lesions.

What seems to be is that there is a certain amount of what's called viral shedding. Shedding means the virus is kind of coming out maybe through small breaks in the skin or the mucosa around the mouth or the genital areas. And even if there are no lesions there, there can be the virus present. Actually, it turns out that with herpes simplex type 2, the one that's sexually acquired, more transmission occurs when people don't have lesions than when they do and it's been well shown numbers of times.

Q So a person is always at danger about spreading it even more so you're saying when they don't have

it present?

A Well, when you don't have lesions, you may not always have virus present, probably comes and goes. Of course, if you don't have lesions, you don't know when there's virus on your genitals, you don't know when you might transmit to someone, but there's always some -- once you've had an infection, there's always some potential risk which can remain lifelong.

Q How can it be transmitted from one person to another? What type of contact can result in transmission between one person that has it, for example type 2, to another person?

A Right. Well, different infectious diseases have different ways of being transmitted. Some diseases are transmitted by the bites of insects or ticks. For example, we have Rocky Mountain spotted fever in this state which you get from the bite of a tick, the West Nile Virus which you get from the bite of a mosquito.

Other diseases are spread through what's -- rabies we have, I'm sure right here in Edgefield County, there's probably or occasionally some rabid animals that you get from the bite of a rabid animal, that would be an example of something that

requires direct contact where the rabid raccoon or a dog or cat has actually bitten you.

Herpes infections require also this close contact. So the type 1 infections which involve the mouth, that's probably passed directly from saliva or contact with the mouth or oral secretions from one person to the other. And you can see where many kids would pick that up because their mom or their dad or their grandma or someone else in their family may have some herpes cold sores sometimes shedding virus even when they don't have cold sores. So kids will pick this up even when they're two, three, four, five years old. It's a common thing.

With a type 2, that comes -- that's transmitted mostly through contact which is sexual between genitalia of a man and a woman. And that's why this is an infection which is uncommonly seen in young children. It's more commonly seen starting with teenage years when people start to become sexually active. So anyway, in short, it's a disease which is spread through direct contact.

Q So you would see type 1 more common with children, I mean, there's a direct method -- an expected method that there can be. How about in a child the age of nine, would a type 2 infection

would that be a rare occurrence in the general population?

A Well, certainly type 1 would be common in children, nothing remarkable about that. But for a little child to have type 2, which is a genital infection, that raises immediate questions to whether or not someone with type 2 infection has had sexual contact with the child or not because that's -- that would be the main mode of transmission.

Q Would you have to have full-blown intercourse with somebody with ejaculate present and all that? Would you have to have full-blown intercourse with a child in order to infect them?

A Probably not because probably just rubbing genital areas which have -- one partner would have virus and it was being shed and even close contact with some rubbing then could cause some breaks in the skin. And the virus being so small could be transmitted that way as well.

Q Could it be transmitted just through genital if your hands were contaminated, for example, touching yourself or masturbating or any other transfer of fluids that would enable the virus to be on your hands, could you transmit it through digital penetration?

A That's a more difficult question to ask and I don't know all of the details about that. I can try to reason it through. If someone has virus on their -- on their -- gets virus from the genitals on to their hand, then the question is can the hand serve as kind of a vehicle to transfer the virus from one person to the other person.

The virus tends not to do well outside of the normal place where it lives. It likes to live around the mouth or around the genitals. As soon as the virus gets on the surface of somewhere, there can be some persistence. A reasonable assumption would be if you got a virus on your, let's say, on your hands or on your fingers from touching yourself and then very quickly, I don't mean tomorrow, I mean within minutes or seconds, then touch the genitals of another person, I can imagine transmission occurring that way, also.

Q Okay. How about getting it from towels or sheets and that sort of thing? I mean, how common is that to make a transmission? Let's go back to the getting it from a toilet seat, those kind of analogies.

A I remember when I was a child, my mom would discuss toilet seats with me, also. There are

several ways to think about that. You kind of have to think it through in a logical kind of way.

First of all, if this were an infection that you could get from toilet seats, then everyone who sits on a toilet seat would be at risk because we all use toilet seats. And then what you would find is that even people who didn't -- who hadn't had sex would be at the same risk as people who did have sex because they're all sitting on toilet seats, but that's not what we find.

When you study not an individual patient, but when you're studying the whole population, you say, gee, who are the people who get herpes simplex type 2? Well, lots of studies about this, but let me give you some examples. People who are professional sex workers, called prostitutes also, would be at high risk because of their profession.

Q Let me interrupt you and ask you this one thing. Would repeated contact over a period of time, would that increase one's chances of contracting it?

A Certainly, yes.

Q So it would be greater if -- your chances of getting it if you had repeated contact with somebody over a period of years, there would be a much

greater percentage that you would -- that you could give it to them other than just touching them one time?

A That's right. Here's a way to think about it. Each time there's an exposure or possible sexual contact, there might be a certain risk of getting the infection. It's not a hundred percent each time. It's like pregnancies, you don't get -- people don't get pregnant every time they have sex, but the more times you have intercourse, the more likely you would be to conceive a child.

Likewise, with an STD, if you only have one contact, there might be only this much risk (indicating) of getting infected, but the more exposure you have, the greater risk would be. The risk would depend also, you know, on lesions, how much virus is there, what the people are actually doing. It could depend on many things.

But I need to answer your question because you asked me about towels and so forth and toilet seats. If it can happen, it must be very uncommon because the people who have -- especially let's take women, the women who have high rates of type 2 could be professional sex workers, women who attend STD clinics that is there because they also have

syphilis or gonorrhea or chlamydia. Now, that makes sense, if you have one sexually transmitted disease, you can get another also.

But perhaps the most important in this context is the fact that if you look at young people and say, gee, at what age do they start getting evidence of having herpes type 2 infections? It's very uncommon in little kids, but once you get to the teenage years, then it starts to become more common. Those are the years when we know sexual activity starts.

So if it were transmitted through toilet seats or other means, you would start seeing it as soon as people started sitting on toilets, you know, not a one year old, but by the time you're two or three, you should be going to the toilet and you'd be seeing a lot of genital herpes in three year olds, which we don't. So this is overwhelmingly --

Q Dr. Brenner, is it, in fact, exceedingly uncommon in young children?

A That's correct.

Q Would it be a red flag to a practitioner to see that virus, the type 2 virus, in a child? Should that be a red flag to a practitioner with a child of that age?

A Right. I'm not the kind of doctor who's in the emergency room, but although I've done that in the past, but if you were a doctor in the emergency room or pediatrician's office and a young child came in with genital herpes, then you would have to say -- you should quickly think could there be some child abuse going on, has some adult been doing something with this child that they shouldn't have been doing.

Q Let me ask you this, Doctor. Did you do research -- for example, what do you call it when it gets transmitted by some inanimate object or some article of clothing or some -- what would they call it? What's the term for that?

A The technical term is a fomite. What a fomite means is some inanimate object, say, this pen could be a fomite. So, for example, what if I coughed on this pen and gave you the pen and there was flu virus on it, could you get flu that way or not? So the que -- some infectious diseases can be transmitted through fomites commonly and others not commonly.

Q Okay. Let me ask you this --

THE COURT: Hold on a second.

Spell that term.

THE WITNESS: Oh, I'm sorry. Fomite,

f-o-m-i-t-e.

THE COURT: Go ahead, Solicitor.

BY MR. MAYE:

Q Let me ask you this. In preparation for your expert testimony here, did you review widely available sources for experts in your field on that level of transmission? For example, did you look at herpes in general and how many references did you find and what sources did you use?

A Well, the -- in Washington, D.C. -- or actually in Maryland just outside of Washington is the ultimate medical library. It's called the National Library of Medicine. And they have been computerizing all the -- they've been keeping a list of all the medical articles published in almost all of the medical journals not just from U.S.A., but from all over the world, all of the good quality journals.

And actually anybody, you could go, all go on the Internet www.pubmed.gov and you can search for articles that relate to anything of interest.

Actually, I typed in herpes, of course, which is a very broad term and I think it gave me something like 50,000 articles had been written which deal with herpes infections, not surprising

because that could include, as I mentioned, chickenpox and herpes type 1 and herpes type 2 and other herpes viruses, but then you can try to narrow your search down more. So I looked at herpes and sexual transmission and you still might find about 5,000 articles.

So this has been discussed many times, as we've discussed also, a relationship between herpes and sex. I tried to search, it probably could be done better, but just a quick search, I looked for a combination of the words herpes, transmission, which means how transmitted from one person to another, and fomite, which is what we mentioned before, some inanimate object such as a toilet seat or a towel, and then the computer gave me not 50,000 or not 5,000, but gave me 11 references. I actually -- I was a little bit surprised. I printed those out and tried to see what was documented there.

Q Out of those 11, what kind of sources of transmission are they talking about getting it like somebody would propose, getting it from a towel, getting it from some other inanimate object on that herpes simplex 2?

A Some didn't even seem relevant to this question, but I'll give you an example of one which

struck me. This said, Primary herpes labialis, so this is of external genitalia of a woman, primary meaning new infection, Primary herpes labialis acquired during a scuba diving course. It's the Journal of Travel Medicine 1997.

And I haven't had a chance to read that article, but just thinking about that trying to imagine what would be involved, I'm not a scuba diver, but I think when people scuba dive, they put on these wet suits, those rubber wet suits, and maybe in a training course, maybe the previous person had some herpes virus which then got on the wet suit and the next person put it on and maybe, we'll have to read the article to find out, maybe that was acquired this way.

There are some others. There's one from 1983. It says, Fomites and herpes simplex viruses, a cause -- no -- a case for nonvenereal transmission, question mark. So this has been discussed a few times, but to have 11 references out of 50,000 which deal with this subject indicate --

Q It's almost statistically insignificant, isn't it?

MR. FALGIONE: Objection, Your Honor. There's no basis for that, Your Honor, absolutely none

whatsoever regarding the statistical inappropriateness or links to any of that. And I'm sure the good doctor is not going to testify that there is any.

MR. MAYE: You only found 11 --

THE COURT: Hold on a second.

There's no foundation and it's a leading question. Disregard the last question and any response given.

Ask your next question, Solicitor.

BY MR. MAYE:

Q So you only found 11 references and some of those dealt with things as obscure as scuba diving?

A Yes, sir.

Q Okay. If physicians found unusual methods of getting something, would a fomite transmission or getting it through some inanimate object, would that be a most unusual method of transmission?

A If you could document it, it would be unusual, would be an unusual case. In fact, people often publish those as case reports.

Q So if there's some bizarre way to get it or something other than sex, it often times is published about?

A That's right. There are some infectious

diseases which have sometimes unusual modes of transmission. When it happens, people write it up as an article, say, wow, look at this, here's a disease that was transmitted not in a common way, but in some unusual way. And a good case report should have good documentation that it's happened.

Q So if it is possible to get it in that regard, it would be exceedingly rare?

A Judging from the literature, it seems to be rare because it's not commonly described or discussed.

Q So when people get type 2, how do they typically get it?

A Well, from everything the standard books say and from our information about herpes type 2, it's a sexually acquired infection. Apparently rarely, I'm not saying it cannot never happen, but very uncommonly there could be some other mode of transmission such as the scuba diving suit in this case.

Q Let me ask you this. How do you test for it? For example, how do you test for type 2? I mean, what are the tests that we use to check for that if somebody's got it?

A Well, a doctor seeing a patient with the kinds

of blisters that look like herpes on the genital area either for a man or a woman -- first of all, if they've seen a lot of cases, they don't even need a test, they can just look at it and say, this looks like herpes to me. And if it's a typical case, they will be right nine times out of ten or more because it's not that uncommon.

In terms of tests that can be done, there are two things, one is a viral culture and one is a blood test. And let me explain both of those. What the viral culture is, is if there's a little sore, it might even be filled with pus or if it's pus, that's called a pustule, if its clear fluid, it's called a vesicle, but anyway, the doctor can break that open and take a little swab and swab some of that fluid, send the swab to a laboratory and they can see if they can grow the virus, that's called a viral culture. And if it grows, that would be like planting a seed from a fruit and see if it makes an apple tree or something like that.

So you're taking some small amount and seeing if you can grow the virus and that is the best way to be sure that that infection is due to that particular virus.

Q But you have to have active lesions to do that

swab test, don't you?

A For a general practitioner in common practice, yes. In research settings, they can probably also try to culture intact skin and see if they get virus, but that would not be a common thing when you go to your own doctor's office. You'd have to have lesions to -- for practical purposes, you'd have to have sores which you can culture.

Other kind of tests is a blood test --

Q Let me ask you this. Would the general practitioner or a nurse or somebody who's going to get that swab test and they didn't see lesions, that wouldn't be a negative test, would it, if they didn't see any lesions to swab? That would be no test at all, wouldn't it?

A Right. So if you don't see any lesions, again that's you may see no lesions because the patient doesn't have herpes or you may see no lesions because there just are no lesions present at that time. Remember, this is something that comes and goes. So --

Q But if you don't swab, I mean, there's no test. If you look at somebody and see no lesions and you don't take a test or you don't swab, that's no test at all, is it?

A There's not a test, that's right.

Q Okay. What are the other tests that you can do for type 2?

A Other tests are what would be called antibody tests and that involves taking the blood tests. So you remember it's a little bit indirect because the virus is on your genitals where the lesions are, but you're taking a sample of blood, send it to a laboratory. What the laboratory is looking for is something called antibodies against the virus.

What are antibodies? Those are little balls of protein that your immune system makes when you get an infection. So if you get measles infection, your body makes antibodies against the measles virus. If you get hepatitis A infection, your body makes antibodies against the hepatitis A virus. If you get a herpes simplex infection, your body will make antibodies against the herpes simplex virus. That can be sent out.

Unfortunately, antibody tests are little bit confusing and difficult for herpes because you remember we have those two types, the type 1 and the type 2. And some antibody tests cannot tell the difference between type 1 and type 2 because they're very similar.

Remember these are viruses which are in the same family. What would be an example? Like a house cat and a bob cat. You know, from across the road, they both look like cats and they both have ears pointed up and sharp claws and so forth, but when you get close to it, you can tell a bob cat is different from a house cat.

Likewise here just from -- just some antibody tests can just tell you it's herpes virus, but can't tell you whether it's type 1 or type 2, but better -- there are some newer tests which sometimes can tell type 1 from type 2. I say sometimes, and I tried to review this literature last night also, these newer tests themselves are not perfect. We wish all tests that we did are perfect, but they have problems sometimes as do all tests with false negatives and false positives.

Q So that additional test distinguished from a blood draw between type 1 and type 2, is that -- that's an uncommon test, isn't it?

A It would probably depend on the -- well, couple things. Your local hospital laboratory or your doctor's office can do certain tests. Tests which they cannot do they would have to send out to some other laboratory which could do those tests,

sometimes in a bigger city or in Georgia or some other place. And different laboratories do different tests. And some of this can be confusing for people who are not specialists in infectious disease, you know, which test, which is the best, which is FDA approved, also some tests are more costly than others, so it's kind of a balancing act here.

I'm not sure if I've answered your question.

Q A general lab usually does -- what's the common test for a lab? If you go for a blood screen to see if somebody's got it, what's the typical lab test called?

A I don't know. I haven't done these myself on patients. I'm not sure what most labs can offer. I think it would depend on the laboratory.

Q Let me ask you this. What is a herpes 1/2 IgG screen? What is that?

A Well, if it says herpes 1, 2, that implies that that test can't tell the difference between a type 1 and a type 2.

Q Okay. Just test for both?

A Testing for both. And you said the word IgG --

Q Yes. I'd like for you to look at what's been marked as State's Exhibit 1, a type 1/2 IgG screen

on the defendant in this case, George Jones.

A Right. Well, again, this -- remember this is not a test -- we're not culturing the virus. This is a blood test to see if the person has antibodies.

Q Because you've testified to culture the virus, you've got to have sores and do a swab, right?

A For practical purposes, yes. Well, what IgG is that stands for immune globulin G. And that's -- that is one kind of antibody which the body makes against viruses, but this particular test, this was done in something called the Mullins Laboratory, this particular test does not distinguish between type 1 herpes and type 2 herpes. All this shows is that this person has had at least one herpes infection, but we don't know if it was type 1 or type 2.

Q What is the other one? Other than IgG, what's the other screen or is there another screen of antibodies? Are there different types of antibodies referred to by other names?

A Yeah, there's several letters. There's a IgA, IgM, IgD, IgE. The most common ones that are tested for diagnostic purposes would be IgG or IgM. IgM antibodies is usually what the body makes first. If you have -- I'll come back to something simple like

measles. If you get measles, your body first makes IgM antibodies. And after a while, the IgM goes away and you have IgG, which is longer lasting.

So this is just looking at IgG which suggests this is not a recent infection but some longstanding infection. But, again, this cannot tell you whether it's type 1 or type 2.

Q What's the threshold for a positive test on that screen?

MR. FALGIONE: Objection, Your Honor. Counsel is now asking this witness to extrapolate a test that he had no input or no purpose in and no exposure prior to just a few minutes ago, so there's not an appropriate foundation for that.

MR. MAYE: I'm asking him to read what the test results are. And it's got written right on there what the threshold is for a positive test.

THE COURT: That's an exhibit?

MR. MAYE: Yes. And it's in evidence.

THE COURT: He can read anything from an exhibit.

MR. FALGIONE: Thank you, Your Honor.

BY MR. MAYE:

Q What does it say the threshold is for a positive test?

A Well, it says, Herpes 1 slash 2 IgG, that means it's a test for either 1 or 2 or both together, then there's a number 42.1. Then below that -- well, below that the laboratory is explaining what they mean. Actually, this is not that uncommon. Different laboratories may have slightly different tests and they will try to explain to the doctor what the numbers mean because it could be using different ways of measuring things. This laboratory says negative would be less than 0.9. Indeterminant, which means you're not sure if it's negative or positive, would be between 0.9 and 1.09. So below one would be negative, right around one would be indeterminate. And then more than 1.1, they call that positive. So this test is 42, which is far above one so that would be considered --

Q Certainly way above 1.1?

A -- would be a positive test.

Q 42?

A By what the lab is saying here.

Q Okay. Let me ask you this. You said there's an additional test that some laboratories can do for a type 2 screen to determine if somebody's got type 2, but that's not all together an accurate test is what you said; is that correct?

A I'm not an expert in the accuracy of some of these new tests. I looked at the -- in my line of work, we look a lot to the U.S. Centers for Disease Control, which is in Atlanta, that's the federal agency that deals with infectious disease. We look to see what they were saying about herpes infections and they had a big meeting about herpes infections about ten years ago. And they said, We need better tests that can tell type 1 from type 2. That was ten years ago.

So, in the meantime now apparently in response to that request by the federal government, companies have been trying to make better tests. What I can see from literature is that these are newer, there are several of them, they are in use, not totally satisfactory.

I have a -- I was a bit surprised to see what the CDC itself said about them on the web site. It's the little fact sheet about genital herpes. They say -- and, again, this is just a document for the general public. This is question and answer:

How is genital herpes diagnosed? Health care providers can diagnose genital herpes by visual inspection. We discussed that. If you're experienced, you can look at it if the outbreak is

typical. And by taking a sample from the sores and testing it in the laboratory, that would be the culture.

Then it says, Blood tests which detect antibodies to type 1 or type 2 can be helpful, although the results are not always clearcut.

In the technical literature, I find that also. I think this is an evolving area. We hope the tests become better. The problem of that, it will be helpful for epidemiologists, I'm not sure if it's always helpful for the one patient you have in front of you.

Q So, Doctor, I guess to summarize, the best test is a swab test if you can get an active culture?

A Absolutely, that --

Q But you could follow an adult around for all their life if they had it and it was longstanding, they never had any active lesions again, you could never perform that swab test on them unless they had an outbreak and had lesions, could you?

A You would have to -- since people have different recurrences, you would have to see them just when they had the recurrence or if they didn't have recurrence but just had shedding, viral shedding without lesions, which can happen, then I

think a regular doctor, a regular lab, wouldn't be able to culture the virus.

Q So you could go back to somebody over and over again looking --

MR. FALGIONE: Objection, Your Honor, leading.

THE COURT: It appears to be phrased so that it's going to be leading. I know you hadn't finished the question yet.

MR. FALGIONE: Yes, Your Honor.

THE COURT: Go ahead, rephrase your question.

BY MR. MAYE:

Q I'll ask you this, Doctor. About what percentage of the general adult population is going to -- on that type 1, type 2 screen, what percentage would you assign as being common among the adult population that's going to test positive on that?

A It would be very high. It could be probably, depending upon the state and what age group, but it could be 70, 80, 90 percent of people will have a positive test.

Q Could be?

A The reason is that this test, this particular test that you showed me tests for antibodies against type 1, as well as type 2. And as you mentioned, many people, lots of -- from the time we're kids, we

pick up this type 1 virus, so it would be very common.

Q How about among the general population for a type 2 test, about what percentage are going to test positive?

A For type 2 --

Q Type 2.

A -- it would be much less. Remember for type 2, it would be very rare in children. In adults, it seems that it could be about approximately one woman -- one adult woman in four in the U.S.A. would have a positive -- a positive test for type 2. So many -- it's a fairly common infection in adults. And in men less, instead of being one in four, it might be more like one in eight, probably because -- probably because transmission's more efficient from man to woman than from a woman to man.

Q Okay. So you're talking about if you said 75 percent of the general population. So if you did a test for type 1 versus a test for type 2, about three in four people would be positive for the type 1, type 2 together and maybe one in four would be positive for the type 2 screen?

A Right.

Q Okay. So all you'd be doing is going from

three and four people to one and four people. So a lot of people are going to test positive for this, correct?

A Sure.

Q Okay. But if you did this test and somebody didn't have anything present at all, that excludes them from transmitting it to somebody, wouldn't it?

A Say again.

Q If they had a negative test, that would exclude them, wouldn't it, from transmitting it?

A The simple answer would be, yes. The complicated answer would be the test could be a false negative test.

Q So no matter what test you did --

A Every test can have some problems, but for practical purposes, if you have a negative test, that means you have not been infected with the herpes virus in question and shouldn't be able to transmit it.

Q But no matter what test you do, you can't narrow it down -- you can't get more specific than one and four, you said about 25 percent, no matter what testing you do?

A With antibody -- I'm not sure I understand the question.

Q Let me ask you this. No matter what tests are available for herpes -- you've already testified in this case if you get a negative test, that just excludes you from transmitting it, practically speaking, but no matter what test you do, you're only taking it down to about 25 percent of the population; is that correct?

A Twenty-five percent of women will have a positive test, yes.

Q Okay. But you testified before that a type 2 test in a child is exceedingly rare and do they include the whole population in that?

A No. When I say that 25 percent of women have a positive antibody test, I'm not -- I'm talking about adults now not about children. In children, it would be much, much lower and doesn't start to pick up until you're in your teenage years.

Q Okay. So children, it's just very, very rare for a child to have type 2?

A That's correct.

Q And, Doctor, you've consulted with some of the ex -- I mean, some of the practitioners that have been involved in this case. And if this child has a type 2 -- this child does have a type 2 diagnosis that was done off a swab, correct?

A Correct.

Q Okay. And that's an unusual occurrence in a nine-year-old, isn't it?

A It is.

Q It strongly suggests sexual contact, too, doesn't it?

MR. FALGIONE: Objection, Your Honor.

THE COURT: What's your objection?

MR. FALGIONE: Leading.

THE COURT: Sustained.

BY MR. MAYE:

Q What does it suggest, Doctor? The presence of a nine-year-old -- the type 2 virus in a nine-year-old, what does that suggest?

A Genital infection of a type 2 virus, which this girl has, suggests that she's had genital contact with someone who also has type 2 herpes who infected her through some close sexual contact.

MR. MAYE: Answer any questions the defense has for you. Thank you, Doctor.

THE COURT: Cross-examination.

MR. FALGIONE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Doctor, I need you to help me clear up a few

things. First of all, there is a test for type 2 herpes that can be performed, correct?

A Some laboratories do have this capability, yes.

Q And it's a matter of if you really want to know if someone has type 2 herpes, you could find out, can't you?

A I would think so. I think you could call up different laboratories and see which ones offer that test.

Q Okay. Doctor, when was the last time you diagnosed anyone with herpes?

A I'm not in a clinical practice, so I haven't done this since my training days. I deal with populations and not with individual patients.

Q That would have been --

A I'm sorry, what --

Q How many years ago would that have been?

A That would have probably been about 30 years ago.

Q About 30 years ago?

A Yes.

Q Is it fair to say that you probably last treated somebody with herpes about 30 years ago?

A I think in those days we didn't even have good treatments for herpes, but now there are antiherpes

drugs, which we didn't have in those days.

Q Okay. Now, Doctor, I'm not so sure I understand what your area of expertise is here with epidemiology. Is that a looking at the broader base like a national picture and trying to project what's happening with various diseases and occurrences, how frequently they're occurring or if they're increasing -- decreasing, is that what that's involving?

A That would be part of what we do, but just to explain what the medical epidemiologist might do, we do surveillance for infectious diseases. We want to know what diseases are occurring in the population and where they're occurring and who's getting them, it can be tuberculosis or hepatitis or AIDS or anything else, what are the best ways to set up programs to prevent transmission from one person to the other, how can we help physicians who are on the front lines to have the best practices so that they can do the best things in their practice to diagnose and treat. We identify disease outbreaks or epidemics and try to stop them.

So we're -- we help practitioners. We help hospitals a lot, but we are not seeing -- we are not on the frontline seeing the patients, we're

assisting the people who see the patients.

Q You're not here today holding yourself out as an expert on the herpes virus, correct?

A That's correct. The real experts are people who may have written hundreds of articles. I found one person who's written 200 articles about herpes from the University of Washington, so he would be a national expert on herpes.

My job is not to write those articles, but is to be able to access them and read them, understand them and then see what we, in South Carolina, can do to help prevent transmission.

Q Doctor, the prosecutor asked you to look at a test for George Jones and asked you if that threshold amount told you anything. It really doesn't tell you anything other than George Jones has a type of herpes, correct?

A Correct.

Q And it doesn't distinguish with type 1 or two type 2, does it?

A That's correct. This was a test for type 1 and type 2.

Q Okay. And wasn't your earlier testimony that anywhere from 70 to 90 percent of the population has type 1 herpes; is that correct?

A Correct.
Q So within this courtroom, there are multiple people with type 1 herpes?
A Absolutely.
Q Now, let's talk for a minute about fomite. Did I say that term correctly?
A (Witness nodded head.)
Q Thank you, sir. Now, there was an article that indicated, although you didn't read it I guess, about the transfer of herpes with someone in a scuba diving class; is that correct?
A Correct.
Q And that was without sexual contact, wasn't it?
A I haven't read it, but presumably that -- we could infer that from the title of the article. That's why we describe this was an unusual means of transmission.
Q Okay. Is it possible or isn't it possible to transmit herpes without sexual contact?
A I think it's possible just not a very probable.
Q Okay. Now, let's talk about probabilities for a minute, okay. If a mother has type 2 herpes and she takes a bath with a daughter and the mother uses the same wash cloth on her private parts that she uses on the private parts of the daughter during the

course of that bath, does the probability increase that the mother will transmit her herpes to that child?

A I can't answer that because I've not read case reports of that occurring, A.

B, if this -- you have to think of it this way: 25 percent of adult women have evidence of type 2 herpes infections. How many adult women are there in the USA? About 120 million. A quarter of those have herpes infections, that would -- a quarter of 120 million, that would be 30 million. Some of those 30 million women have daughters, granddaughters, nieces, children. So if this were something which could commonly occur, we would see a lot of this occurring and it would show up in literature, but we're not seeing this.

So I'm not saying it cannot happen, I'm saying I don't see it happening. It must be very uncommon if it does happen.

Q Okay. If I understand your answer correctly then, it can happen, but the literature, it's not a reported thing very often in your cases that you read in this broad bank of theoretical literature; is that correct?

A I wouldn't call literature theoretical. It's

quite practical --

Q Okay --

A -- descriptive, yes.

Q Excuse me. So if it's happening on a regular basis and family practitioners see it and health nurses see it, but they don't write articles about it, it wouldn't come within your realm of knowledge in your research of this; is that true?

A What would happen is if something were commonly seen, then at some point someone would write not a case report, but a review article pulling together case information and saying -- and saying evidence for fomite transmission of herpes simplex virus. And we're just not seeing that in the literature.

Q Back to my question, Doctor, if those articles aren't written because people down here in the front lines aren't writing them and no one else is writing them, you wouldn't be cognizant of them?

A The kind of article I'm mentioning putting a lot of information together probably is not written by somebody in the front lines, it's written by researchers from the CDC, from medical schools, would really be like this Mr. Corey I mentioned who has written hundreds of articles, that would be someone like that who is a full-time herpes

professional would put that together and that would be out there.

Q Okay. Back to my question to you, I mean, an article has to be written about this thing or would have had to have been written about this thing for you to have come here today and tell us about it; is that correct?

A Well, the literature provides one way to assess what's going on. Another way is to refer to best standard reference text. I happen to be holding two here. These actually have some significance in the law because our policies at DHEC are supposed to, in some ways, reflect the standards here.

This is called the Red Book. It's written by the American Academy of Pediatrics. It represents pediatricians all over the country. This is called Control of Communicable Diseases Manual. This is a publication of the American Public Health Association.

So actually in frontline public health practice, I don't always have to search a bank of 50 million articles. I go to the page here and see what the pediatricians of America say and see what the American Public Health Association says. And they say it in one word. I mean, they say,

Transmission of HSV 2 is usually by sexual contact, period.

Q Usually?

A That's correct.

Q Not exclusively, right?

A That's correct.

Q So your testimony it has to require sexual intercourse or sexual action is really not accurate in all cases, is it?

A I'd have to say it's overwhelmingly probable, but I cannot -- unfortunately, in the real world, not everything is 100 percent.

Q Yes, sir. What's the incubation period for herpes type 2 simplex?

A I could look it up in my books, but I think it's on the order of about two to 12 days or so.

Q Two to 12 days?

A Right.

Q So if a person is exposed to the herpes virus, they can expect an outbreak two to 12 days from there; is that correct, after the date of exposure?

A If they're going to get a full outbreak, but remember not everybody gets exposed has the same clinical course. It's like when we spoke about flu, some people get mild infection and some very severe.

So if you're unlucky, two to 12 days after exposure, after infection I should say, then, yes, then you would have symptoms and a rash and these painful sores and blisters, that's right.

Q And that would be the best evidence of actually having the herpes would be the complaints of the itching and soreness and all of those things, wouldn't it?

A That's right. And especially if it's the first infection, that's the most uncomfortable and that's what might lead someone to go to the doctor.

Q So as I understand your testimony, the logical and most probable point of exposure for that person would be two to 12 days prior to when they actually experience that itching and burning and those complaints; is that correct?

A It certainly is correct if this is the initial outbreak, yes. Remember we have the recurrences which can occur months or years later, so you couldn't go back 12 days from something that's happened months later, but from that initial more severe, florid outbreak with lots of sores, yes, two to 12 days before that should be normally when exposure occurred.

Q And the initial outbreak is usually the more

severe?

A That's correct.

Q So if someone reported for the first time experiencing that, you can logically believe that to be the first outbreak or the first --

A Reasonable assumption.

Q Reasonable. More probable than not?

A Yes.

Q Now, Doctor, isn't it true that sanitary conditions can make a difference as to the probability or possibility of transmitting of herpes virus type 2 simplex from one person to another?

A Sanitary referring to, what, household cleanliness or to what?

Q Well, let me pose this to you, okay. If the conditions are such that the commode is not working and a lady who has type 2 simplex uses toilet paper when she goes to the bathroom, places that toilet paper around various places within the bathroom including the trash can and then a young child goes in and comes in contact with that toilet paper, is it possible that the child can contact type 2 simplex herpes in that manner?

A I would say again it's possible, but very unlikely for reasons which we discussed in my

previous answers.

Q It is possible, isn't it?

A I would say it's possible, but very unlikely.

Q I understand, but it is possible, isn't it?

A Okay.

MR. MAYE: Your Honor, that's been asked and answered.

THE COURT: Asked and answered.

MR. FALGIONE: Certainly, Your Honor, certainly.

BY MR. FALGIONE:

Q Doctor, have you read any reported cases about herpes simplex 2 being transmitted from a mother to a child in the process of childbirth?

A Absolutely. That's something we haven't mentioned before. We've been talking about transmission from one person to another, but it can also be transmission from mother to baby during childbirth. So, in fact, this is a problem not for young men who get herpes, but for any young girl who gets herpes. This will be a consideration for the rest of her life as to whether or not she may infect her own children at the time of birth.

Q Doctor, if I understood your testimony correctly, I believe you indicated that a woman with

multiple sexual partners is more likely than not to come in contact with a herpes 2 simplex virus?

A Right. The more sexual contact you've had, the more likely you are to have had exposure, that's correct.

Q Now, Doctor, isn't it true then that in order for type 2 herpes to be transmitted, it does not require contact that is sexual from a genitalia of a man to a woman?

A We have apparently the case report of a scuba diving suit, so apparently it may happen, but judging from statistical evidence and from literature and from what we know, if it can happen, it would be very rare and uncommon.

Q When you speak of the genitalia and the transfer requirement from a genitalia of a man to a woman, tell me exactly in plain terms what you mean by that.

A Well, men can have lesions on the penis, on the scrotum, on the thighs right around the genital area, possibly virus may be also in the urethra, which is what leads the urine out to the tip of the penis, so there could be virus in any of those places. And women then can get infection either right around the orifice of the vagina or in the

cervix, which is the lower part of the uterus, or again on the skin just right around the genital area.

Q Is it possible, Doctor, for the herpes type 2 simplex to be transferred from woman -- female to female and not require a man at all?

A I think there's -- I think so. I haven't reviewed this particular literature, but I think just as gay men can have STDs, I think lesbian women can also have STDs.

MR. FALGIONE: Thank you, Doctor.

THE COURT: Redirect.

MR. MAYE: Nothing. Thank you. I ask that he be released.

Thank you, Doctor.

THE COURT: Thank you, Doctor. You can step down.

Is this witness free to go?

MR. MAYE: Yes.

MR. FALGIONE: Yes, Your Honor.

THE COURT: You're free to go. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: All right. Ladies and gentlemen of the jury, we'll take a ten minute break. Don't discuss the case. Leave your notes in the

262

courtroom, please.

(The jury retires to the jury room.)

THE COURT: Court's in recess for ten minutes.

(Brief recess.)

THE COURT: All right. Y'all have something I need to address?

MR. MAYE: Yes, sir, Your Honor. We have a -- I'm going to have to call him anyway, Your Honor, so at this point in time, I'm going to call --

THE COURT: Tell me what you've got.

MR. MAYE: I've got a video tape that I want to put in. I've got a interview (sic) of the forensic interview and I want to admit that tape under 17-23-175 which requires a hearing outside the presence of the jury.

THE COURT: You know, I'm really upset about this. Nobody has mentioned this to me. Every trial I've ever done where this has been in existence, they tell me about it before the trial, I take the thing home so I can watch it and make rulings on it. Now, y'all are telling me on Friday at 11 o'clock that you've got a 52 minute video that you hadn't said a word about before now.

MR. MAYE: Your Honor, I apologize. It was not anything that I would have thought that the Court

263

would have looked at ahead of time.

THE COURT: How can I make these rulings without looking at the tape?

MR. MAYE: I knew we would have to look at it, Your Honor, but I did not know that the Court would have reviewed it base --

THE COURT: How can I make the rulings without looking at the tape?

MR. MAYE: You cannot, but I thought we would do so this morning. And I apologize to the Court. This is the first time I've used --

THE COURT: So we're going to have two hours that y'all haven't told me about.

MR. MAYE: Your Honor, I apologize. If I had known that you would have looked at it outside of this environment, I would have provided it ahead of time and I apologize.

THE COURT: All right. I'm not going to beat this horse anymore, but how -- I'm asking you for the third time, how do you think I can make the rulings without looking at the tape?

MR. MAYE: I knew you would have to, Your Honor, but I did not know that I should have submitted it to you ahead of time.

THE COURT: Court's in recess for five minutes.

264

(Brief Recess.)

THE COURT: Bring the jury in.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen of the jury, I've run into a situation that I did not anticipate at all. During that break, I was advised that there are some issues that I have to rule upon. And my best guess is that the quickest I'm going to be able to get through that, and this is pretty optimistic, would be an hour and 15 minutes.

I had planned to keep you here and planned to order your lunch and I think they've already taken your lunch order, but I don't want to make you sit back there for an hour and 15 minutes minimum. I thought about giving you a break and letting you stay back there if you wanted to and come back at a certain time and we'd have your food here. The problem with that is I've got to let everybody in the courtroom eat. So what I've decided to do is just give you an extended lunch break and ask you to be back here at one o'clock.

I'm sorry. I had no idea this was coming up. I think if I -- I always try to make these decisions based on what I would want somebody to do if I were sitting in your place. I realize some of you might

265

disagree with what should be done, but that's what I would want the judge to do if I were sitting in the jury box.

Now, folks, a couple of you were late this morning. I really need you back here at one o'clock if we're going to finish this thing today. I can't impress that upon you strongly enough.

Because I took your cell phones up, I'm going to give you your cell phones back, but I'm strongly admonishing you that you are not to talk to anybody about this case, don't let anybody discuss the case with you in any way and don't let yourselves be exposed to any media coverage, any type of conversation from anybody related to the case, okay. Thank you. And if there is any, just report it to me. Like I said, the only way you can get in trouble is if you're not truthful with me.

All right. Don't discuss the case and I need you back here at one o'clock. Thank you.

(The jury was excused for lunch.)

THE COURT: Call your witness, Solicitor.

MR. MAYE: Ray Olszewski.

THE COURT: Come around please, sir.

****

****

RAYMOND OLSZEWSKI,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name, please.

THE WITNESS: Raymond Olszewski, that's O-l-s-z-e-w-s-k-i.

VOIR DIRE

BY MR. MAYE:

Q Please introduce yourself, Mr. Olszewski, to the Court and tell him where you're employed, about your educational background, where you work.

A I'm employed at the Assessment and Resource Center in Columbia, South Carolina. The Assessment Resource Center is a nationally accredited child advocacy center. We conduct child abuse evaluations and treatment. It's an outpatient clinic. I'm employed as a social worker there. My primary job responsibility is to conduct forensic interviews of suspected child abuse victims.

Q What specialized training in the area of forensic interview of child sexual abuse victims do you have?

A I have training, lots of training in the area of interviewing children. I went through a 40 hour interviewing course in 2000 called Finding Words

that teaches a specific interview protocol that's nationally recognized. I've been through advanced forensic interview training at CornerHouse in Minneapolis, Minnesota, that was a four day advanced interviewing course.

I've taken numerous other work shops, been to numerous conferences, advanced interviewing conferences almost every year for the past few years.

I'm also on the faculty of what is now called ChildFirst South Carolina, it used to be called Finding Words South Carolina. We teach the same 40 hour course that was taught on the national level. We teach it to child welfare professionals across South Carolina. We teach it right there at the Assessment and Resource Center in Columbia. And I've been on the faculty for that course since we started it in 2001.

Q How many forensic interviews of child sexual abuse victims or suspected child sexual abuse victims have you been involved in, Mr. Olszewski?

A I don't have an exact number, but it would be over a thousand. I've been employed at the Assessment and Resource Center for a little over ten years now and so that number would be over a

thousand. Prior to that employment, I worked for Department of Social Services as a child protective services investigator and then as a supervisor. So I also interviewed children about abuse in that capacity as well.

Q Have you previously been qualified in the courts of South Carolina as an expert witness in the field of forensic interview of child sexual abuse victims?

A Yes, I have.

Q Approximately how many times?

A In South Carolina, it would be approximately 20 times both in family court and in criminal court.

Q Okay. Pursuant to the new law, I guess, under Jessica's Law section 17-23-175 regarding the admission of video taped testimony, have you previously been qualified in trials as an individual that has the training and expertise necessary to admit video taped evidence of the forensic interviews of suspected child abuse victims in the courts here in South Carolina?

A Yes, I have.

Q How many times have you participated in that and how many times has that happened?

A Twice.

Q Prior to today?

A Right. That's correct.

MR. MAYE: Your Honor, I'd like to offer him to the defense for them to examine any credentials. I was going to offer him for an expert in the area of forensic interviewing of child sexual abuse victims.

THE COURT: Any voir dire?

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

VOIR DIRE

BY MR. FALGIONE:

Q Mr. Olszewski, you do not have a Ph.D. I take it?

A I do not.

Q And you do not have an M.D.?

A I do not.

Q Okay. And your highest level of expertise is a social worker's certification, is that correct, a master's in social work?

A I'm licensed as an MSW in the State of South Carolina. I also have a diplomate in forensic social work.

Q Okay. And what's it take to be a diplomat?

A Involved a test, an oral test and a written

test, that was administered by the National Organization of Forensic Social Work, covers all area of forensic social work not just child welfare issues or child abuse issues, but any issue that crosses over into the legal arena.

Q Have you previously been qualified as an expert in forensic interviews of children?

A Yes, I have. It's funny, every time I'm qualified as an expert, the language is a little bit different. I've been qualified in forensic interviewing of children, child sexual abuse, just child abuse in general, so sometimes the wording is a little bit different each time it seems.

Q I'm speaking -- you're being offered today as an expert in forensic interviews of children. What courts have qualified you as an expert in the forensic interviewing of children?

A What courts?

Q Yes.

A Numerous courts in South Carolina both family court and criminal court. I don't have a list, but off the top of my head, Richland County for sure, Lexington County, Newberry County.

Q When you speak of counties, are you talking about family court or are you talking about general

sessions court?

A Well, there's been a mixture. I've also been admitted as an expert in two courts-martial at Fort Knox in Kentucky outside of South Carolina. I don't necessarily have a breakdown of which counties were criminal -- some are both, criminal and family court. I've been doing this ten years. It's hard to...

Q Do you have a written protocol for conducting these interviews?

A A written protocol? We follow a protocol, yes.

Q Is it a written protocol?

A Written in what sense?

Q Well, do you have an outline of a written protocol for conducting these interviews?

A Yes.

Q Did you utilize that protocol in this specific interview of this child?

A Yes, I did.

Q Was that part of the discovery materials that you provided to the prosecutor?

A No. We don't generally turn over -- those are part of training materials that technically belong to the Children's Law Center so they're really not ours to turn over. He may have gotten them through

the Children's Law Center, I'm not sure.

Q Have you ever had any complaints made against you by any -- to any licensing board or supervisor?

A No, I have not.

Q Who was present when you interviewed the child, [redacted] Minor ?

A When I interview a child, it's just me and that child in the room.

Q Do you have others present watching outside?

A We do have observation abilities and I'd have to check my report to see.

I have noted in my report that a Gail Reves, I'm not sure if I'm saying that correctly, from Edgefield County DSS was observing and a Lamaz Robinson from the Johnston Police Department.

Q Was [redacted] Minor cognizant that these people were viewing...

A That I'm not sure. I'd have to review the video tape on that.

Q Who determined the location of the cameras in performing this video tape?

A Cameras are secured in the wall. They're not mobile.

MR. FALGIONE: Your Honor, that's all the questions I have.

MR. MAYE: Your Honor, I did not provide a copy of his C.V. I'd be happy to provide it to the defense if they care to do so. And I would care to offer it as a court's exhibit to support his qualifications. It's extensive. It's approximately eight pages. I have not previously provided it to the defense in this case. I'll be happy for them to review it.

THE COURT: You're tendering him as an expert in the field of forensic interviewing of child sexual abuse victims?

MR. MAYE: Yes. Forensic interviewing of child sexual abuse victims and child sexual abuse. I would tender him as an expert in both of those.

MR. FALGIONE: Your Honor, I didn't understand he was going to be tendered as an expert in the area of child abuse.

THE COURT: I didn't either.

MR. MAYE: Your Honor, I would ask to offer him as an expert in both those areas, in forensic interviewing of child sexual victims and child sexual abuse.

THE COURT: I don't think you asked him about anything in the qualification questions other than about his interviewing. I mean, you asked him about

employment in general, but you --

MR. MAYE: I will endeavor to remedy that if I'm allowed to by the Court, Your Honor.

THE COURT: Go ahead.

VOIR DIRE cont.

BY MR. MAYE:

Q Mr. Olszewski, do you have experience through your work in the ARC and working in child sexual abuse investigations in cases?

A Yes. And I should say, first of all, part of, you know, being an expert and being good at doing forensic interviews in child victims is understanding child sexual abuse and child abuse in general. You have to understand the dynamics of child sexual abuse, what victims go through in the process of disclosing abuse and how they disclose abuse. So -- and that's actually part of the 40 hour training that I've received and that we teach so that our child welfare professionals understand those dynamics, as well as the basic protocol and nuts and bolts of doing the interview.

In addition, we work and I work with a multidisciplinary team in Richland County which meets -- it's comprised of a medical component, the forensic interviewers, law enforcement, Child

Protective Services, the Solicitor's office. We meet regularly to discuss cases of child sexual abuse that are being investigated so the investigations can be conducted jointly and efficiently. I've been a part of that since 1997 when I first began working in Richland County at the Department of Social Services.

And I've taken numerous workshops and trainings in all areas of child and child sexual abuse.

Q I'm going to hand you this and ask you if you can identify those pages.

A This is my C.V.

Q How many pages is it?

A I think I counted seven unless I missed one.

MR. MAYE: Your Honor, I'm going to offer that as a court's exhibit for purposes of this hearing now.

THE COURT: Mark it as a court's exhibit, please.

(Court's Exhibit Number 5, Raymond Olszewski's C.V., was marked for identification.)

BY MR. MAYE:

Q I'm going to show you what's been marked collectively as Court's Exhibit 5. Could you relate any of the training and experience you have that is

significant to child sexual abuse and your expertise in the area of child sexual abuse?

A. Yes, I can. The training is, When Words Matter: Emerging issues in forensic interviewing, and Beyond Finding Words. These are three-and-a-half day advanced interview trainings. They also cover topics dealing with child sexual abuse in general again.

So a lot of this is tied in together when you're talking about forensic interviewing, same thing with the advanced child sex abuse forensic interviewing at CornerHouse and then these numerous other trainings on why women kill their children; clinical assessment of juvenile sex offenders and risk for re-offending; the role of trauma and attachment in juvenile sexual behavior; online child exploitation workshop; reactions of non-offending parents to the sexual abuse of their child; child interviews when sexual abuse is suspected; child abuse, domestic violence and animal abuse and the legal implications there; child psychological maltreatment; child custody investigation in contested divorces; the social worker's role in protecting children in custody and divorce cases, all of these are, in my opinion, relevant,

factitious disorder by proxy; memory and suggestibility of the child witness; preparing children for court; confronting child abuse in rural communities; team invest -- a week long course on team investigative process for missing, abused and exploited children in Charleston in 2000; general workshops in child sexual abuse victims; advanced training in child sexual maltreatment. Those are the ones I've attended.

I've also -- if I look at the workshops I've conducted, I've conducted workshops obviously on interviewing children in forensic interviewing, conducted one called, Sexual behavior in children, looking at what is normal versus abnormal; when a child takes it back, I looked at recantation in child sexual abuse cases and what goes into that; the use of language in interviewing children.

I've taught on young childhood cognitive development; techniques for interviewing child victims; developmental impact of child maltreatment, it's part of a two day training I did with APRI in Toledo, Ohio. I've done general trainings on child abuse and neglect.

As part of my faculty appointment with the Department of Neuropsychiatry at USC School of

Medicine, I'm involved in training and teaching child psychiatry residents and fellows in the area of child maltreatment and child abuse. I conduct seminars for them on a fairly regular basis.

Q Let me ask you this. Approximately how many child sexual abuse cases or suspected child sexual abuse cases have you been involved in?

A Since I started at DSS in 1996, that's -- I mean, the number would be too high to count. I'm not even sure I could estimate that. It's in the thou, you know, thousand, 2,000.

Q In excess of a thousand?

A Oh, yeah, well north of a thousand.

MR. MAYE: Your Honor, I'd offer him for any cross-examination to the defense as to that area of expertise. And I apologize for not being more specific.

Q Have you previously been qualified as an expert, I would ask, in the area of child sexual abuse in the courts of the State of South Carolina?

THE COURT: Voir dire.

MR. FALGIONE: Your Honor, I am awaiting the answer to that last question.

****

****

VOIR DIRE cont.

BY MR. FALGIONE:

Q Have you been recognized as an expert in child sexual abuse in any court in South Carolina?

A Yes.

Q What court?

A Again, I couldn't tell you specifically what courts. When I go to testify, I know I've been testifying in the area of forensic interviewing, child sexual abuse, child abuse, forensic social work, but I couldn't tell you that, you know, in Richland County Criminal Court in 1996, I was qualified as X and then I was, you know, I don't keep a list of exactly what they qualify me at in each trial.

Q Well, can you delineate in your own mind a difference in your roles as testifying as a forensic interviewer and testifying as an expert in child sexual abuse?

A Well, yes. Like I said, they're often tied in together. When testifying about a forensic interview, there's often elements involved in that interview or that investigation such as delayed reporting, possible recantation, parental influence or coaching. These are all dynamics that are

involved with child sex abuse victims, child sex abuse cases and investigations and you can't -- you can't conduct, I don't believe, forensic interviews of children without having, you know, an understanding of what child victims go through and how they disclose this type of abuse.

Q I'm trying to ask your qualifications, Mr. Olszewski, on this narrow portion that you're being presented to the Court as an expert in and that's the area of child sexual abuse. You're not a licensed psychologist -- or psychiatrist, excuse me, are you?

A No.

Q Okay. And do you hold any special certificates or degrees only in the area of child sexual abuse?

A There aren't any that I'm aware of.

Q Is it your understanding that in this case you're going to be asked to give an opinion as an expert as to whether or not the alleged victim was sexually abused?

A I don't know what I'm going to be asked, sir.

Q If you're asked, will you offer that opinion as an expert?

A I can't offer -- I'm not going to offer any opinion as to the credibility of the child. I'll

answer questions as best I can depending on what I'm asked. I don't know how to --

Q Is it your understanding that you're going to be asked to offer an opinion as to the identity of the perpetrator of any sexual abuse of [redacted] Minor ?

A Again, I don't know what questions I'm going to be asked.

MR. MAYE: Your Honor, I can probably short circuit this. I will not ask any expert as to the issue of ultimate fact for the jury in this case. I don't intend to ask him any such questions. He couldn't possibly know that, but if that expedites this process, I certainly don't intend to ask him an opinion on the issue of ultimate fact for the jury in this case, Your Honor.

MR. FALGIONE: It does, Your Honor. It does.

BY MR. FALGIONE:

Q Have you offered any published articles in the area of child sexual abuse?

A No, I have not.

Q Have you been published in any publication within the area and within any of your licensing or professional organizations in any of their publications?

A No. I'm pretty much strictly a practitioner.

MR. FALGIONE: Thank you, sir.

THE COURT: Nothing else, the Court finds the expert qualified in both areas.

You may continue.

DIRECT EXAMINATION

BY MR. MAYE:

Q Did you have and occasion to interview the victim in this case, [redacted] Minor [redacted]?

A Yes, I did.

Q When did you conduct that?

A April 14th of 2008.

Q Did you record this and through what method was it documented or reported?

A Yes. It's recorded onto a DVD disk.

Q Were her statements, her interview were those given in response to questioning conducted during an investigating interview of her?

A Yes.

Q And you did preserve it on DVD?

A That's correct.

Q We've already, I think, established that you have been trained in conducting investigative interviews in children; is that correct?

A Yes.

Q Did the -- did you go over all elements, a

detailed account of the alleged offense in as much detail -- did you seek to ask questions in as much detail as you could about -- details about the alleged offense?

A Yes, I did.

Q Okay. Do you have with you today a copy of the DVD in this case?

A Yes, I do.

Q Could you publish it for the Court?

MR. MAYE: Your Honor, if the Court would hear it at this point in time. And, Your Honor, I apologize, this is a matter of first impression for me. If I would have been aware that the Court would have reviewed this prior to us conducting it in this format, I would have done so and I apologize to the Court.

THE COURT: I've let off my steam. We'll just move forward and do the best we can I hope we're not here tomorrow.

MR. MAYE: I apologize.

THE COURT: Play the tape, play the video.

MR. MAYE: Thank you.

(Whereupon, the DVD was played for the Court.)

(During the playing of the DVD, the

following occurred.)

MR. MAYE: Your Honor, can we fast forward this part of the break?

THE COURT: Yes.

MR. MAYE: I hate to ask this, but can I step out.

THE COURT: Yes. We're at ease.

You can step down, but you can't discuss your testimony.

(Brief Recess.)

(Whereupon, the playing of the DVD was continued and concluded.)

MR. MAYE: Your Honor, under 17-23-175, I think that's all I'd proffer of the video tape. I'd just ask that we incorporate it by reference. The victim has already testified in this case. She's been subject to cross-examination. At the time that this interview was conducted, she was under the necessary age of 11 years of age -- well, she was under 12 at the time, she was nine. Pursuant to 17-23-175, I would seek to introduce the forensic interview by Dr. Olszewski.

I would -- in the event that it is allowed by the Court, I would not seek and I would ask that we redact anything about whether or not -- there is one

question in there, Was he not allowed to watch you, do you know that, I'd ask that we'd redact that. I don't think that's fair to go before the jury.

He also asked at one point in time, Has he ever done this to anyone else or do you have knowledge of that, I don't think that that's -- I think that they would probably want that redacted and I would certainly think that that would be appropriate.

At one point in time, he asked, Do you know if they get along, your mom and dad, if they want that out, I'd certainly have that redacted.

And if there's anything else of particular issue, certainly we could take that up. Mr. Falgione and I have reviewed this tape before, but I know he was probably making notes. If he had anything else that is objectionable, there may be that we could just stipulate -- or I would stipulate in all likelihood if there's anything else in particular.

THE COURT: Do you have questions of the witness, Mr. Falgione?

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Mr. Olszewski, what information had you been given prior to this interview with this child?

A I have an intake form that's completed. It's often accompanied by a police incident report if the police are involved in a particular investigation. And I had those documents prior to the interview.

Q How many people had interviewed this child prior to her presenting at your office?

A It's my understanding she was interviewed -- or questioned by the DSS caseworker, Gail Reves, if I'm saying her name correctly. I don't know of any other formal forensic interview that was done prior to my interview.

Q And also the police, is that correct, Mr. Robinson?

A Yes.

Q Investigator Robinson. Who transported this child to your office?

A Gail Reves.

Q What instructions was Minor provided for that transport and the reason for her being in your office?

A I'll see if Ms. Reves documented that on the form hang on one second. (Pause.)

Ms. Reves indicated that Minor knows she'll be asked questions concerning the incident. She needs to tell the truth. She can tell the people -- tell

the people here everything. She is safe here. She isn't in trouble.

Q Whose statement is that?

A Sorry?

Q Whose statement was that that you just read?

A Ms. Reves.

Q The DSS caseworker?

A Correct.

Q As relayed to you?

A Correct.

Q And that was after the interview with the police or before the interview with the police?

A This would have been, I believe, after the interview with the police.

Q Does it affect the trustworthiness of the statements of a child when they've been interrogated previous to coming to your office?

A I would hope a child wouldn't be interrogated prior to coming to our office, but if a child is questioned or interviewed prior to coming to us, it doesn't necessarily affect what transpires in our interview.

Q Have you ever had incidences where children have been -- it has been suggested to children as to what to say in their interview with you?

A Sure.

Q And how do you determine when that happens?

A Often times it's a concern for us especially with -- well, it comes up more often with younger children, young school age, preschool aged children. And sometimes it's purposeful coaching or influence by a caregiver or somebody responsible for the child. Other times it's just caused by confusion.

I have seen cases where you have little preschool aged kids three and four and if they're questioned repeatedly by adults, things can get confusing and sometimes we see that.

In terms of getting at direct or purposeful coaching or influencing by a caregiver, you know, I can go into this, I mean, there are questions we could ask if we have suspicions that that's occurring, questions like, you know, what were you told about coming here today, did your mom or person ask -- tell you to say anything here today, did they tell you not to say anything here to me today, those kinds of questions.

Typically, we have some sort of red flags when we have a purposeful coaching case. Often times kids who come in with instructions to tell us a

false allegation or to fabricate, they often come in and they often disclose very quickly and lots of times the disclosure lacks a detail, this may be because they're nervous or they're anxious.

And often times these coached or rehearsed disclosures, whatever you want to call them, lack detail and that may be because, you know, detail is harder to remember. And when we ask follow-up questions, often times we don't get that detail, that may be a clue to us that -- it may be a clue that this is a coached or false allegation. There also could be other reasons for that, but that's a possibility.

Q A moment ago you attempted to differentiate between questioning and interrogation. What's your delineation?

A When I hear interrogation, I think of a detective interrogating a suspect and asking leading questions perhaps and trying to get a suspect to disclose information. In the forensic interviewing field, we stay away from that word interrogation. We use the word interviewing.

And in questioning, I meant to differentiate between questioning and a full-blown forensic interview. If a child is questioned initially by a

responding officer or a DSS worker who responds to a call, often times that questioning is not as thorough or detailed as what is done later in a full forensic interview at a child advocacy center.

Q When you use the term forensic interview, you're actually talking about a forensic interrogation for the purpose of prosecution, aren't you?

A Not at all.

Q The purpose of this interview that you just did wasn't for the purpose of prosecution?

A The purpose of the interview is to determine whether or not something has happened to the child.

Q And you believe that those results were not affected by the previous interviews or questioning or interrogations, if you will, of this child?

A Not affected in any real, any real serious way that I could determine.

Q What identifiable markers do you have that lead you to that conclusion?

A Well, the interview seemed to be, I have to go back and look at the incident report, but I remember it being fairly consistent what she said previous and what she said to me.

Sometimes we can tell, for example, if there's

been -- the child's been influenced in some way by previous questioning or discussion of the case. Like if a child comes in to me and says I was raped, like a five year old comes in and says I was raped or I was molested, you know, I'm going to doubt that that word came from that child. It probably came from some adult mentioning that word in front of the child or using that word in questioning the child inappropriately, that kind of thing.

So sometimes that gives us an indication that, at least in some way, the child's been influenced by the adults around them. And, again, it doesn't mean that what they're saying isn't true, it just means they've now got a new word for what happened to them that was provided by an adult.

Q Have you ever conducted interviews and reached conclusions and found out later that your conclusions were in error?

A Conclusively found out they were in error? I'm not sure I know an absolute answer to that question.

Q Have you ever taken a statement from an alleged victim that you thought was trustworthy that you later found out was not, within the same process as you utilized for interviewing Minor

A Let me think about that question. Can you

repeat the question just so I'll make sure I'm --

Q Utilizing the same procedures and process that you used in interviewing [redacted] Minor, in other cases, have you ever determined or thought that you had a -- received a trustworthy statement and later found it not to be trustworthy from an individual?

A Me personally?

Q Yes, sir.

A I'm thinking of one case where I -- there were two victims involved and we later found out that both victims had been coached. It was actually stronger than that, they were coerced or threatened into making statements against an individual.

What I can't remember in that case is if I had the opinion that that interview initially was compelling or if I thought there was something hinky about it and I ruled it problematic for some reason. So I'm not a hundred percent sure, but I am thinking of that one particular case.

Otherwise, I don't know how I would know absolutely for sure. It's very difficult, I mean, unless you're thinking in cases of, you know, convictions versus acquittals and, you know, I guess that would be the ultimate determination of whether or not a child is believed, but otherwise I think it

would be very difficult to determine.

MR. FALGIONE: Thank you, sir.

THE COURT: Anything further of the witness?

MR. MAYE: No, sir, Your Honor. I would offer the taped statement subject to the redactions that I would agree to, unless there are any others that he would like for me to agree or we'd like to discuss about redacting. But pursuant to 17-23-175, I would ask to admit that statement or submit it for the Court's review for consideration for admission.

THE COURT: How are you going to redact it?

MR. MAYE: We just won't play it. We'll play it and we'll stop it. We'll know where the -- if we can bring up the counter on this, we'll stop it. We won't play it for the jury. If I can figure out a better method between now and then, I'll do that, but if nothing else, I'll know -- we can mark it on the counter, we'll stop it and send the jury out or whatever we need to do, but I'll make whatever steps necessary -- we'll undertake whatever steps necessary to ensure that I can do that.

MR. FALGIONE: Your Honor, I believe that process in and of itself is going to raise a question in the mind of the jury. They're going to feel that we're hiding something from them about

294

that interview. And, of course, my concern is that that will prejudice them against my client here in this whole matter.

THE COURT: What's your position on the introduction of the DVD?

MR. FALGIONE: Your Honor, I would object to the admittance of this on the grounds that it's -- considering all the circumstances, I don't think the trustworthiness of this particular interview has been guaranteed to the Court.

We know that law enforcement and DSS bring this child -- pick this child up at school, bring her down there from Edgefield to Columbia, I believe is where his office is, that's a considerable distance. The little girl was told that they are present and they're watching this interview.

Certainly, the opportunity there for that little girl to feel like she has to tell the same story that she's been telling or told initially to the DSS worker would be overwhelming. And given the tender age of this child, Your Honor, I believe that that questions the trustworthiness. And if it's in question, it can't be used.

THE COURT: The Court finds that under 17-23-175, the preliminary ruling of the Court is

295

that this is admissible.

The statement was given in response to questioning conducted during an investigative interview with the child. It was recorded and preserved. The child has testified at the proceeding. She is subject to cross-examination related to the elements of the offense and the making of out-of-court statements including this one. And under the totality of the circumstances surrounding the making of the statement, the Court finds that it represents a particular -- it indicates a particularized guarantees of trustworthiness.

In evaluating that last component, I've considered the factors in subsection (B), that is, whether the statement was elicited by leading questions, there were some leading questions, but the ones that I recall, the answers given would be favorable to the defendant.

The interviewer has been trained in conducting investigative interviews of children. The statement involved a detailed account of the offense that's alleged. There is internal coherence within the statement. She was consistent for the most part.

There were a few inconsistencies, but I think

296

those are attributed to the age of the child and not such that they rise to the level meaning that there is not internal coherence. They also generally were somewhat tangential. The most significant one was when she was asked about any kissing and then she later volunteered that she didn't say there was any kissing, so it's not inconsistent, but she said that her father had asked her about whether she wanted to learn how to tongue kiss. And I considered the testimony that's been offered in the case.

All right. You cannot discuss your testimony with anyone during the break.

Court's in recess until 1:15.

MR. MAYE: Your Honor, if it'll assist in any way or if it will assist the defense in any way, I certainly wouldn't object to the Court telling them if we stop and start the tape at any point, that -- he can tell -- whatever they want said. They can say that we all agreed or both sides have agreed that those portions are not to be to be published and they're to draw no inference from that and that may assist them. I mean, I want to be, as an officer of the court, I want to be fair.

THE COURT: Y'all can come up with whatever you want to. I'm going to tell them that if you stop or

297

cut down the volume or whatever y'all decide to do, that those matters have been determined not to be considered by the jury. They're not to speculate on what they might be. Under their oath, they're to reach no inference and draw no conclusion from that fact, the fact that these couple of incidences were not presented to them, something to that effect.

Now, to be quite honest with you, the answer she gave, again, I think, are favorable to the defendant. She was asked about whether she had ever heard of any other allegations of sexual misconduct by the defendant, she said no. And then she said, I hope not.

MR. MAYE: I'll leave anything in they want. I'll redact anything they want me to redact. I'll leave it in as it is if it doesn't offend them. I don't know if any of the answers were unfavorable to the defense, but I was offering to redact them because they were the only ones that I can conclude in any way could be objectionable.

I'll do whatever the defense -- or I would offer to do whatever the defense would request. We'll leave it in its entirety if they want it.

MR. FALGIONE: Your Honor, I think stopping, starting, sending them out is going to cause more

298

speculation than it's worth. Since the Court has issued its ruling, it's all admissible. We certainly will not object to that ruling.

THE COURT: I'll rule it's all admissible and you can maintain your objection. Do you want to do that?

MR. FALGIONE: As to the entirety of it, yes, Your Honor.

THE COURT: All right.

MR. MAYE: Thank you, Your Honor. That will expedite it. We'll play it all.

THE COURT: What people have done in the past is they've either turned the volume down and let it roll or if it's a long segment and they have to fast forward it, we may send the jury out of the room, but I don't think either of these were long segments. They hit a mute button sometimes.

I mean, this happens all the time. It's not anything that I don't think I can handle, but I think it's all admissible.

MR. MAYE: Okay. That's fine.

THE COURT: All right. We've got 30 minutes for lunch from now, okay.

(Whereupon, there was a luncheon recess.)

THE COURT: State ready for the jury?

MR. MAYE: The State's ready. Thank you, Your Honor.

THE COURT: Defense?

MR. FALGIONE: We are, Your Honor.

THE COURT: Bring in the jury.

(The jury returns to the courtroom.)

THE COURT: Call your next witness, Solicitor.

MR. MAYE: The State calls Raymond Olszewski.

RAYMOND OLSZEWSKI,

having been duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name, please.

THE WITNESS: Raymond Olszewski, O-l-s-z-e-w-s-k-i.

DIRECT EXAMINATION

BY MR. MAYE:

Q Mr. Olszewski, if you would, please tell the ladies and gentlemen of the jury where you're employed, in what capacity and how long you've been working there.

A I'm employed at the Assessment and Resource Center or the ARC. It's a child advocacy center, nationally accredited child advocacy center in Columbia. We do child abuse evaluations and treatment. I've been employed there a little over

ten years. My primary job responsibility is to conduct forensic or investigative interviews of suspected child abuse victims.

Q Over the course of the time that you've been employed working doing forensic interviews of suspected child sex abuse victims, how many interviews do you think you've carried out and conducted during the time period that you've been employed?

A It would be approximately a thousand or over a thousand interviews.

Q What kind of specialized training do you have in the area of both forensic interviewing of children and child sexual abuse? Please relate to the ladies and gentlemen of the jury what specialized training you have or educational background.

A Correct. I have a master's degree in social work in MSW from the University of South Carolina. I'm a licensed master of social work. I also have a diplomate in forensic social work, which is like an advanced post-graduate certification in a specialty area.

Specifically in the area of interviewing or child abuse, I've attended numerous national courses

and workshops in the area of interviewing, most notably 40 hour interviewing course in 2000 called Finding Words, which at the time was taught on a national level. I've attended advanced forensic interview training through a child advocacy center in Minnesota called CornerHouse. It's a three and a half day advanced interview training. Again, numerous workshops in the area of child abuse and forensic interviewing.

I also teach forensic interviewing. I'm on the faculty of what we call Child First South Carolina. It's a 40 hour forensic interviewing course where we teach frontline child abuse professionals and investigators like CPS workers, law enforcement investigators and other forensic interviewers. We teach them how to do forensic interviewing.

Q How many cases in which you have been involved where there was either child sexual abuse or allegations of child sexual abuse? How many cases have you worked child sex abuse cases? Could you put a number on it?

A I couldn't because we see all different typologies of abuse. The majority of interviews we do are related to child sexual abuse and we see some severe physical abuse cases and then other types of

abuse as well.

Q Would those cases number in the thousands that you've been involved in during your tenure and career working?

A During my tenure and career, it would probably be close to a thousand just specifically sexual abuse cases, yes.

MR. MAYE: Your Honor, subject to any cross-examination from the defense in this case, I'm going to offer Mr. Olszewski as an expert in the area of forensic interviewing of child sexual abuse victims and child sexual abuse.

THE COURT: Voir dire?

MR. FALGIONE: Subject to my previous --

THE COURT: Subject to previous objections, he is recognized.

You may continue.

BY MR. MAYE:

Q Mr. Olszewski, let me ask you this. Now, you're not a police officer. You don't necessarily -- are you employed within any law enforcement agency?

A No, I'm not. I'm not.

Q So you're not a policeman. You do not work for the police?

A That's correct.

Q Who is it that you're actually employed by?

A The Assessment and Resource Center is a collaborative project. I am employed by the South Carolina Department of Mental Health so they are actually my employer.

The ARC itself receives assistance, funding and staffing from the Department of Mental Health, the University Medical School Department of Pediatrics, Palmetto Health Richland Hospital. It's kind of a joint effort.

Q What services does the Assessment and Resource Center offer in particularity for -- in a case like the one at hand for child sexual abuse or suspected child sexual abuse?

A Right. We do forensic interviews, which again is like an investigative or fact finding type interview. We provide ongoing treatment to identify child abuse victims at our clinic. We also have a medical component, so we provide -- we have a full-time pediatrician so we do medical examinations as requested on suspected child abuse victims, also.

We occasionally do group treatment both for children and occasionally for identified nonoffending caregivers of child abuse victims. We

also have a training competent as I mentioned earlier. We do some training. But specifically in terms of services to families, that's what we offer.

Q Let me ask you this. Did you have an occasion to conduct a forensic interview on the victim in this case, [redacted] Minor ?

A Yes, I did.

Q When did you carry out or conduct that?

A April 14th, 2008.

Q And you did that forensic interview as a result of an investigation of the charges that are pending against George Jones, the defendant, in this case correct?

A Correct. We received a referral in this case from...

Q Were you provided a date of birth on the defendant, Mr. Jones?

A Yes, that's included in my intake information.

Q What is that?

A [redacted]

Q What do you do in conducting and carrying out a forensic interview? And tell the ladies and gentlemen of the jury what a forensic interview is about. How would that differ from say, example, being asked questions by the police, how would that

differ, a forensic interview? What's the purpose of that?

A Well, in the forensic interview like we do at the ARC, we follow a protocol. It's a nationally recognized forensic interview protocol. It's known by its acronym, RATAC, R-A-T-A-C. And each stage -- each letter in that acronym stands for a different stage of the interview protocol. So the R, for example, is a rapport building phase where we try to build some rapport with the child.

The first A stands for anatomy identification where we have the child -- we try to arrive at a common language for body parts and we try to use the child's language, child's names, for various body parts on the body.

The T stands for touch inquiry where we enter into a discussion with the child about touches, different types of touches which eventually leads into an assessment of whether or not they understand that there's parts on their body nobody's supposed to touch. And then we inquire as to whether or not something like that has happened. And at that point, the child either, you know, generally discloses or doesn't disclose.

If they do disclose, we sort of go into that

second A in the acronym which stands for abuse scenario. At that point, we ask all of our questions related to the details of the abuse of event, whatever that might be.

And then the C in the RATAC stands for closure and that's where we wrap up the interview. We try to end it respectfully. We may ask the child if they have any questions for us or any other additional information to provide. So that's, you know, how the protocol goes.

The overall purpose of the interview is really to discover whether or not something has happened to the child. So you're not always going to have an abuse scenario because often times children, you know, deny that any thing's happened and then, you know, you don't have an abuse scenario and you wrap up the interview, so. Does that answer your question?

Q Yes. Let me ask you this. Do you have any preconceptions going there? Do you have a one bent or bias one way or nother when you begin talking to a child about what they're going to tell you?

A No. I mean, that's part of our training. You go in unbiased and open minded and consider alternative hypotheses and things like that. So,

no, we don't go in convinced something happened or didn't happen. Our job is to figure out whether or not something happened.

Q Let me ask you this. At the time that you typically get a case, something has brought it to your attention either criminal charges on someone, allegations of abuse, something has brought that to your attention; is that correct?

A In fact, one of our requirements in order to schedule an interview at the ARC is that there has to be some type of open investigation. So there either has to be a law enforcement investigation initiated or a child protective services investigation initiated or it could be both, but there has to, you know, at least be enough reason to believe where an investigation has been started.

And our interview is really done, you know, as a part of that investigation. It's just one small part of a bigger investigation so we're just conducting sort of the expert interview of the alleged victim.

Q When children come to you, there's often been some interaction on the part of law enforcement or other individuals, somebody's spoke with them typically or something has been in -- has taken

place prior to them coming to see you; is that correct?

A It would be extremely unusual, almost impossible for somebody not to at least have talked with the child prior to the child coming to see us.

Q Do you try to factor that into the questions you ask and the things that you're doing in the forensic interview the fact that they've been talked to by somebody else prior to that time?

A Yeah. You know, it depends on to what extent they've been spoken to. If they've already had, for example, a full-blown RATAC interview at another CAC, then we would definitely take that into consideration because we'd basically be repeating the same thing if we were to do that. But if they've just been asked a few questions at school or at home by a CPS worker for basic risk assessment purposes to see if the child was safe or not, that's a different type of questioning, I think, than what we go through in our forensic interview.

Q Let me ask you this. Do you do -- in conducting a forensic interview, do you review the materials that are provided to you by either law enforcement or DSS or whatever investigative agency has been involved in the case prior to conducting

the forensic interview to give you background over what led officials to that point? Do you review those materials?

A Yeah. If we have them, we review them.

Q Were you able to do so in this case?

A Yes.

Q Let me ask you this. Just as to cases in general, when you have, for example, a child -- a young child, in the case of a nine year old, tell the ladies and gentlemen of the jury about reporting of it and talk to them about delayed reporting and accidental reporting and direct reporting. And please tell them about what the differences are in those and you're -- the information that you have about delayed reporting, about accidental reporting and what that means.

A Okay. I think you're kind of speaking of two different things so I'll start with what you said is accidental reporting. Generally, in this field, we look at two different types of disclosures, accidental disclosures and purposeful disclosures.

Now, a purposeful disclosure is one where a child makes a decision to go and tell somebody what happened. So they walk into school, they go into their guidance counselor's office and they disclose

or they go to their teacher or they go to their parent or they go to the school resource officer. They've made a decision to come forward.

An accidental disclosure is a disclosure in which the abuse or the suspicion of abuse comes about accidentally. So the child presents at their doctor's office complaining of pain on urination or some other type of medical ailment and it's then discovered that the child may have been sexually abused or a parent walks in on a child being sexually abused or a parent discovers a diary entry or a journal entry or a picture that is concerning and then the child is questioned or a parent walks in on two similar aged peers engaged in some sexual activity and then these peers are -- these children are talked to and one of them discloses abuse. So those kinds of things we call sort of accidental disclosure where a child didn't -- hadn't yet worked up the nerve to come forward and tell somebody, it was sort of discovered.

And what we know, I know from my experience, and what we know from literature on child sexual abuse and disclosure is that many children, in fact, the majority of children don't make an immediate outcry when they're abused. So, you know, it's not

like the first time it happens they immediately run and tell somebody or pick up the phone and call 9-1-1, that is extremely unusual in cases of child sexual abuse.

Q Is that age dependent? Do you see that more frequently in younger children or is that with any variables as to age?

A Well, in terms of the purposeful and accidental stuff, purposeful disclosures you'll see more often in older children where they've made a decision to come forward and tell.

Accidental disclosures we see more common -- more common in younger children where something like what I said is discovered sort of, you know, maybe by accident.

In terms of delayed reporting of child sexual abuse, we really see that across all ages. In fact, many people don't disclose until they're adults or they never disclose, so that kind of crosses --

Q What factors go into the dynamics of, say, between a parent and a child relationship based on your experience with failure to report or delayed reporting? What sort of factors do you find that that is dependent on?

A I missed the first part. You said something

about parent.

Q For example, with a parent/child relationship, what do you see, what factors go into delayed reporting or not reporting on a parent abusing them?

A Okay. Well, if the abusive person is somebody in the child's family, somebody the child, you know, trusts, relies upon for their care, their protection, their comfort, often times the child is seriously conflicted about coming forward and telling for many reasons.

The reason most commonly cited by children is fear. They're afraid to come forward. They may be afraid of the consequences of coming forward. They may have been told that things will happen if they come forward, they'll be in trouble, they may get taken away from the home. They may have been told that, you know, I won't love you anymore if you tell or you won't get to see me anymore if you tell.

That's a real threat to kids, the threat of the perpetrator removing their attention and affection because what we know is what most kids, unlike adult rape victims maybe, most kids don't necessarily want the perpetrator to go to jail and be locked up. Often times they care about the perpetrator, they just want the abuse to stop. And so they're not out

to get somebody in trouble and they firmly believe that's what will happen if they come forward, they'll be in trouble, certainly somebody's going to be in trouble, they'll be in trouble, the perpetrator might be in trouble. So there's a lot of unknowns for this child in terms of coming forward.

And, you know, if you think about children from early on, they're taught to obey their parents, you don't disrespect your parents, you do what you're told. And if they're told over and over again, you know, you can't tell, don't tell about this, bad things will happen, that's very powerful.

Q Some children just don't want to tell, do they? They don't want to, necessarily, to tell at all, do they?

A Right. No, I mean, fear is the primary reason, but you also have embarrassment, shame, guilt. You know, and the longer the not telling goes on, what kids tells us sometimes is they really -- when they finally do tell, there's a tremendous amount of guilt that they didn't tell earlier, you know, I should have told sooner, so.

Q What do children do about coping mechanisms or learning to adapt and live with a pattern of ongoing

abuse? What types of things do you see with children with that?

A Well, what happens is the longer the abuse goes on, the children learn to -- they learn that living in the abusive environment is somehow preferable to what might happen should they come forward and tell. They really believe that if they tell, bad things will happen, like the family will be torn apart, people might go to jail, people will get in trouble. So they start to, like, sort of take this responsibility on themselves of, like, you know, I have the power to either keep the family together or to tear it apart and it's all based on whether or not they let go of this secret. And it often times is very much a secret between the victim and the perpetrator and nobody else.

Q Since the forensic interview is a fact finding interview on your purpose, do you review the initial materials -- do you look at the interview with some scepticism? Are there some red flags that you attempt to look for in trying to be neutral in carrying out the forensic interview, for example, coaching or somebody trying to get some -- some ulterior motive either on the child or adult's part? Do you try to look for those things and what things

do you look for?

A Well, we try to look for it. We also rely on the person that's making the referral to us. We sometimes have information up front that this -- there's concerns about coaching in this case. You know, it might be a custody battle in progress and that may be brought to our attention, so we would certainly, you know, inquire about that and look for red flags where that's concerned.

In terms of the interview itself, yeah, there are certain things that we can look for that may, you know, give us some pause or some concern that a child's been coached. Some of these things are, you know, a child may come in, for example, and, you know, before they even get in the room with us, they're trying to disclose and tell us what happened almost as if they're coming with a job to do and they want to get it over with, they're anxious, they're nervous about it and they want to tell us about what happened.

Lots of times with these coached disclosures, especially if the child is old enough to provide a good amount of detail and their disclosure lacks the amount of detail we would expect of a child that age, you know, we would then look at some

possibilities, you know, for why that's taking place and one of them may be that the child was coached. Of course, there are other reasons why that happens, but that's one red flag, so a disclosure that lacks the level of detail we would expect.

Q Did you notice any of those red flags in the interview that you had with Minor Did any of those things -- was there any red flag that you saw in talking to her?

A No.

Q You didn't see anything in that regard?

A I didn't see anything in that regard.

Q What other factors might -- was it consistency of the story that is reported, is that a factor that you sometimes consider in looking and evaluating?

A Yeah. Right. Is the story consistent, is it plausible, is it consistent with any prior statements that we know about, those kinds of things.

Q Did you see consistency in the interview that you had with Minor in this case?

A Yes.

Q Okay. How did you document the interview process? How were you able to memorialize that or do you preserve it or what's the method? And

describe to the ladies and gentlemen what you do at the Assessment and Resource Center when you carry out an interview with a child.

A All of our child interviews are recorded onto DVD. So we have audio and video of every interview that we do. We do generate a written report afterwards, but that's just a narrative summary of the interview. The actual interview itself is memorialized, as you say, on a DVD.

Q But, ultimately, the interview, when you have it recorded, as you did in this case, ultimately it speaks for itself?

A Right. That's part of why we do it. The interview's there for everybody, you know, anybody who needs to see it, can see.

Q Let me ask you this. Did you bring a copy that fairly and accurately represents and memorializes the forensic interview that you did with Minor Jones, the victim, in this case?

A Yes.

MR. MAYE: Your Honor, at this time, I'd ask Mr. Olszewski to publish that for the jury in this case, of course, subject to our previous discussion.

THE COURT: Subject to previous objections?

MR. FALGIONE: Yes, Your Honor.

THE COURT: Anything else?

MR. FALGIONE: No, Your Honor.

THE COURT: All right. Thank you. Mark it in evidence, please.

(State's Exhibit Number 2, DVD, admitted into evidence.)

MR. FALGIONE: Your Honor, I ask permission to move over to that side of the room so I can see it.

THE COURT: Sure. Move about as you need to move, Mr. Falgione.

Ladies and gentlemen, when this starts out, there's some loud paper noises, you'll see what I'm talking about. So I'm going to ask him to kind of have the volume down a little bit at the beginning because it's very loud at the beginning.

And then if you all will turn it up whenever they get further along into the -- I mean, when he comes into the room, I want it up even though there's going to be loud paper noises.

(Whereupon, State's Exhibit Number 2 was played for the jury.)

THE COURT: Ladies and gentlemen, we'll take a ten minute break. Don't discuss the case.

(The jury retires to the jury room.)

THE COURT: You can step down, Mr. Olszewski,

during the break if you like, but you cannot discuss your testimony with anyone.

We're at ease for ten minutes.

(Brief Recess.)

THE COURT: Is the State ready for the jury?

MR. MAYE: State's ready, Your Honor.

THE COURT: Defense?

MR. FALGIONE: Yes, Your Honor.

THE COURT: Bring in the jury, please.

(The jury returns to the courtroom.)

THE COURT: You may continue, Solicitor.

MR. MAYE: Answer any questions the defense has for you.

THE COURT: Cross.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FALGIONE:

Q Mr. Olszewski, did I pronounce it correctly?

A You did.

Q Thank you. You're not a psychiatrist, correct?

A That's correct.

Q And you're not a licensed clinical psychologist, correct?

A That's correct.

Q And, in fact, your degree or your function is in the social work area; is that correct? You have a master in social work?

A That's correct.

Q Your previous work history, you worked for DSS for an extended period of time, didn't you?

A I wouldn't say extended period. After I got my master's degree, I went to work for DSS about summer of 1996 until December of 1999, so about three and a half -- well -- about three and a half years.

Q Okay. Now, you used your interviewing techniques for the Department of Social Services, DSS, correct?

A No. I was not trained in this protocol at that time.

Q When Mr. Maye asked you, the Solicitor asked you, about the number of cases you'd investigated and done interviews in, you included your DSS cases in that total number, didn't you?

A Cases I'd been involved in, if I heard his question correctly.

Q Okay. And do you advertise that you will testify for out-of-court consultation and in-court testimony nationwide? Is that part of your scenario

with the university specialty clinics biography?

A It's possible that's on my biography.

Q Let's talk about the setting for Minor for your interview for just a little bit, if we could, please. Now, isn't it true that Minor had been interviewed by DSS before you got to her, correct?

A Correct.

Q She'd been interviewed by law enforcement; isn't that true?

A Yeah. I believe, if I'm -- they're interviewing her at the same time, I believe.

Q Well, isn't it true that the DSS worker went to Minor house and interviewed her there?

A Began to interview her there, yes. And then they proceeded to interview her at the police station that same day, if I remember that correctly.

Q Okay. So it's two different locations, but the same day?

A Correct.

Q And isn't it true that Investigator Robinson also came to the house and interviewed Minor at the house or interrogated her, interrogated her there, and then they picked everybody up and moved them down to the police station to continue it, correct?

A I'd have to see the notes. I'm not sure how

much he questioned her at the house. I haven't -- I'm not sure about that.

Q Okay. And isn't it also true on the day when you saw Minor that she had been picked up at school by Investigator Robinson and the social worker and transported from there to Columbia for the purpose of your interview, correct?

A Right. That's correct.

Q Now, do you know if -- well, strike that, please.

What materials were you provided by the police and by DSS prior to conducting your interview with Minor

A I was provided with a police incident report, copies of arrest warrants.

Q And George Jones had been named by the police as a perpetrator of sexual abuse concerning Minor before you got to her; isn't that true?

A Yes.

Q All right. So you had all of that and you knew where that -- where those allegations were coming from, correct?

A Yes.

Q Okay. Isn't it true that when you were sitting there nodding your head up and down in the video

taped interview when you would ask Minor questions about her father and she would answer, that that was, in essence, providing positive reinforcement to her answers to those questions?

A If I had nodded my head or say okay in response, it's an indication that I've heard her or understand what she's saying.

Q Is it possible that the child interprets that positive sign as reinforcement for that answer?

A Not necessarily. I guess if it was done excessively, um -- not necessarily.

Q So you don't believe Minor took that to mean a sign of acceptance or a pat on the back whenever she would answer a question that you liked and you nodded your head up and down?

A I tend to say okay a lot. Sometimes the head nod is paired with an okay and it's just meant to communicate that I've heard her.

Q When Minor talked to you on that tape, she knew that Investigator Robinson was watching and listening to everything that was said in that room, didn't she?

A Yes.

Q And she knew that the DSS worker that she had just ridden down all the way to Columbia and who

she'd previously told this story to was also listening and watching, correct?

A Yes.

Q And, in fact, when you took that break, Minor knew you were going back to ask them questions so that you would come back and ask her more questions to fill in what they wanted; isn't that true?

A Yeah. I was checking with them to see if they had any questions.

Q And the purpose of all those questions was geared towards prosecution, wasn't it?

A The purpose of the questions is to determine what happened, if anything. Once she says something happened, then my job is to get as many details as I can about what happened.

Q Now, wasn't it true that in answer to your questions, Minor did tell you that her father never took his clothes off, correct?

A I think she said not to her knowledge, correct.

Q Okay. And she said that he never touched her with any other part of his body, i.e., his penis or any sexual organs, correct?

A Correct. She said she didn't think so.

Q Okay. And she said there was never anything wet or any substances, any fluids at any point in

this situation; isn't that true?

A Yes.

Q And she said he never kissed her; isn't that true?

A Yes.

Q And she said he never told her not to tell anyone about this; isn't that true?

A Possibly. I don't remember that specifically, but...

Q You wouldn't disagree if that's on the tape?

A No, I wouldn't.

Q I mean -- you don't recall that being on the tape when --

A I know we just watched it twice, but there's so many details I'm listening to. It's very possible that was on there.

Q Okay. Well, isn't it typical for someone who's committed an abuse of a child to tell the child not to tell anybody about it?

A Sometimes that's communicated directly, sometimes it's not.

Q I noticed in your interview, you never asked Minor to go through the motions physically step-by-step of how this alleged assault had happened. Is that part of your normal protocol to

go through it step-by-step?

A You say physically, you mean to --

Q To act it out with the exception of everyone keeping their clothes on?

A No, we wouldn't ask a child to act it out. We sometimes use the anatomically detailed dolls. We have a set of dolls that are anatomically correct and we sometimes ask a child to demonstrate what they've disclosed using the dolls. I did not ask --

Q And you didn't use that in this case, correct?

A No, I did not.

Q Minor also told you that her father never asked her to touch him, correct?

A Correct.

Q What did you know about Minor herpes outbreak or exposure at the time you interviewed her?

A I knew that she had herpes, that was indicated on the questionnaire that was filled out by Ms. Reves when they brought the child in.

Q Okay. And as a result of your interview, did you determine that Minor needed any counseling? Wasn't that on your form as well?

A I recommended counseling in my report. And DSS, I believe, indicated they were going to refer her to the Cumbee Center in Aiken.

Q Didn't your report also indicate that she was doing okay?

A Did my report indicate that she was doing okay?

Q Yes, sir.

A I don't see that in my report. If you could point it out to me, I'll take a look at it.

Q Okay. Isn't it possible and doesn't it -- well, let me rephrase that. Doesn't it occur that when a child tells a story, that they become locked into that story so that they repeat it over and over and over again to subsequent interrogators? Have you ever seen that happen?

A I've seen that happen, but actually more often I've seen happen where the story changes slightly over time more frequently than a story being, you know, exactly the same.

Q How long after the -- after Minor initial reporting of this did your interview occur?

A I'd have to look back at the -- my interview was on the 14th of April and the complaint was made on April 9th, so -- now, I'm not sure if she was interviewed that same day, let's see, looks like she was, so maybe five days.

Q Okay. Four or five days, no more than five days?

A That's what it looks like, right, no more than five days.

Q And was her story entirely consistent within itself from her first reporting?

A I'm going to have to review what she said to the police.

Q Certainly.

A I'd say the basic elements are fairly consistent. She did actually say some additional things it looks like in their interview about getting up to get a glass of water, for instance, when he called her over. I don't recall her telling me that in my interview.

Q Have you been given the initial questioning in which she denied -- were you aware that she denied that her father touched her?

A When she was questioned at the house initially.

Q Pardon me?

A Talking about when she was questioned at her house initially?

Q Yes.

A Yes, I'm aware of that.

Q So you're aware of that?

A Yes.

Q That's a pretty big discrepancy, isn't it?

A It is, but it's something that's not entirely unexpected.

MR. FALGIONE: Okay. Thank you.

THE COURT: Redirect.

MR. MAYE: Just a couple.

REDIRECT EXAMINATION

BY MR. MAYE:

Q Let me show you page 138 or 140 of the DSS...

MR. FALGIONE: I'm sorry, what?

MR. MAYE: I said we've got some DSS records I'd like for him to review.

MR. FALGIONE: Your Honor, I'm going to object to that.

THE COURT: What ground?

MR. MAYE: It's been provided to the defense.

THE COURT: Let me hear his objection.

What ground?

MR. FALGIONE: Those records have not been entered into evidence. They're not part -- they're not part of this report.

MR. MAYE: I don't intend to enter them into evidence.

THE COURT: Do you have any other objection?

MR. FALGIONE: No, Your Honor.

THE COURT: Overruled.

BY MR. MAYE:

Q Review that summation of the initial report.

A Okay.

Q Thank you. She never told anybody her father didn't touch her. She said nobody had touched her privates when she was initially asked; isn't that right?

A That's the way it reads.

Q Okay. She was in what setting when she initially said that?

A She was in her home.

Q Who had just left there? Who had been informed of her infection just prior to then? Who had just walked out at the point in time?

A Her father, George.

Q Okay. Why is that significant -- now, she never said he didn't do it, she said nobody touched my privates.

A Right.

Q Okay. What term did she use when you did the initial assessment as to what that was? What did she refer to her genitalia as?

A With me, she called it a wrong spot.

Q So she's initially asked if anybody touched her privates and she said no?

A Correct.
Q Nobody asked her anything about her father?
A Correct.
Q Okay. But, obviously, they knew that she had herpes at that point in time when they talked to her?
A Yes.
Q She had already been diagnosed of that. The only thing they asked her was, has anybody touched her privates, she initially said no. Where was she taken when she disclosed and is that significant to you?
A She was taken to the police station in Johnston.
Q Is it significant to you that her answer changed -- well, I don't know that it even changed, but is it significant to you that her initial report, nobody had touched her privates, that -- in a different environment, would that be significant to you and why?
A Yeah. Well, we know, first of all, that children often deny when first asked if they've been touched or abused and that is not an ideal setting in which to question a child in a setting in which the perpetrator has been there, has just left the

house.

It reads to me as if her mother was also present during that questioning by the caseworker, that's also something we don't -- that's not best practice either really because the child is often influenced by -- may be influenced by any family member who's around. Who's to say she wasn't fearful, embarrassed, ashamed, afraid to speak out at that moment in the presence of her mom in her house not knowing really what's going on or what might happen.

Q In fact, she said she was scared and afraid and did not know what to do because she was afraid her mother would get mad at her?

A Right. And with that being the case and if her mother is present right there in the room --

Q Is that a typical response that you see from child sexual abuse victims?

A Yes.

Q Is that they're afraid they're going to get in trouble?

A Yes.

Q I noticed you were asked on cross-examination about nodding your head up and down and the question was if you got an answer you liked. At the time

that you conducted this forensic interview, did you have any friends to reward or enemies to punish in this case?

A Me?

Q Yes, personally.

A No.

Q Did you have any stake in how your forensic interview went or did anything -- was there anything that would have pleased or displeased you in the interview personally?

A No. And I often nod and do the okay thing regardless of what the answer is. It's just something I -- it's part of my style, I guess. It's what I do.

Q If a child demonstrated to you signs that they had been coached, if there was any inconsistency or anything that gave you a red flag, as a forensic interviewer, you would have just as much of a duty to report those findings as you would any other finding, wouldn't you?

A Yes, that's true.

Q You're conducting this forensic interview in a neutral fashion. I mean, that's certainly the purpose of you doing so to search for the truth, isn't it?

A Yes. We're just as interested in finding out if nothing happened as we are if something happened.

Q Because you have found that in some cases and that -- that's certainly been the case. And not every case you've been involved in do you always make any finding in that regard?

A Actually, the majority of interviews we do, the interview is either -- there's either a denial of abuse or it's problematic for some reason. So the minority would have...

Q She consistently told you when she was being interviewed by you, any time involving any sexual abuse at the hands of her father, that her face was covered by a pillow; isn't that correct?

A Yes.

Q She was consistent throughout that she could not see what was happening to her?

A Yes.

Q Okay. And so many of the times when she was asked, Did he have clothes on, what did he touch you with, she was telling you based on what she could feel not what she could see because she repeatedly informed you she could not see; isn't that correct?

A Yes.

MR. MAYE: Answer anything else the defense has

for you. Thank you.

THE COURT: Recross.

MR. FALGIONE: May it please the Court.

RECROSS-EXAMINATION

BY MR. FALGIONE:

Q Mr. Olszewski, if I understand this theory right, you're saying Mr. Jones, even though he wasn't present when y'all -- or when Officer Robinson and the DSS worker were interviewing Minor and her mother in the house, that Minor was more comfortable down in -- at the police station being interrogated than she would have been at home; is that correct?

A Yeah, it's very possible.

Q Okay. Is it also possible if it was the other way around, that you would say if the interview had occurred at the home instead of the police station and she would have been forthcoming, that you would have said she's more comfortable in the setting of the home and that was a better interviewing setting for her?

A That may be true for some kids. In my experience, the majority of kids are not as comfortable talking about any type of maltreatment that may be going on while they're in the home in

which that is taking place.

Q Now, isn't it true that it wasn't just Minor that was taken down to the interview at the police station, it was Minor and her mother, wasn't it?

A Yes. It's my understanding, though, that at the police station, Minor was interviewed by herself, I may be wrong about that, but that's the way I read it.

Q Okay. Isn't it true that Minor indicated to you in your interview that her father never administered corporal punishment to her, never spanked her, never paddled her, never beat her; isn't that true?

A Yes.

Q Do you have any reason to doubt any of that?

A I don't have any reason to doubt it, no.

Q Okay. And she also gave us a pretty good description about what she could see and what she couldn't see on the video tape or on the C.D. You would agree that that's probably the best evidence of what her testimony was there, wouldn't you?

A I'm not sure I understood the question.

Q Would you agree that her testimony as contained on that C.D. about what she could see and what she couldn't see and what she felt and couldn't feel is

probably the best evidence as opposed to the testimony that maybe in front of the court today? What she said on this is probably a better recollection than what we're hearing here or if it's not the same, if it's not consistent?

A What we're -- I'm not sure --

Q I'll withdraw the question. It's confusing. Don't worry about it. I'm sorry.

Did you find it odd that there were other people in the house, no T.V. playing, no noise and -- when Minor said this occurred?

A I might find it odd except she had pretty thoroughly explained that her mother was taking some kind of medication to the point that she wasn't able to wake her up, that her brother was also asleep, so.

Q You didn't find anything irregular about any of that?

A No. And, again, I'm not -- this interview is just one part of the investigation. So if somebody went to the house and determined that it's so small that would seem unlikely, that's a different part of the -- that's not my...

MR. FALGIONE: Thank you, sir.

THE COURT: Anything further of this witness?

MR. MAYE: Just one.

RE-REDIRECT EXAMINATION

BY MR. MAYE:

Q Often children don't make any outcry at all, do they, because they don't want it discovered?

A You mean outcry while the abuse is taking place?

Q Yeah.

A Right. Yeah, that's often the case, I mean, unless something really hurts and they scream, but that's unusual in my experience.

MR. MAYE: Nothing else.

THE COURT: Anything further of this witness?

MR. FALGIONE: No, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. MAYE: I ask that he be released, Your Honor. Thank you.

MR. FALGIONE: That's without objection, Your Honor.

THE COURT: Thank you. You're free to go, sir. You don't have any exhibits, do you? You don't have anything with a sticker on it, do you?

THE WITNESS: No.

THE COURT: All right. Thank you. You're free to go.

339

Call your next witness.

MR. MAYE: The State rests, Your Honor.

THE COURT: All right. Ladies and gentlemen, I told you at the outset of the trial when the State rests, I have to discuss some legal issues with the attorneys. We're at that point. This typically takes about 20 minutes. I'll try to get through it as quickly as I can. Hopefully, I can do it quicker than 20 minutes. I'll get you back out here as soon as I can. Thank you.

(The jury retires to the jury room.)

THE COURT: Motions.

MR. FALGIONE: Yes, Your Honor. I'd move for a directed verdict of acquittal in this case as to both charges due to the State's requirement that Mr. George Jones be tested pursuant to Schmerber for herpes while at the same time not providing a specific test for the herpes type 2 virus that obviously the victim has as been delineated. And they, therefore, have denied him a fair trial by failure to provide him with the appropriate test to exclude type 2 herpes from his being while at the same time inferring to the jury that he has this specific type of herpes that the prosecution alleges the victim has.

340

Your Honor, I'd also add these additional grounds in reviewing the evidence and all reasonable inferences therein. There's no proof that George Jones is infected with the same type of herpes as the alleged victim in reviewing the evidence and all reasonable inferences therein. There's inadequate evidence to support a conviction of George Jones on the charge of criminal sexual conduct or lewd act on a minor given that there was no penetration and as to the incidents as described by the alleged victim.

And I would incorporate any previous motions that have been made regarding the evidence in this matter, Your Honor.

THE COURT: All right. With regard to the motions related to the testing, the Court denies that motion.

With regard to the assertion that the cases should be dismissed for the reason that there's been no evidence that Mr. Jones was infected with the same type of herpes as the purported victim, that also is denied.

With regard to the assertion that the indictment should be dismissed for lack of evidence and one specific argument being made related to penetration, the victim testified that her father

341

inserted something inside of her, there is evidence of penetration.

And reviewing the elements of both offenses, the Court finds there's evidence sufficient to allow the case to go to the jury on both indictments. Motions are respectfully denied.

Mr. Jones, I've got to go over some things with you now. I have to do this for everybody who's on trial whether they're on trial for a traffic case or a murder case. I need your responses under oath, so I need you to raise your right hand, please.

GEORGE ALBERT JONES,

having been duly sworn, testified as follows:

THE COURT: We've reached the stage of the trial where the State has rested and the next thing that would happen is that your side, the defense, is given the opportunity to present evidence for the jury to consider. Do you understand where we are?

DEFENDANT: Yes, sir.

THE COURT: Now, you've got no obligation to prove anything at all. And if you do put up any evidence, the burden of proof does not shift. The burden remains entirely with the State of South Carolina to prove every essential element of each offense charged against you beyond a reasonable

342

doubt, but you are permitted to offer evidence for the jury to consider in deciding whether the State has met its burden or failed to meet its burden of proof. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Now, you may call witnesses to testify on your behalf. If you wish to testify yourself, you may testify yourself. Nobody can make you present any witnesses or testify yourself. You understand that?

DEFENDANT: Yes, sir.

THE COURT: You have an absolute right to remain silent. And if you choose not to testify, I'm going to tell that jury that they cannot hold your silence against you in any way. They're not to discuss it in their deliberations. It's not to enter their minds in making the decision of whether you're guilty or not guilty. Do you understand?

DEFENDANT: Yes, Your Honor.

THE COURT: Now, this decision about whether you testify, it is your decision to make and yours alone. You're the person on trial. These are your rights. And I expect that you would confer with your attorney, family members, friends, anybody whose opinion you might value on important

343

decisions, but ultimately it's your call to make because you're the one on trial. Only you get to decide whether you testify or not. Do you understand?

DEFENDANT: Yes, Your Honor.

THE COURT: Does he have a criminal record that would subject him to impeachment?

MR. MAYE: Your Honor, he does have several -- Investigator Robison is going to retrieve his criminal record for me.

He does have several convictions that are going to be outside the ten years. Although one of his convictions, although outside the ten years from the date of the offense and conviction, he received a burglary second conviction here in Edgefield County that he got 15 years suspended on five years probation and running that forward, it would be within the ten years.

When Investigator Robinson comes back, I'm going to give you the exact dates, but I would intend to impeach him with the burglary second nonviolent conviction for purposes of impeachment of his credibility in the event that he does testify. That would be all that we would maintain that we would be eligible to do. And I've got that right

344

here, Your Honor. I apologize.

He got a burglary second nonviolent conviction 3/16 of 1998 that he received 15 years suspended upon the time he'd already served and five years of probation on 3/16/1998. And then his probation was violated 11/20 of 1998.

THE COURT: So when is the last time he served?

MR. MAYE: He was on probation for that charge apparently for a five year period of time. I've got it's 15 years suspended on time served, and I'm not sure when he was released, and five years of probation, 11/20 of 1998.

THE COURT: So his probation was violated 11/20/98. I don't know when he finished his sentence.

MR. MAYE: He got a five year sentence and I'm not sure when he was released, Your Honor. I can find out. Probation may be able to tell us. He got it -- he was revoked 11/20/1998 and got five years.

(Pause.)

PROBATION AGENT: He was released in 2001, February 6th, 2001.

THE COURT: All right. This indicates that he was convicted of burglary in the second degree. He had a probation revocation proceeding on November

345

the 20th, 1998. The probation office tells me he was released from confinement on February the 6th, 2001, which will have been nine years ago tomorrow.

Rule 609 states that evidence of a conviction for an offense that's punishable by imprisonment in excess of one year is admissible to attack credibility of a witness.

However, when the witness is the accused, the Court has to make a finding that the probative value of admitting the evidence outweighs the prejudicial effect to the accused. And, further, there's a time limit of ten years from the later date of the conviction or the release of the witness from the confinement imposed for that conviction.

The rule also states that evidence that a witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement regardless of the punishment.

The Court finds under Rule 609(a)(1), that if Mr. Jones takes the witness stand, the State may ask him if he was convicted of burglary in the second degree nonviolent. The Court finds that the prejudicial effect is outweighed by the probative value of admitting the evidence.

All right. What that means, Mr. Jones, is if

346

you take the witness stand, the State can ask you were you convicted of burglary in the second degree nonviolent, but they cannot ask you any of the specifics about the conviction.

And if they do ask you that question, I will turn to the jury and tell the jury that they cannot consider that evidence for any purpose except the limited purpose for which it was admitted and that is to evaluate your credibility, your believability and for no other purpose. Do you understand all of that?

DEFENDANT: Yes, Your Honor.

THE COURT: Now, whatever decision you make about this, you can change your mind until such time as you actually come up here and take the witness stand. Do you understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: Has anybody exercised any undue influence over you to get you to testify or not testify?

DEFENDANT: No, Your Honor.

THE COURT: And today are you under the influence of any kind of medication, alcohol, drug, anything that would affect your thinking adversely?

DEFENDANT: No, Your Honor.

347

THE COURT: Do you suffer from any physical or mental conditions that affect your thinking adversely?

DEFENDANT: No, Your Honor.

THE COURT: All right. Here's what I'm going to do, Mr. Jones. I'm going to make a finding that you understand that you have a right to testify; you have a right not to testify; that if you choose not to testify, I'm going to tell the jury that they cannot hold your silence against you in any way at all; that if you choose to testify, that the State may ask you about that burglary second conviction, but if they do, they cannot go into any details about it. And I would instruct the jury that they can consider that evidence, if at all, only on the issue of your believability, your credibility and no other purpose.

I find that you understand the decision about whether you testify is your decision to make and yours alone. And I understand -- I'm sorry -- I find that your decision is made freely, knowingly, voluntarily and intelligently. You understand the applicable rights related to testifying or not testifying and you understand the general overview or the consequences of testifying or not testifying.

348

And I'm going to maintain that ruling so if anybody does attempt to improperly influence you, you have to let me know right away, all right.

DEFENDANT: Yes, sir.

THE COURT: Mr. Falgione, do you intend to offer evidence?

MR. FALGIONE: We do, Your Honor.

THE COURT: Are you ready now?

MR. FALGIONE: Your Honor, there's two things I would like to take up with the Court prior to that. And these are two prospective witnesses for the defense that are actually the prosecution's -- prosecution favorable, one is Ms. Desiree Council, the DSS supervisor. She has let it be known to me that she will attempt to hurt Mr. Jones while she is on the witness stand. I ask that she be declared a hostile witness and I be allowed to examine her with leading questions.

THE COURT: You can cross-examine the witness now even if it's your own witness.

MR. FALGIONE: Thank you, Your Honor. There's no need to go any further with the rest then. Thank you, Your Honor.

Your Honor, if we can have a few minutes with my client prior to beginning the testimony, I would

349

appreciate that.

THE COURT: Yes, sir.

MR. MAYE: Your Honor, the only thing that I have is from my understanding, there was an initial -- 140 pages of DSS notes in this case that were subpoenaed by Mr. Falgione. They were provided to me, I guess, it was Monday when we had that initial hearing. They are the case notes of Gail Reves who is the initial case agent. It is my understanding that he intends to call Desiree Council as a witness and I assume put her up as some sort of custodian of these records.

There's 140 pages here. It's hearsay upon hearsay. It's everything under the sun involving this case. I mean, it's basically everything we've talked about in this case. It includes in there summaries of the report; all of this talk about HIV, obviously we instructed all of the witnesses not to say anything about the HIV; statements in here like he told his boss he has herpes; at one point in time, he says he doesn't know; one time he says he doesn't have herpes; reports that the child -- I mean, the brother, Terrance, said that Minor had told him twice that her dad got up and took her to the living room.

350

I don't know how that -- I just want to bring that to the Court's attention. It's, you know, I guess if he attempts to offer it as some sort of regularly reported business record, all of this is hearsay I would maintain because like I said, they're the case notes of Gail Reves. And I don't know what the Court's ruling would be on that, but I would think it could open the door for a lot of stuff that's in here because it's everything she wrote down.

THE COURT: I don't know what he intends to ask her.

MR. FALGIONE: Your Honor, I don't intend to enter those records. I do intend to ask Ms. Counsel, who was a supervisor of Ms. Reves, what her personal knowledge is regarding some certain aspects of it.

MR. MAYE: That would be fine, Your Honor, but if he's going to ask her and it's outside of her personal knowledge, if it's based on these -- this hearsay, I don't know that she's going to be able to go into that because she wasn't the agent. I'm just -- I know you can't predict that.

THE COURT: Mr. Maye, you know, I can sit up here and play what if until the end of time. Let me

351

just find out what they do try to do and I'll rule on that.

What else do you want?

MR. FALGIONE: That's it.

THE COURT: Thank you. We're at ease. Let me know when you're ready.

(Brief recess.)

THE COURT: Are you ready?

MR. MAYE: The State's ready.

THE COURT: Bring the jury in, please.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, that took a lot longer than I thought it would. I told you that when we got to this point, I would explain to you where we go from here.

The next thing that we will do is give the defense an opportunity to present evidence for you to consider. This does not change the burden of proof. The burden of proof remains entirely upon the State to prove every essential element of both offenses charged beyond a reasonable doubt. But the defense is given an opportunity to present evidence for you to consider in evaluating whether the State met its burden of proof or failed to meet its burden of proof. The defense has informed me that they do

352

intend to offer evidence and we're going to hear that now.

We're going to try to get through this and I'll see how long this takes and then I'll have to make some sort of decisions. I'll probably ask for your input as far as the timing because right now I don't know exactly where we are.

When this case is all over and everything has been said and done, I'll be happy to talk to you and take the robe off and you can have at me for any questions, comments, criticisms or complaints, but right now I'm doing the best I can.

Call your first witness, Mr. Falgione.

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes.

MR. FALGIONE: We would call Ms. Desiree Council.

DESIREE B. COUNCIL,

having been duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name, please.

THE WITNESS: Desiree B. Council, C-o-u-n-c-i-l.

****

DIRECT EXAMINATION

BY MR. FALGIONE:

Q Ms. Council, you're here today under subpoena, correct?

A Yes, I am.

Q And you're not very happy about being here today, are you?

A (No response.)

Q Ms. Council, who do you work for?

A I work for the Department of Social Services.

Q How long have you worked for them?

A Thirty years.

Q And what's your position?

A Human service coordinator.

Q Who was the caseworker for [redacted] Minor ' case?

A The investigative worker was Gail Reves, foster care worker was Maronda Tally. And Denise Johnson was an interim because Ms. Tally was out on leave for a short while.

Q Isn't it true that the -- I refer to her as the caseworker, but you called her an investigative worker.

A Our case workers have different job responsibilities and -- depending on what the role is, but they're all case workers, so, yes. But Gail

Reves did the investigation when we received allegations of abuse.

Q Okay. And I understand that Ms. Reves is no longer functioning as a caseworker with DSS; is that true?

A That is correct.

Q Okay. You're familiar with Ms. Catherine Ethridge, aren't you?

A Yes.

Q And what role does Ms. Ethridge play on behalf of DSS and others?

A Ms. Ethridge is a licensed foster home in Edgefield County.

Q Is she utilized on a regular basis by DSS?

A When we have need for placement, we do call upon her.

Q And when you say placement, you're talking about she functions as a foster home; is that correct?

A Correct.

Q Are you aware that [redacted] Minor was placed with Ms. Ethridge?

A Yes.

Q How long has Ms. Ethridge been a foster home, do you know, a licensed foster home?

A I don't know the exact timeframe, but a few years. I don't know the specific date of when she was licensed.

Q Isn't it true that [redacted] made some serious complaints about Ms. Ethridge while she was in the -- placed as a foster child in Ms. Ethridge's home?

A I don't know that I would call them serious.

Q Well, didn't [redacted] complain --

MR. MAYE: Your Honor, I'm going to object to the relevance of this to anything involving the victim in this case as to foster care involving the allegation of this case. I'm going to object to the relevance.

THE COURT: Do you want to be heard, Mr. Falgione?

MR. FALGIONE: Yes, Your Honor. It's entirely relevant. As we go through this line of questioning, it reflects on the credibility of the alleged victim in this matter.

THE COURT: All right. I'll allow it. Go ahead.

MR. FALGIONE: Thank you, Your Honor.

BY MR. FALGIONE:

Q Didn't [redacted] complain that Ms. Ethridge

yelled at her all the time?

A Yes, she did.

Q And didn't she complain that Ms. Ethridge threatened to whoop her?

A Yes, that was in the record.

Q And didn't she complain that Ms. Ethridge allowed another foster child to sneak boys in the house at night?

A She did not say Ms. Ethridge allowed that. It occurred. And once Ms. Ethridge found out about it, she put a stop to it. Also, the reason Ms. Ethridge yells is she is deaf. She naturally talks loud. And once that issue was resolved, there were no more problems.

Q Well, didn't she -- didn't Minor complain that Ms. Ethridge wouldn't let Minor call her caseworker?

A It was limited, but once again once that was addressed, it was resolved. Ms. Ethridge was fairly new to the foster care program when the children were placed with her. And so any time you have a first placement, you have to -- often times foster parents don't know what they can or cannot do.

Q This wasn't the first placement in Ms. Ethridge's home for a foster child, was it?

A No, I think another county had placed a child in the home.

Q Didn't Minor complain that Ms. Ethridge wouldn't give her enough food?

A When questioned upon that, it was found out that Minor was saying she wasn't fed breakfast, but she was given cereal. She eats lunch at school. She is given more than enough at night, but she didn't think cereal was enough. All of these issues were addressed and were found to be unfounded, if you will.

Q Unfounded in what manner? What does that mean?

A Often times with children you have to get concrete and what's enough is not necessarily in one's mind. I don't think Ms. Ethridge allowed a lot of sweets and extra stuff like that, but I can't be sure of that. I don't know.

Q So by unfounded, you mean they weren't credible?

A No. When you get to pinpoint what exactly it is you mean. When specifically asked, What do you eat when you say you didn't get breakfast, Minor said, Well, I only get cereal. So, in her mind, she apparently was getting more than that when she was at home, that wasn't breakfast.

Q Well, didn't Minor complain that she didn't feel safe in Ms. Ethridge's home?

A I'm not sure.

Q You're not sure?

A I'm not sure.

Q Well, let me ask you this. Did you even bother to talk to Ms. Ethridge about any of these complaints?

A The workers did, yes.

Q Who was that?

A Ms. Gail Reves.

Q And isn't it true that your agency took no action against Ms. Ethridge, correct?

A There was no need to, so, no, we did not.

Q Regarding any of Minor complaints, correct?

A We addressed all of the complaints.

Q With who?

A With Minor and Ms. Ethridge.

MR. FALGIONE: Thank you.

THE COURT: Any questions of the witness?

MR. MAYE: Just a few.

CROSS-EXAMINATION

BY MR. MAYE:

Q When you have a child -- and you've been working for DSS for 30 years?

A Over 30 years, but, yeah.
Q When you have a child that's taken away from their parent -- she lived with her mother, correct?
A That's correct.
Q When you have a child, especially in a sexual abuse case, that's taken out of their home environment, I mean it was obvious she missed her mother and she wanted to go home, didn't she?
A Yes, she did.
Q Well, do you find that the least bit unusual based on your experience with DSS?
A No, I don't. Once Minor and her brother settled down, and there was another child in the home that was disruptive, that child was moved, once all of that took place, Minor and her brother both developed a very close relationship with Ms. Ethridge and continue to this day to have contact with Ms. Ethridge.
Q Would you find a child being taken from a home where the allegations of abuse for that child to have an adjustment problem, would you find that to be the least bit unusual?
A No, that's not unusual at all. They're having to learn a whole new situation. They don't know the rules that apply. I mean, they're coming from their

home where they're comfortable into a new environment where they're trying to figure out what they can and they cannot do.

Q Because some kids eat Frosted Flakes and I guess some kids eat granola and tofu. It depends on what the environment that their -- what the parents like, right?

A That's correct.

Q And so it's not at all unusual, these complaints would be typical childlike and childhood complaints about a child that had been removed from one household and go to another; is that correct?

A That's right. And when the issues came up, the caseworker went with Minor to talk with Ms. Ethridge and they all talked about what the concerns were and Minor was quite comfortable after that.

Q So her complaints weren't things that y'all deemed lies, they were just perceptions and her perception of where she was living then as opposed to where she lived before?

A Right. No, Minor has always been forthcoming. And sometimes you have to get specific with children of a certain age. They don't think in the abstract, you know, they are specific. You haven't had any breakfast? Well what did you eat this morning?

Well, I ate cereal, but I didn't have any breakfast. What is breakfast? You know, when I grew up, grits, eggs and bacon every morning.

Q So she was a nine-year-old little girl had been removed from her mother's care in this case.

A Yes.

Q And put with a foster family?

A Yes.

Q And her complaints were pretty typical from a child under those circumstances?

A Yes, they were.

MR. MAYE: Nothing else. Thanks.

THE COURT: Anything further of the witness?

MR. FALGIONE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. FALGIONE:

Q Now, Ms. Council, it's your testimony that complaints from a child placed in a foster home that she doesn't feel safe are typical?

A Like I said, I don't recall her saying that. I don't know the circumstances surrounding it, so I don't know.

Q These conferences that you said occurred between the case worker and Ms. Ethridge, did you attend any of those?

A No, I did not.

Q Do you know if it happened one time or not at all or more than one time?

A The only one I recall was the one that I just told you about that dealt with the food and being able to call and Ms. Ethridge yelling. That's the only one I --

Q You didn't attend those conferences?

A No, I don't.

Q But you believe they occurred?

A Yes, I do.

MR. FALGIONE: All right. Thank you, ma'am.

THE COURT: All right. Anything else of the witness?

MR. MAYE: Nothing from the State, Your Honor. Thank you.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Am I free to go?

THE COURT: Do you need this witness anymore?

MR. FALGIONE: No, Your Honor.

THE COURT: You're free to go, yes, ma'am. Thank you.

All right. Call your next witness.

MR. FALGIONE: We would call Catherine

Ethridge, Your Honor.

CATHERINE ETHRIDGE,

having been duly sworn, testified as follows:

THE CLERK: State your full name and spell your last name.

THE WITNESS: Catherine Ethridge, E-t-h-r-i-d-g-e.

DIRECT EXAMINATION

BY MR. FALGIONE:

Q Thank you, Ms. Ethridge. Ms. Ethridge, I'm going to ask you questions from over here, okay?

A Okay.

Q Now, just speak into the microphone, that's fine. I know you're not -- you're kind of soft spoken here today. I understand.

Now, Ms. Ethridge how long have you been a resident of Edgefield County?

A Well, I was born and raised here.

Q Okay. How long have you been a foster parent or had a licensed foster home?

A Down here, about two years.

Q About two years?

A Yeah, a little better.

Q Have you always been active with young people --

A Uh-huh, yes.

Q -- and always loved and nurtured young people?

A Yes, sir.

Q Now, how many foster children have you had in your home? How many children have you taken in over the years?

A You mean down here?

Q Yes, ma'am.

A Okay. The first two I had -- I had two, then -- and then I got one more, that made three, and then I got two more, that made five.

Q Okay. Do you have five now?

A No. I don't have any now. They all went back home.

Q Can I slide that microphone up for you a little bit so we can hear you over here? Thank you.

Now, Ms. Ethridge, did DSS place [redacted] Minor in your home?

A Yes, sir.

Q And did you have any other children in your home when [redacted] Minor was placed there?

A Yes. I had one little girl.

Q One little girl?

A Yes, sir.

Q And what was her name?

A (No response.)
Q Was it Alena?
A Yes.
Q Thank you. Now, how did [Minor] interact with you?
A She was fine.
Q Was her brother, Terrance, there as well?
A Yes, sir.
Q Did they seem to get along fine in your house?
A Yes, sir.
Q Did you have anyone by the name of Janessa staying in your home?
A No, sir.
Q Were you aware of any allegations by [Minor] that Alena was fighting with Janessa?
A No, sir.
Q Okay. Do you know who Janessa is?
A No, sir.
Q Never -- didn't exist; is that correct?
A No, sir.
Q All right. When [Minor] was in your home, did you ever refuse to give her food?
A No, sir.
Q Did you ever limit her to one meal a day?
A No, sir.

Q Did you ever yell at Minor for not making her bed properly?

A No, sir.

Q Did you ever threaten to whoop Minor for not making her bed?

A No, sir.

Q Did you ever tolerate Alena cussing and swearing?

A No, sir.

Q Did you ever refuse to let Minor call her DSS social worker?

A She never asked me.

Q Did you yell at Minor everyday?

A No, sir.

Q Did you do anything that caused Minor to fear for her safety in your home?

A No, sir.

Q Until you were contacted by my office, were you even aware that Minor had made those types of claims against you?

A No, sir.

Q Had DSS ever sat down and told you that they -- Minor had made those claims against you?

A No, sir.

Q Those claims were all false, weren't they?

A Yes, sir.

MR. FALGIONE: Thank you, ma'am. Please answer any questions Mr. Maye may have.

THE COURT: Questions of the witness.

CROSS-EXAMINATION

BY MR. MAYE:

Q Ms. Ethridge, Minor was in a pretty tough spot. She got taken away from her mom where she lived.

A Yes, sir.

Q And she missed her mom, didn't she?

A Yes, sir.

Q It's not unusual that you get kids when you're a foster parent, they're in a bad situation usually when they come to you, aren't they, for one reason or another?

A Some ways, yes, sir.

Q It takes a lot of understanding, too, doesn't it?

A Right.

Q Not unusual for a child to want to go home, to miss their parent, to be anxious to go back to their household?

A That's right.

Q And Minor was no exception to that, was she?

A No. At first, you know, she wanted to talk to

her mother, but then after she was there about a month, she was fine, you know, she -- because they went to visit every two weeks.

Q And y'all ended up getting along fine?

A That's right. We went to Myrtle Beach together and had fun together and be, you know.

Q Y'all actually got to be pretty close after she was there for a while?

A That's right.

Q And you think that she probably had some pretty genuine affection towards you towards the end, didn't she?

A That's right.

Q That kind of would be typical of any nine-year-old girl under a circumstance like she was under, wouldn't it?

A Yes, sir.

MR. MAYE: Nothing else. Thanks.

THE COURT: Anything further of this witness?

MR. FALGIONE: Yes.

REDIRECT EXAMINATION

BY MR. FALGIONE:

Q Ms. Ethridge, you love all children, don't you?

A Yes, sir.

Q You can tell that. Thank you, ma'am.

THE COURT: Anything further of the witness?

MR. MAYE: Nothing from the State. Thank you.

THE COURT: Thank you, ma'am. You may step down.

Call your next witness, please, Mr. Falgione.

MR. FALGIONE: Your Honor, we would call Phillip Williams.

PHILLIP ANDERSON WILLIAMS,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name.

THE WITNESS: Phillip Anderson Williams, W-i-l-l-i-a-m-s.

DIRECT EXAMINATION

BY MR. FALGIONE:

Q Mr. Williams, where are you employed?

A Mullins Pathology Laboratories in Augusta, Georgia.

Q And what is your job there?

A I'm the general manager.

Q Are you familiar with some testing that your lab did on George Jones?

A Yes, sir.

Q Do you have those results with you, sir?

A I have a copy here.

Q Okay. Is that the same as this copy that's been entered into evidence, sir?

A Yes, sir, it is.

Q Now, Mr. Williams, decipher and interpret that test result for us, if you would please, explain that to us a little bit.

A Well, the test that was requested that we performed was a test for the presence of herpes 1 and 2, immunoglobulin G antibodies. We performed that test and we got a result that would be interpreted as positive.

Q Meaning that the herpes antibodies were present in that sample?

A That is correct.

Q Okay. Now, who requested that test? Does your paperwork show that?

A It came to us through the Edgefield County Hospital.

Q Okay. Now, is there a test that can be performed that would distinguish between herpes type 1 and herpes type 2?

A Yes, sir, there is.

Q Was this that type of test?

A No.

Q What type of test would be required to

determine whether the antibodies that were present were herpes type 1 or herpes type 2?

A There are specific tests that will determine whether those present are type 1, type 2 or a mixture of both.

Q Does your lab do those types of tests?

A Yes.

Q So had it been requested, you could easily have run that test to determine if this was herpes type 1 or herpes type 2; is that correct?

A That's correct.

Q But that was never requested?

A This is the only test request that we have any record of.

Q And as I understand it, that test doesn't tell us anymore than it could be type 1 or type 2; is that correct?

A It could be type 1, type 2 or both.

Q Or both?

A Yes.

Q We just have no way of knowing, do we?

A No, we do not.

Q Are you aware that the herpes virus is present in about 90 percent of the population of the type 1?

A I wouldn't put it quite that high, but it's --

there's a lot of it out there. I did a quick check of some of the literature before I came. If you'd like to...

Q Well, we've heard from others --

A I realize I'm not here as an expert witness, so.

Q Okay. Well, what would you estimate the herpes type 1 percentage rate in the population based upon your readings to be?

A All of the studies that I've seen that have come out of the National Institute of Allergy and Infectious Disease and the Communicable Disease Center put the presence of either type 1 or type 2 antibodies in the 20 to 25 percent of the population range, one to four to one out of five.

Q And isn't it true that the herpes type 1 antibodies are present in a much larger segment of the population than the herpes type 2?

A Right. It's much more common.

Q Okay. And herpes type 1 being the type that is a cold sore or is transmitted in other ways; is that correct?

A That's true.

Q Okay. But this test as requested doesn't tell us anymore than the herpes antibodies were present,

correct?

A That is correct.

MR. FALGIONE: Thank you, sir. Please answer any questions of Mr. Maye.

THE COURT: Any questions of the witness?

MR. MAYE: Just a couple.

CROSS-EXAMINATION

BY MR. MAYE:

Q So with that test, George Jones, he could either have type 1 or type 2, right?

A Type 1, type 2 or both.

Q He could have any of them?

A Either or both.

Q So what we're talking about, if additional tests are done, whether those tests are valid or not, you're talking about just percentages. You're talking about you said, what, about 70 something percent? So, what, like three in four people are going to test positive for 1 and 2 and then about a quarter of them are going to test positive for just 2; is that about right?

A Yes, sir.

Q So you're just narrowing it down more specifically. You're not excluding anybody from that. You just exclude more people with a type 2

test of the general population?

A Would you restate that? I'm not quite sure I understand the --

Q Well, if 25 percent of people are going to test positive for 2 --

A Yes, sir.

Q -- out of every hundred people, what, 25 are going to test average for the 2?

A Yes, sir.

Q And if you do the type 1, 2 or both screen, about 75 out of a hundred are going to?

A I wouldn't argue with that, yeah. I'd say that's a fair estimate.

Q Is that pretty close?

A Yes, sir.

Q Okay. So in either test, herpes is present and you could certainly eliminate somebody. If you said somebody passed herpes to an individual and they tested negative to the first one, well that would, you know, that'd exclude them all together, wouldn't it?

A Yes, sir, it would.

Q Okay. So this is inclusive, but just not as inclusive as some of the other ones could have been. You could have upped your percentage if you would

have done it with a type 2 only screen?

A I would agree with that.

MR. MAYE: Nothing else. Thank you.

THE COURT: Further questions?

MR. FALGIONE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. FALGIONE:

Q Now, Mr. Williams, actually, if it had been requested, you could tell if type -- if George Jones had type 2 herpes, couldn't you?

A Yes, sir, I think we could.

Q If it had been requested, that would have been the test that you would have run, correct?

A Yes.

Q And so it's more than just a population thing. I mean, it can be specific. You can tell if a person has -- carries the type 2 antibodies or the type 1 antibodies, correct?

A Yes, sir.

Q But that test doesn't do that?

A No, sir.

MR. FALGIONE: Thank you, sir.

THE COURT: Any other questions?

MR. MAYE: Just one.

RECROSS-EXAMINATION

BY MR. MAYE:

Q Anybody could request that type 2 test, not just the State or the Edgefield Hospital. If somebody really wanted to know that, anybody could get that test, couldn't they?

A As long as it came through a practicing physician. Our orders are restricted to it coming from a physician. At least in the State of Georgia, individuals cannot order diagnostic procedures on themselves.

Q But if it came from anywhere else, y'all's lab, they would have done it if somebody else wanted it, other than the State or Edgefield County?

A Oh, sure. Yeah.

MR. MAYE: Okay. Thanks.

THE COURT: Anything else of the witness?

MR. FALGIONE: No, Your Honor.

THE COURT: Thank you, sir. You may step down. Is he free to go?

MR. FALGIONE: Yes, Your Honor. Thank you.

THE COURT: You're free to go. Thank you. Call your next witness.

MR. FALGIONE: Your Honor, we understand that

our witness is going through the metal detector downstairs and he's on his way up to the courthouse. We would call Mr. Calliham.

JAMES P. CALLIHAM,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last name.

THE WITNESS: James P. Calliham, C-a-l-l-i-h-a-m.

DIRECT EXAMINATION

BY MR. FALGIONE:

Q Mr. Calliham, do you operate a business in the Johnston area?

A In Edgefield.

Q In Edgefield. It's 206 Pen Street here in Edgefield?

A Right.

Q How long have you operated that business?

A Fifty-eight years.

Q And what is the nature of your business?

A Furniture and appliances.

Q Are you familiar with George Jones? Do you know George Jones?

A Yes, I do.

Q Have you sold George Jones a number of

appliances and air conditioners over the years?

A Yeah, we have.

Q And do you have your paperwork regarding some of those sales?

A I do.

Q For Mr. Jones. If you would, would you please turn to some of that and ask -- and tell me where was -- where was the first sale that you made to him that was delivered to [redacted] Johnston, South Carolina?

A I think everything we sold him was delivered to that address.

Q Okay.

A There have been a number of items, but I can't remember delivering to anywhere else. In all of this paperwork, everything is [redacted].

Q Can you please go through your paperwork and tell us the items that Mr. Jones purchased and had delivered to that address?

A Well, we had a window air conditioner.

Q And how much was that, sir?

A How much?

Q Yes, sir.

A 514.10.

Q $514.10?

A Uh-huh.

Q And what was the date of that sale?

A That was June the 4th, '02 -- June the 14th, I'm sorry.

Q June the 14th of 2002?

A Uh-huh.

Q And that was for [redacted], Johnston, South Carolina?

A Right.

Q Okay. Would you tell us about the next one, please?

A I got another air conditioner delivered on 4/21/05.

Q And how much was that?

A That one was 495.

Q $495?

A Uh-huh.

Q Do you have more items, sir? Would you go to the next one, please?

A Then I had a washing machine in May the 6th of '05, that was still at [redacted].

Q And how much was that?

A 424.

Q $424?

A Uh-huh.

Q Do you have more, sir?

A We do. Had a T.V., DVD/VCR combination that was in 6/6 of '05, that was 636.

Q Okay, sir. Again, that was delivered to [redacted] purchased by George Jones?

A That's right. And then we had a range that was 11/23 of '05, that was 530.

Q And, again, that was delivered to [redacted]?

A [redacted].

Q Okay, sir.

A Then we had another air conditioner and that was 8/28 of '07, 256.05.

Q All right, sir.

A That's it.

Q Thank you. So it ran for a range of years up through 2007; is that correct?

A Right.

Q And George Jones made those purchases and they were delivered to his home at [redacted] as far as you understand, correct?

A Correct. Right.

MR. FALGIONE: Your Honor, I would move to enter those sales invoices and documents into evidence at this point.

THE COURT: Any objection?

381

MR. MAYE: No, sir.

MR. FALGIONE: Thank you, Mr. Calliham. Please answer any questions Mr. Maye has for you.

THE COURT: Is that a copy? Can we keep that?

THE WITNESS: Yeah.

THE COURT: Mark that as an exhibit.

(Defendant's Exhibit Number 2, invoices, admitted into evidence.)

MR. FALGIONE: Nothing further for this witness, Your Honor.

THE COURT: Thank you, sir. You may step down. Is he free to go?

MR. FALGIONE: Please, Your Honor.

THE COURT: Thank you, Mr. Calliham. You're free to go.

Call your next witness.

MR. FALGIONE: Your Honor, we have a matter to take up outside the presence of the jury.

THE COURT: Ladies and gentlemen, please step in the jury room. Don't discuss the case.

(The jury retires to the jury room.)

THE COURT: Yes, sir.

MR. FALGIONE: Your Honor, if I -- I respectfully request ten minutes to discuss with my client whether he is going to testify or not. We've

382

had this discussion and it's continuing and ongoing so that we can make that decision and inform the Court of the same when we return from that small break.

THE COURT: All right. We're in recess.

MR. FALGIONE: Thank you, Your Honor.

(Brief recess.)

THE COURT: Any further evidence?

MR. FALGIONE: Your Honor, my client would like to take the witness stand.

THE COURT: All right. Mr. Jones, do you want to take the stand?

DEFENDANT: Yes, Your Honor.

THE COURT: All right. Just stay where you are. Is that your own decision, made of your own free will?

DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Bring the jury in, please.

(The jury returns to the courtroom.)

THE COURT: Call your next witness.

MR. FALGIONE: Thank you, Your Honor. We would call George Jones to the stand.

THE COURT: Mr. Jones, please come around over here and let the clerk swear you in.

****

GEORGE ALBERT JONES,

having been duly sworn, testified as follows:

THE CLERK: Have a seat. State your full name and spell your last, please.

THE WITNESS: George Albert Jones, J-o-n-e-s.

MR. FALGIONE: May it please the Court.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. FALGIONE:

Q George, you've been obviously attending throughout these entire proceedings, haven't you?

A Yes, sir.

Q And you've chosen to take this witness stand, haven't you?

A Yes, sir.

Q You understood you didn't have to, but you wanted to, didn't you?

A Yes, sir.

Q Well, George, where did you live before you were charged with this?

A [redacted].

Q [redacted]?

A Yes, sir.

Q And was that the same address where you had all of the air conditioners and appliances delivered

that you bought over the years?

A Yes, sir.

Q How long had you lived at [redacted]?

A Ever since February 6, 2001.

Q Who lived there with you?

A Me, Shannon, Minor and Terrance.

Q Now, George, let's get this out of the way right away, okay?

A Yes, sir.

Q Were you charged with a burglary charge years ago?

A Yes, sir, back in 1998.

Q And did you plead guilty to that charge?

A Yes, sir.

Q And did you serve jail time because of that charge?

A Yes, sir.

Q Is that behind you?

A Yes, sir.

Q Okay.

THE COURT: Hold on just a minute, Mr. Falgione.

Ladies and gentlemen, give me your attention, please. I need to give you an instruction. It's called a limiting instruction.

You've heard evidence that the defendant was convicted of a crime in the past. This evidence was admitted for a limited purpose and it may be considered by you if you conclude it true only on the issue of the defendant's credibility, his believability. You may not use this evidence for any other purpose.

You may use the evidence, if you choose to do so, only in deciding whether the defendant's testimony is believable. You must not consider the defendant's prior record as any evidence of his guilt on the charge which we are trying today.

All right. You may continue, Mr. Falgione.

MR. FALGIONE: Thank you, Your Honor.

BY MR. FALGIONE:

Q Now, George, who else lived at [redacted] with you?

A Me, [redacted] Terrance and Shannon.

Q Now, Shannon is the mother of your children?

A Yes, sir.

Q And [redacted] and Terrance are your children?

A Yes, sir.

Q Now, where did you sleep when you slept in -- when you were at [redacted]?

A I slept in the bed.

Q Pardon me?

A In the bed, but like earlier when I used to get off from work earlier part of the day, we would lay on the couch until it got bedtime, you know, when I got off from work. In the early part of the day, we'd lay on the couch. I'd be at one end. Shannon will be at the other end and the kids will be on the other couch.

When it was time to go to bed, we all went to bed, but mostly the kids would go first because they had a curfew. I wouldn't let them stay up past eight o'clock. Eight o'clock they was in the bed because they had school.

Q Where were you working at that time?

A On Strom Thurmond Lake.

Q And what time did you get up to go to work?

A I was up by 5:00. I left the house by 6:00 because I had to be at the job by 7:00.

Q That was in the a.m.?

A Yes, sir.

Q And what time would you get off work in the afternoon?

A Well, we'd knock off at five o'clock. I'd get home about 5:30 to 6:00.

Q Okay. Who made dinner?

A Shannon, she would make dinner during that time. But, like, the days that I'm off, I would cook breakfast and dinner, you know, because basically, like, when I was working, they would eat cereal because Shannon wouldn't cook breakfast, but when I'm off, I did the breakfast. I cooked the full course meals. I don't believe in cereals.

Q Is your job the source of the money that you use to support the air conditioner, the appliances, paid for the groceries and those kinds of things for you, Terrance and Shannon?

A Yes, sir.

Q And [redacted] Minor

A Yes, sir.

Q Tell us about your relationship with your children. How did you get along with Terrance and [redacted] Minor

A We had a good relationship. We'd go to school, they had donuts with dad, like that, you know, go to school with them. If they had a complaint, me and Shannon would go to the schoolhouse because if they had a problem, I had a problem because I had made the solemn sworn to myself that I wouldn't do them like my dad did us when he left us. I wasn't going to do them like that. And I stuck it out. It

wasn't easy all the time, but I stuck it out. And I would have never left them and I surely wouldn't hurt them.

Q Now, did Minor ever draw pictures or give you anything and Terrance? Did they ever acknowledge you as their father?

A Yes. They -- birthday thing, like, they gave me a watch for my last birthday. You know, they'd give me a card every now and again. Minor like, would draw pictures of me, her, Terrance and Shannon, you know, being a family and stuff like that.

Q What happened to those pictures?

A Over the years, I don't know, sir.

Q Did the children acknowledge you on Father's day?

A Yes, sir. And on birthdays, they'll sing happy birthday to me, you know. It was kind of embarrassing because I wasn't used to nothing like that, you know, but I enjoyed it.

Q Well, George, let me ask you, were you the best father that you could be?

A Not at all times, you know. Everybody has little issues and problems, you know, but I was all they had and I did my best.

Q Well, did you ever beat the children?
A I'd beat them when they did something that we didn't approve of, I would whoop them.
Q Well, did you do that to keep them on the straight and narrow hopefully instead of wandering off the path and getting in trouble?
A Yes, because, like, Terrance he was getting older, he would sometimes get sassy with his mother and I wouldn't allow that. And I would tear his tail up about it, you know, because I told them they got to respect her just as well as respect me, you know. I ain't had, like, to be rough with them or anything. When I came in the house, they knew I was the boss, you know. They knew this, you know, it wasn't no question, ifs or ands, you know.

But sometimes Shannon be done got on them real hard, but when I walk in, it'd ease up because I'd give them a lot of leeway. I only punished them when they needed to be punished.

Q Well, did Shannon join you in making those decisions and in taking care of the kids like that?
A Sometimes, because sometimes she would wake me up during the night and tell me Terrance have steady running around in the house.
Q And what would you do then?

A I would warn them the first couple of times, then I'd go in there with a belt.

Q And did they respect that?

A Yeah. After I hit them, they didn't get no more noise.

Q Well, George, was that the way you learned to be a parent?

A Not really, you know, because when I was younger, you know, I had got this tick bite, Rocky Mountain spotted fever, you know, and I almost died from that. And so mama really didn't whoop me too much after then, you know, because I was a sickly child back in the day.

Q Well, George, how did you feel about Minor and Terrance?

A I love my kids. I love my kids. We used to go to the park together.

Q How did this situation get to this point?

A I have no idea. I couldn't really tell you. The only reason I can say this was Lamaz Robinson told me, he said that I would be the, most likely, the first suspect anyway and why, I don't know.

Q Where did Investigator Robinson make that statement to you?

A Down there at the county jail.

Q Okay. After you'd been arrested?

A Yes, sir.

Q Okay. When you stayed at the house, is it your testimony, and as you stayed at the house, is it your testimony you slept in the bed with Shannon?

A Yes, sir.

Q Did you sleep on the couch at night?

A No. Like I say, it was the earlier part of the day and I was at one end, Shannon was at the other end. Me and her shared the same couch and the kids shared the same couch. If I have to sleep on the couch, I don't need to be there.

Q Well, did Shannon ever tell you since these charges were brought, that she doesn't believe them or she does believe them?

MR. MAYE: Your Honor, objection to hearsay.

MR. FALGIONE: I withdraw the question, Your Honor.

MR. MAYE: Objection to hearsay, that's totally inappropriate.

BY MR. FALGIONE:

Q George, you've heard all of the bad things that have been said about you in today's proceedings and yesterday's and the day before. Let me just come out and ask you, did you ever sexually molest Minor

A Why would I mess with my daughter? Shannon supplied the needs of that field. I didn't have to do that.

Q Did you molest Minor

A No, sir.

Q Do you understand you're under oath?

A Yes, sir.

Q You've sworn to tell the truth before God.

A And I'm telling the truth. Why would I have to molest my daughter?

Q Your statement, that you did not do any of these things that you are charged with?

A I did not do nothing. I love my kids. And I still love them today. Even though it seem like they turned against me, they're mine. They're mine.

MR. FALGIONE: George, I'm sure Mr. Maye's got some questions for you. Please answer his questions.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. MAYE:

Q So you were living full-time at [redacted]

A Yes, sir.

Q Why did you tell Investigator Lamaz Robinson

when he interviewed you and gave you this written waiver of rights that you signed on 4/11 of 2008 that you lived at [redacted], Johnston, South Carolina, 29832?

A Because they was making it clear to me that I couldn't go back to the house.

Q The truth of the matter is that you blew in and out of there and stayed there very infrequently. You just came in and out of there and stayed every now and then; isn't that right?

A No, sir. No, sir.

Q You just blew in when you felt like it. You were an absentee father; isn't that right?

A No, sir.

Q When you came over there, you were staying on that couch and visit your daughter, Minor so you could molest her; isn't that right?

A I slept in the bed with Shannon.

Q You're just as sure of that as this living at [redacted] that you told the officer here?

A I lived at [redacted], been there ever since 2001 February the 6th when I got out of prison. I'd been right there ever since. I know it. She know it. Her mother know it. All of them know it. Why would I have furniture delivered to

somewhere I don't live? Why would I do that, stuff that I bought, my hard-earned money to somewhere I don't live?

Q Because you had kids there and your sexual play thing was there, your daughter; isn't that right?

A No, sir. I'm not that kind of a person. One thing about a reputation, that's what people say of you and thinks of you, but your character, that's what God knows of you and he knows my character ain't like that.

Q What's your character?

A I was a good father to them. I wasn't the best, but I was a good and a hard-working one. I went to work every day, ten hours a day.

Q You're so good that when they come to your house to tell you that your daughter has got herpes and how you get herpes, because Gail Reves came to your house and sat down with you and told you that your daughter, Minor had herpes and that it was transmitted sexually and you're --

A She didn't say all that.

Q Let me finish, please. And you got up upon hearing that and went over and picked up something and got Terrance's bicycle and without so much as saying a word, peddled off and left there. That was

your response when they came to tell you that your daughter had herpes --

A No, sir, it wasn't like --

Q -- isn't that right?

A It wasn't like that, sir. When I first --

Q You left without saying a word, didn't you?

A When I first walked in the house, she asked -- Shannon say, That's the father right there. She said, Well, does he live here? Shannon said, No. And I'm like, why, why say I don't live here? I live here.

If I would have stayed there at that given moment, I would have contradict everything that Shannon was telling them. I don't want to get her in any trouble. She hadn't done anything to me. Why I want to get Shannon in trouble? She's not the bad person. She ain't done nothing wrong to me. I'm not here to try to tear her down or anything like that. I just want the truth to be known. I did not do it.

And then she made a statement saying that the kids be with her all the time and that's not true. I baby-sit the kids when she go to church, when she go shopping somewhere, when she went to the doctor, I baby-sit them, but we didn't stay at the house all

the time. I took them around to visit my mom, their other cousins and stuff on our side. They went with me.

Q She told DSS you didn't live there because that was true. You just blew in and out of there when you felt like it; isn't that right?

A No, sir. I'm telling you the truth. I don't know why you don't want to believe me. I have no reason to lie to you. I know you're doing your job, but I have no reason to lie. Why? I have nothing to hide, nothing.

Q Your response when they tell you your daughter has got herpes is get on Terrance's bicycle and leave, isn't that true, because that's what you did, didn't you?

A No, sir.

Q What did you do then? Why did you leave?

A Like I said, if I had of stayed, I would have contradict everything that Shannon had said. And prior she had done went to the doctor a couple of times before that. The doctor said it was a viral infection, that's what the doctor had said it was a viral infection. And she went several times to the doctor. They never said nothing about penetration. They never said anything of the sort about that

until this other test supposed to have came back. And now all of this other stuff's coming back because some believe saying it's a sexually transmitted disease, but other than that, didn't none of that come up and she went a couple of times to the doctor.

And then this other lady said her daughter was like that the same way and she was coming to her menstruation and then the same thing happened with Minor she was coming into her menstruation and that's where that pain was coming from because in a couple of days, she was fine. And when they came to question about that, she was in no pain at all.

Q Your daughter has got herpes and is going to have it until the day that she dies; isn't that right?

A If her mother got it, she'll have it.

Q Because you gave it to her --

A How did I give it to her?

Q -- just like you gave it to that child?

A I came out of prison February 6th, 2001. I wasn't diagnosed in prison with nothing, so how did I get it? I wasn't diagnosed with anything. They check you for everything.

Q Mr. Jones, that DSS worker, Gail Reves, went in

there and told you that your daughter had herpes, an STD --

A You've done said that before, sir.

Q -- and she told you that the disease was transmitted sexually, that didn't phase you at all.

A She didn't say that.

Q You walked over and picked up some object off of the shelf --

A She didn't say that.

Q -- and got on that bicycle and left, didn't you?

A She didn't say that it was transmitted sexually, that's not what she said.

Q But your response upon finding out your child had herpes --

MR. FALGIONE: Objection, Your Honor. We've been over this three times, same wording, same allegation, same response.

THE COURT: It's been asked and answered. Move on.

BY MR. MAYE:

Q Did you leave?

THE COURT: It's asked and answered. Move on.

THE WITNESS: Yes, I left the house, yes.

THE COURT: Hold on a second. I ruled. Move

on.

BY MR. MAYE:

Q So you cared so much about your daughter --

THE COURT: Don't you ask that same question.

MR. MAYE: No, sir, I will not.

BY MR. MAYE:

Q You cared so much about your daughter, that that was your response?

THE COURT: That's the same question. Move on, please.

BY MR. MAYE:

Q Where did you go?

A I went over to my mother's house.

Q You went to see Monty Kneece, didn't you?

A No, I did not. If you look at the timeframe, you'll see that's not where I went, if you got the timeframe planted down.

I have nothing to hide, nothing at all. I have nothing to hide.

THE COURT: Wait until he asks you a question, please.

BY MR. MAYE:

Q The truth of the matter is every time you got the chance, you slid in there and you got your daughter and you digitally penetrated her and you

gave her herpes; isn't that true?

A I was in the bed with Shannon. And if you ask her, she ought to tell you the same thing. I was in the bed with her. If I have to sleep on the couch, I don't need to be at that house.

MR. MAYE: I have one matter we probably need to take up outside the presence of the jury, Your Honor, before I go forward.

THE COURT: Ladies and gentlemen, I need you to step in the jury room. Don't discuss the case. If you need to make phone calls, now's a good time to do it.

(The jury retires to the jury room.)

THE COURT: Yes, sir.

MR. MAYE: Your Honor, he just blurted out up there that he's never been diagnosed with anything in this case. He has been diagnosed with HIV. He told this officer that he'd been aware of it and I intend to impeach him of that.

He's put it into evidence -- I mean, he's put it into play here that he's never been diagnosed with anything. And he's also put his character into play here and I would intend to use the remainder of his prior record against him as well, Your Honor, because I think he's directly put his character in

401

evidence here not in response to any of my questions, but through his own ascertations (sic).

Certainly before going down that road, I wanted to take it up with the Court, but I maintain that he's opened the door to talk about his complete record because he's put his character into question. And, also, he said that he's never been diagnosed with anything and I have evidence to the contrary that he's been diagnosed with HIV. And I also would intend to ask him if when asked by Investigator Lamaz Robinson if he had herpes, that he told him that he could not remember.

THE COURT: As far as asking him about HIV, you're attempting to impeach him with a collateral matter. It's irrelevant. It doesn't have anything to do with this case.

What do you say about the other part of his record?

MR. FALGIONE: Your Honor, I think that's irrelevant as well. The tests have all been submitted. He knows he's got herpes. He said he has herpes.

THE COURT: No. I'm talking about his criminal record.

MR. FALGIONE: Oh, the criminal record, that

402

clearly is not into play here, Your Honor. His character -- the response of the client -- or Mr. Jones gave responsive to this was due to prosecution questions about battering him about what kind of person are you to ride off on a bicycle. Naturally, they baited that hook and can't throw it out in front of him and then when he responds to it, say, oh, we can now impeach him with his prior criminal record, that's not allowed.

THE COURT: What's the rest of his record?

MR. MAYE: Your Honor, the only thing I would add to that is he did not -- it was not in response to a question. It was a spontaneous utterance on his part with him saying that he's a good fellow.

Let's see, he's got a '88 failure to return rental tapes. He's got a '89 possession of crack cocaine. He's got a contributing to the delinquency of a minor charge that he got -- he was charged with a CSC with a minor for fathering one of these children when his -- when the mama of that child was just 14. He was 28 and she was 14. That was pleaded down to contributing to the delinquency of a minor.

He's got a DUS in '95. He's got a '95 assault and battery conviction. He's got a '96 DUS second.

403

His probation was revoked for contributing to the delinquency of a minor, but I wouldn't maintain that's a conviction. He's got the burglary second charge, Your Honor, which we've already impeached him on.

But I do think he's put his credibility into play here and he's --

THE COURT: His credibility's in play once he takes the stand, that's not the issue.

MR. MAYE: I do think that we ought to be able to impeach him because he has basically asserted what a good fellow he is.

THE COURT: Yes, sir.

MR. FALGIONE: Your Honor, those charges were totally unrelated. They're old history and they certainly have nothing to do with the charges before the Court here today.

To put the evidence of those would be so prejudicial and they serve no function. They're not relevant to any of these charge or any of these proceedings today. Further, it would be -- it would be put in front of the jury for no other purpose than to inflame that jury further in this case.

(Pause.)

THE COURT: All right. I've looked through my

404

notes and the case notes and I have to deny the request to go into this.

There's a case, State versus Hallman, it's a 1989 case. It's a whole series of cases that deal with character. They tend to all seem to be saying that you have to focus in on a particular trait of character, you're not permitted to just do a blanket attack. And in this particular case that I told you about, it was a criminal sexual conduct prosecution and the court said the trial judge improperly restricted character evidence to allow it to go only on issues of truth and veracity.

Rule 404, the South Carolina Rules of Evidence, the Lyle case and those issues deal with, generally, that evidence of other bad acts is not admissible to show a criminal propensity or to demonstrate that the accused is a bad person. The evidence is admissible only to show such things as motive, identity, the existence of a common scheme or plan.

We haven't even started down the road of common scheme or plan because things have to be similar if -- they have to be similarly executed, similarly done, because common scheme or plan, somebody molests children, they do it the same way, they have the same modus operandi and you might be able to get

405

those kind of things in, but you can't do it with a shotgun approach.

The other factors that are allowed in on character deal with absence of mistake or accident or the issue of intent.

Every case I'm looking at here says it doesn't come in.

Now, I'm going to caution you, though, Mr. Jones, that if you sit up here and you keep saying things like that, you might open the door. We didn't talk about opening the door earlier when I told you about the criminal record, but I've had situations before where I've excluded evidence and the defendant kept on keeping on and he finally said the thing that opened the door. So I can't sit up here and tell you what would or would not open the door, but you better be careful.

I'm going to caution both of y'all to please don't talk over one another. And, secondly, you need to answer his questions and he needs to ask a question, get his answer and move on.

THE WITNESS: Yes, Your Honor.

MR. MAYE: Your Honor, the only other thing that I would request -- I intend to ask him --

THE COURT: You can ask him what he told Lamaz

Robinson.

MR. MAYE: Yes, sir. And, also, one other question as to he told Monty Kneece, his sometimes boss in this case, that he had herpes and he intended to leave town, wanted money to leave town upon finding out about these charges.

MR. FALGIONE: Your Honor, we previously had Monty Kneece under subpoena and he's still under subpoena, but we didn't anticipate, given the prosecution's case, that we were going to have to need this.

If Solicitor Ervin brings that into play, we may recall -- may call Monty Kneece who I will tell the Court will contradict what the Solicitor intends to say. So we may be on a landslide with multiple witnesses here, Your Honor.

THE COURT: Well ask this witness what he told Monty Kneece.

EXAMINATION

BY MR. MAYE:

Q Isn't it true that you told Monty Kneece that you had herpes and what they had charged you with with molesting your daughter and you wanted money, an advance on your paycheck, so you could get out of town?

A I went to him and I told him, I said they was accusing me of that. And I told him, I said the reason that I had told Monty about the herpes thing when I was working with him, because I didn't really want to tell him what I was going to the Medical College of Georgia for and I didn't want him looking at me all crazy.

Q So you did tell him that you had herpes, that's true?

A Yeah, I did say --

Q You did say it was a lie and subterfuge --

THE COURT: I couldn't hear him because you're talking over him. What did he say?

THE WITNESS: Yeah, I went there and I told him that, but I wanted the money for another reason because I just had got paid. I made 800 -- brought home $841.

THE COURT: Go ahead, Mr. Maye.

MR. MAYE: Your Honor, that's basically what I was going to ask him. And I was going to ask him --

BY MR. MAYE:

Q Did you tell -- when Investigator Lamaz Robinson asked you if you had herpes, you told him that you couldn't remember; isn't that right?

A No, sir, I didn't tell him that. He wasn't

asking me questions. He was making statements. He was talking like he knew everything already. He wasn't asking me questions. He was making statements.

MR. MAYE: Your Honor, that's all. He apparently admits that he told somebody he had herpes. He's apparently going to offer some other explanation, but I think we've covered that.

MR. FALGIONE: Excuse me, Your Honor.

THE COURT: Yes, sir.

MR. FALGIONE: The witness, as I understand it, never received treatment for herpes. The treatment he was receiving in Georgia, as he stated, was HIV. That's my understanding of the medical records and the treatments. I only bring that up because I don't think the witness was actually listening to herpes or HIV. And if it's HIV, that should not come before the court.

MR. MAYE: Your Honor, that's a total rewrite of what just got asked and answered. He already admitted under oath up here on this proffer that he told Monty Kneece that he had herpes, but he's saying that he didn't really want to tell him what it was for, but he's admitted that and that's what I intended to ask him, which he's already indicated

409

that he did do that that he told an individual that he had herpes.

THE COURT: All right. Y'all tell me where I am because I -- are we talking about a prior consistent statement or prior inconsistent statements? What are y'all trying to get in?

MR. MAYE: I'm going to ask him in this case, he said that he didn't have herpes, Your Honor, but he has previously told someone that he did, Monty Kneece by his own admission. He now claims that that was for some subterfuge. But he's got up here in front of this jury and said he didn't have it, that he never tested positive for anything. I asked him, Isn't it true that you told Monty Kneece in this case that you had herpes, which he's admitted he did.

(Pause.)

THE COURT: All right. We've really gotten into a complicated area of law at six o'clock on Friday night.

You're implicating Rule 801, 806 and 603 -- I'm sorry -- 613 of the South Carolina Rules of Evidence and other things. Rule 613 states that in examining a witness concerning a prior statement made by the witness, the statement need not be shown or its

410

contents disclosed to the witness at that time, but on request, it shall be shown or disclosed to opposing counsel.

And then, Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made and the person to whom it was made and is given the opportunity to explain or deny the statement.

If the witness does not admit that he made the prior inconsistent statement, extrinsic evidence of such a statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible, which makes sense because if he admits making the statement, you don't need to put in other evidence that he made the statement.

Then there's an additional sentence, This provision does not apply to admissions of a party opponent as defined in 801(d)(2).

801 and 806 are talking about hearsay issues. 613 is talking about prior statements of witnesses.

There's some code sections that are cited that I've got to look up, too.

411

There's case law about unlike the federal rules, that in South Carolina, you have to lay the foundation, which I've already read to you, a person -- a witness has to be permitted to admit, deny or explain the prior inconsistent statement. Extrinsic evidence that a statement is not admissible unless the witness is advised of the substance of the statement, time and place it was made and the person whom it was made, that's the foundation.

And then there's a statement in these notes under the rules of evidence that states that in South Carolina, the language was added which sets forth that if the witness admits making the prior statement, the witness has been impeached and no further extrinsic evidence of the statement including the statement itself is admissible.

MR. MAYE: Your Honor, I didn't intend to call anybody to impeach him as long as he had admitted it. And it's my understanding that he has admitted that he made the statement. And I wouldn't intend to call Mr. Kneece to contradict him or corroborate that, the inquiry would end would be my understanding because he's admitted that he made the statement.

412

THE COURT: Which one?

MR. MAYE: He admitted that he told him that he had herpes. He's told this jury that he never tested positive for herpes. I asked him and described to him the place. It was after he found out about this to Monty Kneece and that he went asking him for money in this case and told him that he had herpes, which he's admitted that he told him that he had herpes.

He says it was subterfuge on his part and if he wants to explain that, that's fine, but -- because I think he'd be entitled to explain it if he wanted to.

THE COURT: But he denied the statement about leaving town.

MR. MAYE: I won't ask him that then. I'll ask him isn't it true that you went to talk to Monty Kneece immediately upon finding out about this. And I'll just leave that part out about asking him if he intended to leave town. If he denies that, I won't ask him about it, but he's admitted that he told him he had herpes.

THE COURT: Do you have anything else, Mr. Falgione?

MR. FALGIONE: No, Your Honor.

413

THE COURT: You can ask the witness if he made a prior inconsistent statement.

MR. MAYE: I can ask him if he's previously told someone --

THE COURT: You know you have to tell him --

MR. MAYE: The circumstances.

THE COURT: You have to tell him when the statement was made, who it was made to and those foundational things that are in 613. All of these cases say that's mandatory. And that's still subject to 403 analysis. So if y'all start talking about HIV, I'm probably going to trump that with a 403 analysis. So I don't know where you're going to go down this road --

MR. MAYE: I'm not going to do that. Thank you.

MR. FALGIONE: And that's my extreme concern is that we're heading down the HIV road right now, Your Honor.

THE COURT: All right. Well, I can tell you I've gotten reversed on this before. I try my best to understand it. I try my best to apply it. I told you it's a tricky area.

Unfortunately, my book fell apart that I normally use so I'm trying to flip back and forth

between computer pages and that's hard to do. I've read everything I can put my hands on up here.

MR. MAYE: Your Honor, I would intend to ask him if, after learning about this, he went to Monty Kneece, the person he was working for at that time, and told Monty Kneece that he had herpes. And he said that he did.

THE COURT: You can do that.

MR. MAYE: Thank you, Your Honor.

THE COURT: All right. Bring in the jury.

Do you have other witnesses?

MR. FALGIONE: No, Your Honor.

THE COURT: Unless this goes down somewhere and you call Mr. Kneece.

MR. FALGIONE: Exactly.

(The jury returns to the courtroom.)

THE COURT: All right. You may continue, Solicitor.

BY MR. MAYE:

Q Mr. Jones, right after you found out about this charge, you went to see a man that you were working for, Monty Kneece, didn't you?

A Not right after. This was hours and hours and hours later.

Q So some hours later, you admit you went to

talked to Monty Kneece, right?

A Yes, sir.

Q And you told him during that conversation that you had herpes, didn't you?

A I went to tell him that they was accusing me of having herpes.

Q You already testified up here that you told him --

A I said that's what I meant to say that they was accusing me of it.

Q That's not --

A Because I hadn't been tested for nothing.

Q That's not what you previously testified to up here under oath, is it?

A No, sir.

Q You testified under oath, in fact, just a moment ago that you told Monty Kneece that you had herpes, didn't you?

A Well, I admit, I had told you I went to tell him that they was saying I had this and gave it to my daughter and I wanted some money.

Q That's not at all --

A But I made -- I brought home $841, that was enough money to go anywhere I wanted to go because that's the kind of money I make on my job. We get

paid every two weeks. I make anywhere from 12 to 14 to 16 to $18 an hour on my job, that's enough money to go anywhere I want to go. But when I got home, I gave Shannon $200. I gave my kids their allowance. If I want to go somewhere, that's enough money to go.

Q Mr. Jones, you have already admitted up here that you told him, not what you're telling this jury now just a few moments ago --

A I just told you that.

Q Let me finish, please. Just a few moments ago under oath, you said, you told Monty Kneece that you had herpes, right?

A I said what I meant to tell you that they was accusing me of having and giving it to my daughter. You can change it however you want to. I know what I told you and I'm redirecting and telling you the truth.

Q You're redirecting it trying to put a spin on it now.

A How I'm going to put a spin?

MR. MAYE: Your Honor, I would like for the court reporter to be able to play back to the jury his previous statement in regard to that question.

THE WITNESS: I told you that's what I had said

the first time.

BY MR. MAYE:

Q Well, when are you lying? Which one is a lie?

A What did I just say, when I admit that I told you that they was saying I had this because I hadn't been tested for no herpes. How I know I'm supposed to got something that ain't been tested.

Q But you sure went and told --

A Show me the test.

COURT REPORTER: Please stop talking over each other.

THE COURT: Amen to that.

THE WITNESS: Well, Your Honor, I would like to see the test then, you know.

THE COURT: We're just asking y'all not to talk at the same time.

THE WITNESS: Yes, sir. I'm sorry, Your Honor.

THE COURT: Yes, sir.

MR. FALGIONE: I object. It's been asked and answered.

THE COURT: Well, I've still got the issue about playing back what he said a little while ago.

MR. FALGIONE: Yes, Your Honor.

THE COURT: Unless you're abandoning that, Solicitor.

418

MR. MAYE: No, sir. I want her to play back his answer under oath to that. I want to play it back to the jury.

THE COURT: Folks, I'm going to have to send you out and get the court reporter to queue this up and bring you back in. I'm sorry. Don't discuss the case.

(The jury retires to the jury room.)

THE COURT: He said both.

THE WITNESS: Sir?

THE COURT: You said both. You said at 17:47:46 line 26, the question was asked by Mr. Maye, Isn't it true that you told Monty Kneece that you had herpes and what they charged you with, molesting your daughter, and you wanted money, an advance on your paycheck so that you could get out of town? And your answer there was, I went to him and I told him they were accusing me of that and I told him that I had -- no, I'm sorry. I don't know that this -- this is a dirty copy of the transcript I'm looking at so I don't think I'll be able to read that.

But later on you were asked, So did you tell him, this is at 17:48:18 line 13, So did you tell him that you had herpes -- I'm sorry -- so you did

419

tell him that you had herpes, that's true? And the answer, Yeah, I did.

And the question, you just said it was a lie. And I said, I can't hear him because you're talking over him. And then you started back up, Mr. Jones, said, Yeah, I went and I told him that, but I wanted the money for another reason because I had just got paid. I made $841.

Let me know when you reach that point. Play it so they can listen to it.

Mr. Jones, you can step down if you like, but you can't discuss your testimony with anybody during the break.

(Whereupon, portions of George Jones' testimony was played for the Court as reflected on page 406 line 21 to page 407 line 4.)

THE COURT: All right. Do y'all want to put anything on the record about this?

MR. FALGIONE: It's on there, Your Honor.

THE COURT: All right. Bring in the jury.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, the court reporter is going to play for you testimony and questions -- the testimony of this witness, questions by Mr. Maye that started at 5:47

420

this afternoon while you were out of the courtroom. The witness was here under oath. Hopefully, you all can hear it.

(Whereupon, portions of George Jones' testimony was played for the jury as reflected on page 406 line 21 to page 407 line 4.)

THE COURT: All right. You may continue, Mr. Maye.

MR. MAYE: Nothing else, Your Honor. Thank you.

THE COURT: Anything else of this witness?

MR. FALGIONE: No, Your Honor.

THE COURT: Thank you, Mr. Jones. You can step down.

Anything further from the defense?

MR. FALGIONE: No, Your Honor.

THE COURT: Anything further from the State in reply?

MR. MAYE: No, Your Honor.

THE COURT: All right. Ladies and gentlemen, I'm going to just lay this out for you and tell you what the options are as I see them right now. I had -- I told y'all I've been a judge over 18 years and generally I don't find myself in this situation, so I apologize to you that I allowed us to get to this

421

point.

It's now almost 6:30. My preference would be to stay and work. There are two stages in the trial that remain, the closing arguments and then the part where I tell you the law, we call that the charge. I can tell you how long mine's going to take, it's going to take 22 minutes. I never know how long the lawyers are going to take. If I had to guess, I would guess that as soon as we start that process, you would get the case somewhere around an hour and a half after we started.

Now, before we can start that, I have to talk to the lawyers about some legal issues, so that means that you're not going to get the case until eight o'clock probably at the earliest. Now, I may be wrong, they may talk shorter than what I said, but I don't want to rush things. I told y'all at the very beginning this week, it's very serious business and just because we've gotten in this time crunch, the worst thing that any of us could do is to rush this.

Now, I don't know what's going on in your lives so that's why I'm going to ask you to do what I'm about to ask you to do. I'm going to ask you during this break while I'm talking to the lawyers, to give

422

me some sort of feedback, through the foreman writing it out, as to what your preferences are with regard to these options, staying here tonight and work or come back next week.

If we come back next week, it cannot be Monday or Tuesday or Wednesday probably, it would probably be Thursday. The reason for that is because we've made special arrangements to bring a judge in from Florence to hear some cases that I can't hear because it's a small town and there are some cases I can't hear.

And I'm going to tell you with the budget like it is, it's a bear to get another judge sent in here because it costs money for another judge to come in here. So we've made all of those arrangements, everybody's lined up and we've got a judge coming in. Now, it's possible something can happen with that case and might can get you in sooner than Thursday.

We could talk about working on Saturday. I've never found it to be the case, generally, that juries would want to do that, but we can talk about it.

Now, when you're talking about this, you cannot discuss the case. You can only talk about what your

423

preferences are.

Now, as I told you, you've got about an hour and a half or so left in this trial before it's handed to you. How long you take to decide it, of course, is completely up to you and you've got no idea how long that will be because you haven't talked to one another about it and you can't talk about it yet.

But I always tell folks, I use as an example, if it's your 25th wedding anniversary, I don't know that. You know, if something major's going on in your life, tell me about it because I don't want to be the one to mess that kind of thing up. And I'm going to have to make a decision and I can't make everybody happy.

I told y'all on Tuesday I didn't envision any way we'd go beyond Friday of this week and I believed that with all of my heart and soul and I was flat wrong. Now, we may not go beyond Friday if y'all decide to stay and work. It's up to you and me and what we decide to do. If we do keep you here, I'm going to have the clerk come back and get your dinner orders and we'll have that brought to you.

So what I've got to do now is basically the

424

same thing I had to do at the close of the State's case. And if you all will go back there and do what I just asked you to do. As soon as I can, I'll get back to you.

Mr. Foreman, when you've got that information, I need it in writing because I have to make it part of the record, send it out by the bailiff as soon as you've got it ready, okay. Just give me y'all's preference. And if it's just one of you that wants to leave, put that down, but put down why if you've got something going on in your life, all right. Thank you.

(The jury retires to the jury room.)

THE COURT: Motions.

MR. FALGIONE: Your Honor, I'd renew my motions for a directed verdict of acquittal based upon the same grounds as previously stated to the Court. I'd incorporate all of those grounds into this motion.

THE COURT: All right. That's respectfully denied. There's sufficient evidence to go to the jury on both indictments.

All right. We'll be at ease until I see what the preference of the jury is. If y'all want to state a preference, y'all tell me because I don't know what's going on in your lives either.

425

MR. MAYE: I'd just assume to keep rocking and rolling, Your Honor, that would be my vote.

MR. FALGIONE: Whatever the jury decides is okay with me, Judge.

THE COURT: I can tell you from prior experience, if they're all in agreement, I'd be shocked. I'll just have to decide and somebody will be mad. We're at ease.

(Brief recess.)

THE COURT: They want to stay.

(Court's Exhibit Number 6, jury note, was marked for identification.)

(Pause.)

THE COURT: All right. Does the State have any input on the proposed charge?

MR. MAYE: Leave it in the discretion of the Court, Your Honor. Thank you. No objection to the charge.

THE COURT: The defense has handed up a request to charge number three. I'll charge something similar to that.

MR. FALGIONE: Thank you, Your Honor.

THE COURT: Do you want to open on and close?

MR. MAYE: Your Honor, I'll decline opening on the law unless required to do so.

426

THE COURT: Are you ready to go, Mr. Falgione?

MR. FALGIONE: Yes, sir.

THE COURT: Are you ready, Mr. Maye.

MR. MAYE: The State's ready. Thank you.

THE COURT: All right. Will you tell Mr. Dunn to bring the jury in for me?

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, as I told you before this last break, there are two stages that remain in this trial. You have all of the evidence that you're going to decide -- have to decide these cases. There are two stages that remain, the closing arguments and the charge.

Now, the way this works is that the defense will give the first closing argument and the State gets to go last because it has the burden of proof. I always take a break between the closing arguments and my part. We'll probably have to do that tonight because your food will probably be here, I don't know, but in any event, I always take a short break there so I can get set up and bring you out. And as I told you, it's going to take me 22 minutes to explain the law to you. I invite your close attention.

Mr. Falgione, you're recognized for your

427

closing argument.

MR. FALGIONE: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

CLOSING ARGUMENT

MR. FALGIONE: Good evening. It's always the scariest time of trial for me. We're here tonight Friday evening, late, everybody wants to go home. My fear is that you're going to be all too human and that you're going to hurry up and decide this thing and go on about your lives without carefully considering everything that you've heard here, everything that you've seen and putting it all within the context of the law as Judge Keesley is going to give it to you.

I remember when we first got together here, it seems like it's been an age ago, we talked a little bit about reasonable doubt, that's the State's burden, reasonable doubt, any reason, any hesitation, any reason that causes you to hesitate to act or any reasonable doubt. It's hard to define, but as we look at this, what did we see here, how did this whole thing get started?

Well, it got started when Minor went to the doctor for a couple of infections and then the

428

doctor decided it was herpes. And the doctor was right. It was Dr. Gordineer. She was right about that, but we've heard contradictory evidence about her conclusion that it has to be sexually transmitted.

Remember we heard even one of the experts that was put up today, Dr. Brenner, what did we learn from him? He was put up by the prosecution. What we learned from him, that the last time he really saw anything like that was 30 years ago when he was out practicing and he really didn't do much of that then. So how did he prepare for trial to come and talk to you all? Well, he looked at articles and all of those kind of things, but during the course of this, you know, and he testified that he looked, yeah, usually type 2 is transmitted sexually, but it can be transmitted in other ways. We don't know. We don't know.

And as we looked at it, we learned about different types, a type 1, 90 percent of the population is one estimate. You heard it was 75, 80 percent. We know that George has got that, okay, but we know a lot of other people in this same room have that.

Now, why don't we know if George has type 2 or

429

who else has type 2 that was involved in this case? We don't know that because the people in charge decided not to run that test. Reasonable doubt, ladies and gentlemen, there it is right there, reasonable doubt.

It wasn't within George's confines to do that, was it? He didn't order the test. He was ordered through the proceedings with the prosecution and they are the ones through their agents and employees requesting the test. Now, they could have requested a type 2 test, that wasn't done. You've got to ask why, why wasn't that done.

Now, what else do we know about this whole thing? You heard a lot of heat, a lot of passion when this first came before you by Mr. Maye. And I expect you're going to hear it again, you know, here at the end. Part of that was that George blows in and blows out. He doesn't live there. Well, I think y'all found out differently when you see -- take those bills back that you saw for the appliances, the air conditioner and look at the period of time that that ran.

Now, we also know that George, contrary to the initial statements by all these folks including Minor was that he always slept on the couch. Well,

430

remember when I asked Minor about occasions when George would be in -- sleeping with Shannon, Minor mother, and Minor would come in and want to get in bed with them, okay, that tells it, that tells it clearly there.

The other thing is you heard George's testimony. George comes to us as imperfect as all, but that doesn't make him guilty. When we asked him about his prior burglary charge, he was forthcoming with that, wasn't he? And he explained it. And that's there. And the Judge is going to give you an instruction about that.

We know George got up and went to work. He tried to hold that family together. And Minor actually had a good relationship with him prior to this. So why did that change? Why did that change?

Well, once we get Minor to Dr. Gordineer's office, what happened? Dr. Gordineer says, oh, this has to be sexually transmitted. And, gosh, what do we have then? Who else could do this? Well, it must be George.

We've got DSS. She talks to Minor Okay, they get involved in this thing. They interrogate her. They interrogate her. And Minor a little girl, you know. I wouldn't care if it was a little girl

431

or a little boy, they're all looking for acceptance just like we all are. And they're going to give you what they think you want to hear. So Minor at first, she says George does it. George had never done it. Of course, upon continuing suggestion, she says George did it.

Then we get the police involved. The police interrogate her. Okay, we've got one story. But who's present when the police interrogate her? We've got the same DSS person. Okay, now we've got DSS. We've got the police. Now, what are we going to do? We'll take them down to the police station, we'll interrogate them there. Okay, now we got that. So then where do we go?

Well, we'll take them out of school. We'll drive them over to Columbia and we'll have Mr. Olszewski interview them. Mr. Olszewski, of course, is a former DSS employee. And this video tape -- this video taped interview, as they call it, is actually an interrogation. Y'all are smart enough to see that. What was the purpose of that? It wasn't to provide treatment for Minor, no. There wasn't a bit of treatment given to her after that, was there? No.

And you heard the questions. Minor in that

432

room, knows she's being video taped and she knows Investigator Robinson and she knows the DSS worker is watching everything she's saying. She's a smart little girl. She knows she has to tell the same story there as she's told previously. Not only that, but Minor knows because the interviewer, i.e. interrogator, tells her, Well, I'm going to go ask them, see if they have anything else they want me to ask you.

So you saw it on the video. He goes out and he gathers up some more questions and comes back and where is he? It's right there in front of Minor what's everything geared towards? It's geared towards trying to pin this on George.

Now, what happens when he's interviewing Minor I hope you noticed when she gave him an answer that was consistent with that theory, his head was going up and down, wasn't it, you know.

Now, what do you mean when you look at someone and they talk to you and they go, uh-huh, uh-huh, that's it, that's what I want to hear? Those subtle little cues and these folks that do these interviews and then interrogate people know that. Those are cues that positively reinforce.

What about Minor when she was on the witness

433

stand? I asked her, How many people have you talked to about this and have talked to you about your story? Lots. How much time did you spend preparing for trial? How many people got you ready to come here today and testify? Lots.

In fact, that preparation was pretty much evident when she was asked, Where do you live, do you remember how she responded? Edgefield County. How many little girls when you ask them where they live are going to say Edgefield County. Why is that important? Well, that's important to establish jurisdiction for one thing. That's not something that's normal for a little girl to say.

You can't blame a nine-year-old girl for telling adults what they indicate they want to hear. This prosecution machine, once it gets moving, it doesn't look anywheres else. Did we look anywhere beyond George Jones?

What do we know about [redacted] mother, Shannon? Well, we know that [redacted] has got a lot of -- a fair number of other brothers and sisters, don't you think that some of those need to be talked to, some of those other sexual partners throughout all of that. Is it possible there's something else that has happened out here? What do we know about that

434

involvement? What do we know about DSS's involvement? All of those things cause you to hesitate to act and that's reasonable doubt, ladies and gentlemen.

Now, when we talk about Minor story to begin with, what do we know about Minor story? This whole case is distasteful. These whole allegations are distasteful for everybody. But Minor I hope you picked up on this, when she was asked up here how all of this happened, she would say, Well, I was told to put the pillow over my head.

And then when she was asked, What did you do first? I put the pillow over my head. How did you hold it? With my hands. And then she would say, Well, then I took my underpants down.

Now, physically, that can't happen. Now, that's an inconsistency, isn't it, in the way those things are done.

Also, think about the setting of it. You know, Minor says that, and you've got a photograph of the outside of this house, that she would come to the couch, she would lay on the couch and she would be manipulated with a finger from that standpoint. That is in a home that, from the appearances of it, can be as big as this courtroom on the entire

435

inside, with two bedrooms, other people sleeping there, no lights, no noise, no record.

Doesn't that cause you to hesitate to act? Don't you want to know more about that? Isn't that the essence of reasonable doubt? You have to question, you have to challenge those things because we can't move entirely by sympathy in this case. You can't be moved entirely by that because that's not the law.

Now, as fathers and mothers and sisters and brothers, we don't want to hear about terrible things like this because we don't want to think about these things. And when we do hear about them, when we do think about them, we want vengeance. We want vengeance. That's not justice.

What's all of this big testing about George shown? Shows he has type 2 herpes, him and a whole lot of other people. Does it show he has the type -- excuse me -- the type 1 herpes. Does it show he has type 2 genital herpes? No. Has that ever been shown? No. So that brings us down to [redacted] story.

Now, you saw how DSS would close ranks here when I was talking to the DSS worker. She couldn't wait for me to ask the question so she could explain

436

it to you. Didn't you get that feeling? When I started asking her about Minor complaints about Ms. Ethridge, wasn't she ready to explain that away?

Well, think about this, she complained about Ms. Ethridge, she complained that she didn't feed her, she wasn't safe in her house, didn't feel safe in her house, that Ms. Ethridge threatened to whoop her, that Ms. Ethridge yelled at her.

Now, think beyond that because they did admit this. DSS, according to Ms. Ethridge, never even talked to Ms. Ethridge about those complaints.

Oh, and there was one other one, too, that Minor -- Ms. Ethridge wouldn't let Minor call DSS.

Now, according to Ms. Ethridge, who is the foster parent, sweet, lovely lady, you've got to have a good heart to take kids into your home like that, she said DSS never even talked to her about it. Now, if they didn't talk to her about it, what did they do? They dismissed those complaints. Isn't that a serious complaint if a child says, I'm not safe in that house, I can't call out, you don't feed me? So DSS obviously chose not to believe Minor story. And it was a story. Is that reasonable doubt? I submit to you, ladies and gentlemen, that it is.

437

Please forgive me. It's late in the day for me, too, and I'm trying to stay up with the notes. And speaking of notes, some of you took notes and I'm glad you did because I hope you wrote down those inconsistencies as well as the other things.

You know, we tend to cherry pick things as we go through life. We try and only remember the good things or we try to remember the bad, but I know you're fair and you're equal jurors and that you've paid attention.

And I truly apologize that we're here so late on a Friday night. And don't let Judge Keesley take the blame for all of that, okay. He's had two attorneys that have been jackasses out here at times just to put it bluntly, so he's had to deal with us. Don't hold that against our clients, either the State or George Jones. Everybody's just trying to do their jobs.

And now we have to turn this over to you to allow you to do your job. So as you go back into your room and you begin your deliberations, remember that you're dealing with people here, you're dealing with lives and what you decide is going to affect lives no matter what.

Now, you're not here to reward Minor And God

438

knows if we could reward her in some way, we would, all of us would because nobody wants Minor to suffer, but that's not what this trial is about. This trial is about the crimes and the charges that are pending against George Jones.

And to do your job, you have to weigh that evidence and decide if there's any reasonable doubt, any doubt to which you can attach a reason, the Judge will give you the law, then you'll find that if you honor your oath and follow that law, then you will find a not guilty verdict in favor of George. I trust you will.

I wish you well. And I ask that you all respect each other's opinions when you go back into that jury room and I ask that you try to set aside the passion and the sympathy and evaluate this case fully and fairly within the context of the law that the Judge gives you. Thank you.

THE COURT: Thank you, Mr. Falgione.

Mr. Maye, you're recognized for your closing argument.

MR. MAYE: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. MAYE: Ladies and gentlemen of the jury, as I got up and talked with you at the beginning of the

439

week, I talked with you about getting those jury summons. And you understand now it is a burden to come down here to be taken away from your lives. We had to stop and start. You're here now 7:18 on a Friday night.

Winston Churchill once said that the highest duty that a citizen has during peacetime, a lot of people in Edgefield County, a lot of them on these walls, a lot of people that worked in this courthouse were taken away for military service, the draft. They used to say men used to have to go out and work on the roads or pay a tax to have somebody work in their place. We don't have the draft. This is the last compulsory public service that we have and it is vitally important.

You sit as the judges of the facts in this case and it is vitally important to everybody here in Edgefield County, to [redacted] Minor [redacted], the victim in this case, everybody that comes through here, everybody in this courtroom, it's vitally important.

What do we've got here? We've got a nine-year-old little girl who's trying to cope and live her life who is taken to the doctor with a raging case of herpes.

You don't leave your common sense at home when

440

you come up here to the courthouse. The collective wisdom of the 12 of you together outstrips all of that of any one person. I don't care who that is. I don't care if they're a doctor from Columbia with degrees or anything else. The collective wisdom of the 12 of you outstrip that of any one person. You bring into this courtroom the sum total of all of your life experiences.

That little girl didn't get herpes from a towel. She didn't get it from a scuba diving suit. She got herpes from George Jones, her father, who was abusing her systematically from the time that she was seven years old until it came out at the doctor's office that she had herpes.

What did Dr. Gordineer tell you, the private practitioner with all of her years of experience? I've never even seen it in a nine-year-old little girl.

All of these tests, oh, 75 percent, 25 percent, all of the people in the country. They're not talking about nine-year-old little girls going to school here. They're talking about adult people. That skews this. They're not talking about kids.

Kids that come down with a raging case of genital herpes get it because somebody was abusing

441

them. They don't get it from towels and they don't get it from scuba suits. They don't get it from toilet seats. What a ridiculous ascertation (sic).

Anybody, somebody had to have done this, some cousin had to have done it. She had to have got it from a towel, from the bathtub, had to come from somewhere. Just kicking up dust trying to obscure the simple facts in this case. Well, what about herpes from George Jones who was abusing her and molesting her.

You can see it. One thing that you can do is evaluate the credibility and believability of people and you can see their demeanor and how they act. And it's been said that the truth speaks twice not once.

This little girl when she was nine years old, went down there, and you saw the forensic interview and you heard her testimony up here as an 11-year-old, she was nine then when she went down and talked to Mr. Olszewski. She's 11 now and she came up here under oath and told you what happened in this case. The truth speaks twice not once. Listen to her testimony. You saw the video tape what she told then and now.

My parents demonstrated to me quite painfully

442

when you're a child, when you start telling a lie. My mama had a good memory. She'd ask you something one time and she'd wait about six months and she'd ask you again. Lord knows if you told a lie and you couldn't remember what you said and you'd get nailed over and over again with it.

That little girl two years apart she told that story and you saw an example of it up here under oath in front of you and on that video tape. George Jones can't tell the truth ten minutes apart from outside this courtroom and inside this courtroom, he can't tell it the same way. And there's a certain amount of arrogance that goes along with that.

He's charged with lewd act and I told you what that was, that's messing with a child. The Judge is going to charge you with great detail what the law is in this case. It's somebody older than the victim, which he certainly is, touching her genitals. And she got up there and she told you it didn't happen every time. He didn't always penetrate me.

And criminal sexual conduct with a minor in the first degree, the Judge is going to give you what the age range is, that's penetration however slight. It doesn't make any difference whether it's a finger

443

or his penis, any penetration however slight, a sexual battery in this case.

And [redacted] Minor [redacted], the victim in this case, she got up here and she told you who did it. And it wasn't out of spite. It wasn't out of malice in this case.

Mr. Olszewski told you what accidental reporting is because you saw it through what he said in this case, oh, she had to have been mad because he wouldn't let her sleep with him, had to have been some other alternative theory to this.

The only reason that came out, she didn't tell it. He told you about delayed reporting in this case, initially not reporting it, why that happened in this case. She didn't tell it on him, it came out. She initially denies it.

Now, they'll tell you and they're trying to paint it in this case, oh, she said George Jones didn't do this, that's not true. When they first confronted her with it, she said in that case when they first confronted her, has anybody touched your private, she said no initially.

George Jones is there. They tell him in this case in that same timeframe, they inform George Jones that his baby, his child, has a sexually

444

transmitted disease, has herpes. No, at the start of this case, you heard all of that talk, oh, what a tragedy for a father to have to hear that in this case.

Well, what happens when this father hears that his baby's got herpes? Oh, he looks around for what he needs to gather up out of that household and he's on his son's bicycle and he's off down the road. That's how concerned he is about his daughter, his baby, having a sexually transmitted disease, herpes. No affect on him any at all but to bolt and take off and get on that bicycle and peddle himself down the road.

Oh, why did you leave? Oh, I left because my wife was lying and saying I didn't live there and I didn't want to get her in trouble.

It's because he didn't live there. What did he tell Lamaz Robinson when he goes to talk with him? He lives at [redacted].

He blew in and out of their lives as he wanted to. And he stayed on that couch and he used this girl as his sexual play thing. He wasn't in there with her. He was coming to see his girlfriend and his daughter all in the same. He's using this child as his sexual play thing. Nothing he was doing was

445

for her benefit in this case, it was for his and he transmitted that virus to her.

A father's response is to get on the bicycle and peddle away. And low and behold where does he go? He goes to his employer wanting money and tell him, I've got herpes, that's the last thing you heard up here what he was talking to Monty Kneece. And he can't tell it twice ten minutes apart, asked him up here, have to play it back what he said under oath here, going to his employer upon learning about this that it's come out that his daughter has got herpes and what's first and foremost on his mind, to go to his employer, to get out of there, to get him some money. And what's he tell him? I've got herpes, by his own admission.

You can forget any and all of this talk and all of these experts we drug in here about type 1 and type 2 herpes and you can throw that all out the window because he eliminated any doubt right there.

All we're talking about doing is 75 out of a hundred or 25 out of a hundred. Oh, we'll make all this big deal about the herpes test in this case. They went down to the hospital and they got a serological test, a blood test.

The only really good one is the swipe test.

446

And in adults, the experts have told you in this case, it dies out over time. An adult like that with a long-standing infection of it might never have open sores again. To get a good and accurate test for that, they've got to do a swipe.

Oh, there are tests. There are other tests that they could have done, but they got a serological test and it didn't exclude him, he's included. Seventy-five out of a hundred or 25 out of a hundred between type 1 and type 2.

But let's talk about this. Whether it's 75 out of a hundred or 25 out of a hundred people walking around with either type 1 or type 2, who's got access to [redacted] who's sleeping on the couch in there? He does.

Any talk about that went out the window because what's on his mind when he finds out that she's got herpes is he's on the road wanting to get money and telling his employer that he's got herpes. Any doubt about whether or not he had it was removed with the last bit of testimony that you heard in this case.

He's got it and he gave it to her. It didn't come from a scuba suit. It wasn't a miracle that she just got it from Lord knows where. She got it

447

from George Jones and she got it because he was using her as his sexual play thing. What a betrayal. I told you at the start and the outset of this case, the ultimate betrayal.

They tell you about delayed reporting in this case. Things get all twisted in this case when the people that you're supposed to be able to rely on to look after you, to nurture you, to protect you against the whole world when they're abusing you. And what do children learn to do? Cope, adapt, survive.

She didn't tell on him. She didn't cry out with her mama in there. She didn't cry out with her brother there. She's a child. Sexual relationships are complicated enough for adults, that's why the law protects little children. She never said anything. Lord knows if she would have ever said anything if he hadn't infected her with the virus in this case, but he finally did.

The doctor told you the more times it happens, the more the percentage goes that you're going to get it and it finally ran out. Seven years old, eight years old and nine years old and he gave it to her and it came out. And he's on the road and he's headed out of there. And the first thing he's doing

448

is telling his employer, I got herpes. And he did and that's who gave it to her and there's no mystery about it.

You heard all of the evidence in this case. You heard from Dr. Gordineer, a nine-year-old little girl, she knew what she was diagnosing when she saw the lesions and she knew what was up. She immediately called DSS. They immediately called the police. They took her down to the ARC. She was interviewed. You've seen the interview in this case. You heard the expert testimony in this case. You've got all of the facts.

You weigh and judge the credibility and the believability of the witnesses in this case. You decide, is George Jones a credible and believable witness? He can't tell it right from minute to minute let alone from year to year. And there's a certain amount of arrogance.

I told you the collective wisdom of the 12 of you, that outstrips all of any one person. There's a certain amount of arrogance to think that you can come up here and just explain your way out of anything in front of 12 intelligent people. And it blew up in his face today in this courtroom.

Parents are supposed to look out for their

449

children. There's just no other way around it. And this catastrophically failed in this case. Parents tell their children about getting touched or abused by somebody over and over again. All they can do is, kids go out into the world, if somebody puts their hands on you, you tell me. But that completely fails when her parent is the one doing it in this case.

So when she got diagnosed with herpes, she told DSS, she told Lamaz Robinson, she told Dr. Olszewski, Mr. Olszewski, at the ARC in this case. And now she got up here under oath and she told the 12 of you and she's putting it in your hands.

If somebody puts their hands on you, you tell me. Well, she's told it now and she's told it to the 12 of you. The facts in this case speak for themselves. All I'd ask that the 12 of you that go back in that jury room to deliberate in this case do is come back with a verdict that speaks the truth and does justice for everybody here in Edgefield County.

I appreciate your close attention in this case. Thank you.

THE COURT: Thank you, Mr. Maye.

All right. Ladies and gentlemen, as I told

450

you, I need you to step back in the jury room. I'll either send for you or let you eat. Don't discuss the case.

(The jury retires to the jury room.)

THE COURT: All right. We're at ease. Let me find out what's going on.

(Pause.)

THE COURT: All right. It seems sort of ridiculous in this case because the only thing alleged is some sort of penetration of the genital area of the child. The law states with regard to criminal sexual conduct with a minor in the first degree, that neither the judge or the jury, depending upon the type of proceeding, is supposed to make a determination as to whether the incident involved sexual intercourse or insertion of some portion of the body of the perpetrator into the genital openings of the minor or the insertion of some object into the genital opening of the minor.

They really can't find the defendant guilty without making that determination because it has to be a sexual battery in this case on the CSC charge, but I put a question on this verdict form, I'll let y'all look at, it's the same wording as what's on your draft charge at the bottom.

451

(Pause.)

MR. MAYE: That's fine, Your Honor.

MR. FALGIONE: That's without objection.

THE COURT: All right. There's no objection to it. Bring the jury in for me.

During the charge, please stay still and stay quiet. Don't move around. Don't shake your head. Don't do anything to distract the jury. If anybody needs to leave, they need to leave now absent an emergency. Now, if there's an emergency, you act accordingly.

(The jury returns to the courtroom.)

CHARGE OF THE COURT

THE COURT: Members of the jury, all of the evidence has been presented, you've heard the arguments of counsel and now it's time for me to instruct you on the law that applies to the case. I want to thank you for the manner in which you've conducted yourselves and ask that you please continue to pay close attention during this next stage.

Now, first, you need to understand some basic ground rules. You, the jury members, are the sole judges of the facts. You decide all of the issues of fact. You alone determine the truth of the

452

evidence, its effect, its value and its weight. You alone judge the credibility of witnesses, in other words, whether or not a witness' testimony is believable.

In that regard, you may believe all that a witness said or none of it. You may believe part of what a witness said and not believe the balance. You may believe one witness against many or many against one. You may consider any interest, bias or prejudice that you feel that a witness has in the case. You may consider the demeanor and the appearance of a witness and the opportunity for knowledge that the witness had. You may consider the lack of evidence presented by the State.

But you're not to exercise these considerations arbitrarily. What you need to do is to use your common sense, use your sense of logic and reason and your good judgment.

During the trial of this case, testimony was presented by persons designated as expert witnesses. The rules of evidence allow for someone, by virtue of education, training and experience, to render opinions as expert witnesses. You may accept or reject the testimony of an expert witness just as you may any other witness in whole or in part.

453

It's not proper for me to give you a charge on the facts of the case. I can't discuss the facts with you. I'm not even permitted to convey to you an impression as to what, if any, personal opinions I may develop about a case as it goes along. So if, during any stage of the trial, you develop an impression that I've got a personal opinion about the facts, you have to remove that totally from your mind. You're the sole judges of the facts.

I am the judge of the law that applies to the case. And under your oath, you must accept and apply the law as I give it to you and that means that you have to abandon any conflicting ideas that you might have as to what the law is or what it should be. I give you the law, you apply it to the facts as you determine them to be and in that way, you reach your verdicts.

It's also my job to decide what evidence is admissible. If I rule something inadmissible or told you to disregard something, you're not to consider those things in arriving at your verdicts. Base your verdicts on the competent evidence before you, consider the testimony of the witnesses and the exhibits admitted in the trial.

I remind you, ladies and gentlemen, of the

454

limiting instruction I gave you earlier related to evidence that the defendant was convicted of a crime in the past. This evidence was admitted for a limited purpose and may be considered by you, if you conclude it true, only on the issue of the defendant's credibility.

You may use this evidence, if you choose to do so, only in deciding whether the defendant's testimony is believable and for no other purpose. You must not consider his prior criminal record as any evidence of guilt on the charge that we are trying today.

Now, I need to explain to you that there are two types of evidence generally presented during a trial. There's direct evidence and there's circumstantial evidence.

Direct evidence is evidence of direct perception, including the testimony of a person who asserts or claims to have actual knowledge of a fact such as an eyewitness.

Circumstantial evidence is proof of a chain. It's proof of a chain of facts and circumstances indicating the existence of a fact.

The law makes absolutely no distinction between the weight or the value to be given to direct or

455

circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You need to weigh all of the evidence in the cases. And after weighing all of the evidence, if you're not convinced of the guilt of the defendant beyond a reasonable doubt, you must find him not guilty.

The defendant in this case is presumed innocent. This is no mere legal theory. It is a fundamental and substantial right to which every one is entitled. It's been described as being like a robe of righteousness that's placed around an accused and it remains with him through every stage of the trial. It continues to exist after you go back to your jury room to deliberate so that he is presumed to be innocent unless and until you, the jury, determine that the State has proven him guilty beyond a reasonable doubt.

A defendant is not required to prove his innocence. He is not required to prove anything. The burden is on the State to prove the guilt of the defendant beyond a reasonable doubt. And it's required that every essential element of an offense charged be proven by the State beyond a reasonable doubt.

456

Now, that doesn't mean that the State has to prove the guilt of the defendant beyond all doubt or beyond every doubt. The appropriate standard is proof beyond a reasonable doubt.

Some of you may have served as jurors in civil court. And if you have, you know that the burden of proof in civil court requires establishing that something is more likely than not. We call that the greater weight or preponderance of the evidence.

But we're in criminal court here. And in criminal court, the standard is much higher and the proof must be much stronger than what is required in civil court.

The burden of proof in criminal cases such as these, as I've repeatedly told you, is proof beyond a reasonable doubt. So in a criminal court setting, the State has to prove more than the likelihood of guilt or the probability of guilt. The State has to prove guilt beyond a reasonable doubt.

So what do I mean by that term? Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are few things in the world that we know with absolute certainty and in criminal cases, the law does not require proof that overcomes every possible doubt.

457

If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of a crime charged, then you are to find him guilty of that crime. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty on that charge.

There's no obligation on the part of Mr. Jones to raise any doubt or any other possibility. He's presumed to be innocent. The State has the entire burden of proof and has to prove to you that the defendant is guilty of the offense charged to the exclusion of any other real possibility.

All right. Let's turn to the indictments in these cases. The defendant is charged in one indictment with criminal sexual conduct with a minor in the first degree. It's alleged that in Edgefield County on or between the dates of June 1, 2007 and April 1, 2008, George Albert Jones, who is alleged to have been born on [redacted], engaged in sexual battery with Minor who is alleged to have been born on [redacted], she being less than 11 years of age and the defendant being older than Ms. Jones.

In another indictment, the defendant,

458

Mr. Jones, is charged with committing a lewd act upon a child. In that indictment, it's alleged that George Albert Jones, who is alleged to have been over 14 years of age at the relevant time, did between the dates of June 1, 2007 and April 1, 2008, in Edgefield County, willfully and lewdly commit a lewd or lascivious act upon or with the body of Minor who is alleged to have been less than 16 years of age at the relevant time, in that the defendant fondled, caressed the body and/or touched the vaginal area of Ms. Jones with the intent of arousing, appealing to and/or gratifying the lust, passions or sexual desires of Mr. Jones.

Now, ladies and gentlemen, I remind you that the indictments have no evidentiary value. They are merely charging papers, the formal means by which someone's charged and brought to trial.

I also remind you that these indictments are separate and distinct and they have to be evaluated each of them on -- each one on its own merit or lack of merit.

Ladies and gentlemen, you're not to take into account the fact that the accused has been charged in more than one indictment. You cannot hold that in any way against him. The reason for this is that

459

the accused is entitled to a fair and impartial determination of each indictment based on your determination of the evidence on each separate indictment. The accused is not to be prejudiced by the fact that there is more than one pending charge against him in this trial.

Now, ladies and gentlemen, I instruct you that there's a special statute that states that testimony of a victim in a criminal sexual conduct case does not necessarily require corroboration if the jury determines that the testimony of a purported victim proves all of the essential elements of the offense to the satisfaction of the jury beyond a reasonable doubt.

Now, corroborating evidence would be evidence that supports the testimony of the purported victim. It's up to you to review all of the evidence and give it such weight, if any, that you decide it should receive.

All right. I'm going to talk to you first about criminal sexual conduct with a minor in the first degree. What that law states is that a person commits criminal sexual conduct in the first degree when he engages in sexual battery with a person who is less than 11 years of age. Sexual battery with a

460

person less than 11 years of age.

So you need to understand the term sexual battery. It's a defined term. Sexual battery refers to situations where a perpetrator engages in sexual intercourse or causes any intrusion however slight of any part of the perpetrator's body or any object into the genital or anal openings of the purported victim's body except when such intrusion is accomplished for legitimate medical purposes.

So to prove the defendant guilty of criminal sexual conduct with a minor in the first degree, the State must first prove beyond a reasonable doubt that in Edgefield County on or between the dates alleged in the indictment, one, that the defendant engaged in a sexual battery with [redacted] and, second, that [redacted] was less than 11 years of age at that time.

To prove sexual battery, the State must prove beyond a reasonable doubt that during the relevant time and in Edgefield County, the defendant either engaged in sexual intercourse with [redacted] or that he caused some part of his body to be inserted however slightly into the genital opening of [redacted] or that he caused some object to be inserted however slightly into the genital opening of [redacted]

461

[redacted].

Now, let's talk about lewd act. In addition to the charge of criminal sexual conduct, the defendant is charged with committing or attempt -- committing a lewd act upon a child. It's unlawful in this state for a person over the age of 14 years to willfully and lewdly commit a lewd or lascivious act upon a child who is under the age of 16 years with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of the perpetrator.

The allegation here is that the defendant engaged in at least one separate incident of lewd act separate from criminal sexual conduct upon Minor [redacted] during the designated time separate and apart from the alleged criminal sexual conduct with a minor.

Now, a person acts willfully when he acts voluntarily and intentionally with a specific intent to commit the unlawful act. A lewd act is an act that is obscene, lustful, indecent, lecherous or wanton. A lascivious act is one that is lewd, indecent, obscene or tends to excite lust or depraved morals in respect to sexual relations. Here, the lewd act alleged is that the defendant

462

fondled, caressed the body and/or touched the vaginal area of Ms. Jones.

So to recap the lewd act, in order to -- the lewd act charge, in order to prove the defendant guilty of a charge of committing a lewd act upon a child, the State has to prove to you beyond a reasonable doubt each of the following elements:

First, that the lewd act occurred during the time specified in the indictment; second, that the incident occurred in Edgefield County; third, that the defendant was over 14 years of age at the time of the offense; fourth, that he willfully and lewdly committed a lewd or lascivious act upon [redacted]; fifth, that [redacted] was under the age of 16 years at the time of the incident; and, sixth, that the defendant committed the act with the intent of arousing, appealing to or gratifying his lust, passions or sexual desires.

The final thing I have to tell you on the law, ladies and gentlemen, is that the defendant is entitled to every reasonable doubt arising in the entire cases. If, upon any issue of fact essential to a conviction, you have a reasonable doubt as to how that issue should be resolved, you must resolve that doubt in favor of Mr. Jones.

463

If, upon reviewing an entire case, you have a reasonable doubt as to whether the State has proven him guilty of an offense charged, he is entitled to that doubt and a verdict of not guilty on that charge.

On the other hand, if, upon reviewing an entire case, you find that the State has proven every essential element of the offense charged against the defendant beyond a reasonable doubt, it is equally your duty to find the defendant guilty of that charge. That's the law.

Now, ladies and gentlemen, when you go back to the jury room to decide the cases, you're going to have with you these verdict forms. On these forms, you're going to tell us your decisions. You've got one for each charge. They're separate and distinct, remember.

Now, I'm supposed to tell you that you're not to infer from the order in which I state these that I'm trying to suggest one form of verdict over another. I've got to say one thing first and one thing second.

Now, what you will see is that each of these has a caption at the top. And what I've done is written in the middle which one you're dealing with.

464

This one reads, Lewd act upon a minor. And it reads, We, the jury, unanimously find the defendant, and you have two possible forms of verdict, you may find the defendant not guilty or you may find the defendant guilty of committing a lewd act upon a minor.

The other indictment reads, it has a caption at the top and it reads, Criminal sexual conduct with a minor in the first degree. We, the jury, unanimously find the defendant, and you have two possible forms of verdict, you may find the defendant not guilty or you may find the defendant guilty of criminal sexual conduct with a minor in the first degree.

Now, there's an instruction down here that only applies if you find the defendant guilty. And certainly I'm not trying to suggest to you what your verdict should be in either case, but there's a statute that requires me to put this on this verdict form and it's a question to you. And it reads, If you have found the defendant guilty of criminal sexual conduct with a minor in the first degree, has the State proven beyond a reasonable doubt that the defendant engaged in sexual intercourse with the minor, or that he inserted some portion of his body

465

into the genital opening of the minor, or that he inserted some object into the genital opening of the minor. And you have two possible forms there, yes or no. And you just check the response that's appropriate.

Mr. Foreman, part of your job is to record these verdicts for me. I think you'll find these forms self-explanatory. Just check the responses chosen by the jury and sign your name on the signature line on each form for me please.

Now, ladies and gentlemen, how you go about your deliberations and how you go about taking your votes is all in your discretion subject to this requirement, your verdicts, your decisions, your answer to that question, if you reach that question, must be unanimous. All 12 of you must agree before you can record any decision on these verdict forms.

You cannot do anything to change the requirement of a unanimous verdict. When you come out and your verdicts are published, you can be asked individually as to whether that was your verdict and if it's still your verdict. So please understand you can't go back there and decide to do it by majority or anything like that. It has to be a unanimous decision.

466

When you've reached your decisions, knock on the door and the bailiff will respond to your knock.

I've probably told you several dozen times during this trial don't discuss this case yet. And believe it or not, it's not time yet. The law says that I have to go over with the attorneys what I just told you and that's just common sense. We don't want you back there using the wrong law to decide these cases. So they have to be given a chance to point out to me what I may have said wrong.

I've already printed this out for them. We've been through it during one of the breaks we had. I don't think this will take long. But sometimes I -- I never read the thing verbatim, sometimes I misread, sometimes I say things I don't even realize I said it and they have to be given a chance to point it out to me.

Here's the signal you need to look for. If I'm satisfied with what I told you, I will send the exhibits and the verdict forms back there into the jury room. When those things are in the room with you and the bailiff is out and the door is closed and it's just the 12 of you in there, you start talking about the case. You don't have to wait

467

another second, but don't talk about it until then.

Now, you've got your notes. You can take your notes back at this point.

And one of the exhibits is a DVD. It gets real crowded in there if we put the T.V. in it, so I don't usually send that in there unless you ask for it. It's up to you as to whether you want it or you don't want it. If you want it, just tell the bailiff when you want it and he'll roll it in. And you'll probably want to get it out of there because it gets pretty crowded in there with it.

I thank you very much for your attention. You may retire to your jury room to deliberate. When your food comes, they'll bring it in and y'all can eat and deliberate. Thank you.

(The jury retires to the jury room.)

THE COURT: State for the record any exceptions, additions or objections to the charge, from the State?

MR. MAYE: Nothing from the State.

MR. FALGIONE: Nothing from the defense, Your Honor.

THE COURT: Thank you very much. Gentlemen, it's been a great pleasure being with y'all, might not acted like it all the time and I apologize if I

468

was short with you.

Here are the verdict forms. If you'll check those, check the exhibits. When you're satisfied, give those to the bailiff.

(Pause.)

THE COURT: Have y'all checked everything?

MR. FALGIONE: Yes, Your Honor.

MR. MAYE: Yes, sir.

THE COURT: We're at ease on this case pending a verdict.

(The jury commences its deliberations at 8:00 p.m.)

MR. FALGIONE: Your Honor, at this time, I'd like to turn over those Department of Mental Health records with the Clerk to be placed under seal.

THE COURT: Thank you.

(Court's Exhibit Numbers 7 and 8, medical records, were marked for identification.)

(A recess transpired.)

(The following occurred during jury deliberations at 9:33 p.m.)

THE COURT: I have a note from the jury, reads two questions, first question is, When was the first initial date Minor was taken to the doctor? The second question is, When was the last time,

469

parentheses, date, Minor was penetrated?

Those are questions of fact. And you all might be able to agree on the first one. I don't know what kind of agreement you may get on the second one because --

MR. MAYE: That's the ultimate issue of fact. Your Honor, all I can say is I think there's -- I can't even remember what day she was initially taken to the doctor. I think the testimony was they diagnosed her on, what day, the 6th or something like that. I can't even remember that because she went for a UTI and then she went back and that's when the doctor reported it.

OFFICER ROBINSON: April the 6th she was diagnosed.

MR. MAYE: Dr. Gordineer reported it on the 6th?

OFFICER ROBINSON: No, she was taken to the doctor on the 6th and Dr. Gordineer told us on the 9th and that's when we took her.

MR. MAYE: So she first went on the 6th and then she -- when Dr. Gordineer confirmed the test. I don't know.

(Pause.)

MR. MAYE: The officer's telling me that on the

470

6th, she was initially taken to the doctor and that on the 9th, they had the cultures and all back, but my understanding was she had been taken to the doctor earlier than that when they first thought she had an UTI, so I don't know. I don't know when the first time that she went to the emergency room was. I was unclear about that.

THE COURT: What day did Dr. Gordineer testify?

MR. FALGIONE: I think it was April the 6th, Your Honor, 2008.

MR. MAYE: All I remembered is some days before, you know, she had been, they thought she had a UTI and they prescribed her an antibiotic. When that didn't work, she came back.

THE COURT: Was there testimony about that?

MR. FALGIONE: No, Your Honor.

MR. MAYE: I can't remember.

MR. FALGIONE: I don't recall any testimony about previous --

THE COURT: That didn't ring a bell, but I might have missed it.

MR. MAYE: Your Honor, I think those are just questions of fact for the jury to take from the evidence.

THE COURT: Mr. Maye, you asked Dr. Gordineer a

471

question, Doctor, let me direct your attention back to April the 6th, 2008, and the days before and up to that time period, do you know [redacted], the victim in this case?

Dr. Gordineer said, Yes, I do.

And then skipping down over that. She stated, I was working in the emergency room in April of 2008 and she came in complaining with painful -- something -- and she had been there several days before and had been treated with an antibiotic for a urinary tract infection. I was concerned because that's just not a typical complaint of a nine-year-old to have that much pain, so I went ahead and did an exam and checked her genital area. And there were obvious genital ulcers consistent to what looked to be herpes.

So she did testify that she saw her on April the 6th and a few days before that, she apparently had been in for a urinary tract infection.

If you all can agree on a date, I can just bring them out and tell them that these are issues of fact, that there's an agreement that the first doctor visit was whenever. If y'all want to say the first week in April of 2008 or if you want to say April the 6th or if you want to say April the 4th

472

and April the 6th or whatever, I don't care.

The second question, nobody can answer that question.

MR. MAYE: No. They'll just have to take that from the evidence as they --

MR. FALGIONE: We'll agree with April the 6th, Your Honor, on the first one.

THE COURT: Is that all right with you?

MR. MAYE: Your Honor, the only thing I would ask is just what's in that question, that she appeared on April 6th and she had been in there several days before. I'd just ask that it mirror what's in the -- exactly what she said, which I think is the answer to that. I don't know how long several days is, but I mean that's all that we've got. I'd hate for them to think just April the 6th because she'd been in there earlier.

THE COURT: Do y'all agree that I can just play that portion of her testimony?

MR. MAYE: Sure.

MR. FALGIONE: Your Honor, I'd prefer not to. If we can't agree on April the 6th, then, no, I would object to that, Your Honor.

MR. MAYE: Well, I think the only thing to do then is play them that portion of the testimony or

473

print that portion of the testimony out and let them read it.

THE COURT: You can't print it out. It's a rough copy.

MR. MAYE: Or if it was handwritten as she's given it, I wouldn't object to that.

THE COURT: I can print it. I can -- literally, I can print it, but what I'm saying is it's not a transcript yet. It's just a rough copy.

MR. MAYE: I would have no objection to that.

THE COURT: I can't send a rough copy of a transcript into the jury.

MR. MAYE: That's fine. I mean, I would have no objection if you wanted to handwrite what was in there.

MR. FALGIONE: Can we agree for April 6th because that's really what they're asking here is when did Dr. Gordineer see her and --

MR. MAYE: No. I think they're wanting to know when she -- because she first came in there complaining of symptoms several days before, so it was earlier than that than April the 6th. So I would just want them to hear that testimony from the doctor, Your Honor, that answers that.

MR. FALGIONE: Well, she was diagnosed with a

474

urinary tract infection. The doctor made that diagnosis. The doctor didn't diagnose her with herpes.

MR. MAYE: It was misdiagnosed initially would be my contention. So I would just ask that we play back that portion of the testimony.

THE COURT: Bring the jury in.

(The jury returns to the courtroom at 9:42 p.m.)

THE COURT: Mr. Foreman, I received a note from the jury that reads two questions, the first question is, When was the first initial date that Minor was taken to the doctor? The second question was, When was the last time, parentheses, date, Minor was penetrated?

Are those the questions of the jury?

MR. FOREMAN: Yes, sir.

THE COURT: Mr. Foreman, members of the jury, those are issues of fact and I cannot comment on the facts. The only thing I can tell you is that if you want me to have the court reporter replay the testimony of any witness or a portion of the testimony of a witness, she can cue it up and play it.

The only thing is I want you to understand that

475

I can't represent to you that one witness may have covered every issue that you may have a question addressed. In other words, it may be covered in more than one witness' testimony. But to give you an example, if you want to hear Dr. Gordineer's testimony again, I can replay that for you. If you know some other witness you want me to hear -- you want to hear played, I can play that for you, but that's all can I do. I can't comment on the facts, all right.

If you want me to replay a specific witness, just send me a note and we'll do the best we can. Like I said, it gets a little bit tricky at times because it may be covered in more than one witness' testimony. I mean, we can replay the whole trial if you want to hear the whole trial, but that's up to you, all right. Thank you.

(The jury retires to the jury room to continues its deliberations at 9:45 p.m.)

(Court's Exhibit Number 9, jury note, was marked for identification.)

THE COURT: Exceptions, additions, objections to the answer?

MR. MAYE: Nothing, Your Honor. I think that was appropriate.

476

MR. FALGIONE: Nothing from the defense, Your Honor.

THE COURT: We're at ease. Just leave Mr. Jones out here, if you would, for a little while. See if they send me a note. We're at ease.

(A recess transpired.)

THE COURT: All right. I've been informed the jury has a verdict. Obviously, I have no way of knowing what they've decided in these cases.

This is something I say in every case. Please stay still and stay quiet during the reading of the verdict and after it. Don't show any sign of approval or disapproval. Don't shake your head in agreement or disagreement. Just stay still, stay quiet, we'll get through this just fine.

Bring in the jury, please.

(The jury returns to open court to report its verdict at 10:03 p.m. for verdict.)

THE COURT: Madame Clerk.

THE CLERK: Mr. Foreman, have you reached a verdict?

FOREMAN: Yes, we have.

THE CLERK: Would you please pass it to the bailiff, please?

(Bailiff hands verdicts to the Court.)

477

VERDICT OF THE JURY

THE COURT: State of South Carolina, County of Edgefield in the Court of General Sessions, State versus George Albert Jones, case number 2009-GS-19-349, lewd act upon a minor. We, the jury, unanimously find the defendant guilty of committing a lewd act upon a minor, signed by the Foreman.

Case number 2009-GS-19-409, criminal sexual conduct with a minor in the first degree, we, the jury, unanimously find the defendant guilty of criminal sexual conduct with a minor in the first degree.

The interrogatory was posed to the jury, If you found the defendant guilty, has the State proven beyond a reasonable doubt that the defendant engaged in sexual intercourse with the minor or that he inserted some portion of his body into the genital opening of the minor or that he inserted some object into the genital opening of the minor? That question was answered by the jury, Yes. The form is signed by the Foreman.

Mr. Foreman and ladies and gentlemen of the jury, if I've accurately stated your verdicts, those being guilty on both counts and an affirmative

478

finding on that question, please signify by raising your right hand.

All 12 hands are raised.

Any matters to take up prior to the jury being discharged, from the State?

MR. MAYE: Nothing from the State, Your Honor.

THE COURT: From the defense?

MR. FALGIONE: Nothing from the defense, Your Honor.

THE COURT: Thank you very much.

All right. Ladies and gentlemen, before I let you go, there's a little bit of information I need to give you and I know how late it is. I do have to talk to the lawyers briefly outside your presence. And then any sentencing, if you want to see the sentencing, you're welcome to come back in, I'll tell the bailiff and he'll come get whoever wants to come in. If you don't want to come in, I just need you to wait back there in the jury room for me, okay.

I need you to step back in the jury room right now and I'll send for you momentarily if you want to come in for the sentencing.

(The jury retires to the jury room.)

THE COURT: Do you have any motions, Mr.

479

Falgione?

MR. FALGIONE: Your Honor, I'd request ten days to file the appropriate motions.

THE COURT: You can't do that in criminal court.

MR. FALGIONE: Your Honor, I would move for -- thank you. I would move for a new trial.

THE COURT: All right. Do you want to state any grounds or do you want me just to deal with it?

MR. FALGIONE: Your Honor, I would reiterate the same grounds I used for a directed verdict motion.

THE COURT: All right. The Court has considered a motion for a new trial. The Court does not find that the verdicts are the product of any passion, caprice, prejudice or any undue influence exercised over the jury or any improper motive over the jury. As to the extent that that ground is raised, which the Court considers it to be raised, the Court denies the motion.

On the ground that there is insufficient evidence to prove these material elements of each offense, there is sufficient evidence, in the Court's view, as to each material element of each offense charged and that ground also is denied.

480

As to all of the issues raised during the trial and the motions made and the rulings, the Court's reconsidered those and stands by them and respectfully denies the motions that have been raised to this point and denies any motion for a new trial based on any of those assertions.

All right. Ask the jury if any of them want to come in for the sentencing.

(Pause.)

THE COURT: All right. Solicitor, what do you have on sentencing?

MR. MAYE: Your Honor, I have his prior record. 1989, he was convicted here on a Johnston case of possession with crack cocaine. He received a five year sentence, suspended upon the service of 60 days with three years of probation.

Your Honor, in 1994, he was charged with criminal sexual conduct with a minor for fathering the 14-year-old older child, Terrance, in this case, Your Honor. He was allowed to plead down to contributing to the delinquency of a minor. At that time, he received a one year sentence suspended upon 30 days, credit time served and two years of probation in 1994.

He had a DUS in 1995, a DUS in 1996, an assault

481

and battery conviction, I have, 7/29/1995. His probation was subsequently revoked in 1996 on the contributing charge. He got an 11 month sentence for that.

He was charged with burglary first. He pleaded guilty to burglary second nonviolent. He got 15 years suspended on time served and five years of probation in 1998. His probation was revoked on that and he got a sentence and received a sentence in 1998.

He's now been convicted by the jury in this case, Your Honor. The crime speaks for itself. He shouldered his offspring with the burden of having an incurable disease that she'll carry with her the rest of her life.

He's been a product of this system for a long period of time. He's never proven himself worthy of receiving any of the benefits and breaks that he's received in the past. His probation has been violated twice. I would just ask that the Court's sentence reflect the gravity of what he's done and what his prior record reflects on him.

THE COURT: Does any of them wish to be heard?

MR. MAYE: No, sir, Your Honor.

THE COURT: All right. Mr. Falgione.

482

MR. FALGIONE: Thank you, Your Honor.

Your Honor, obviously, Mr. Jones has been in and out of prison. However, prior to this incident for which he stands before the Court today, he was out, he was a productive individual. He helped support this family and these children.

He has served 667 days in the county jail after being arrested on this. Your Honor, we would respectfully request that he be given credit for those 667 days and that any sentence that the Court may pass on him that it run concurrent. And we'd just request that the Court issue a sentence in a fair and impartial manner.

THE COURT: Do you want to say anything, Mr. Jones?

DEFENDANT: Yes, sir. Please the Court.

I'd like to say that these allegation they made, I haven't done them. I have helped them any way I can. When I was out, I always bought all their clothes, kept their hair done, this and that. I done all of that for them.

And to see when they first walked in here the other day, things ain't getting done. They needed me and they still do. They didn't dress like that when I was out there because I provided things for

483

them. I dressed them better than I did myself. If they would be truthful, they will tell you that.

They ain't had to never worry about no money coming home because I always done that, even give her nephew money because his daddy wasn't doing things for him and they also know that. And why they not speaking the truth today, I couldn't possibly tell you because they know. They know the truth.

THE COURT: Thank you, sir.

(Pause.)

THE COURT: All right. Mr. Jones, if you wish to file an appeal from this trial, you have to do so in writing. It has to be done very quickly, so you need to tell Mr. Falgione if you want to file an appeal, and I suspect that you would. If you're not able to afford an attorney, the Office of Indigent Defense will represent you on your appeal, so tell Mr. Falgione if you want an appeal filed.

DEFENDANT: Yes, Your Honor.

THE COURT: And tell him right away.

DEFENDANT: I want an appeal.

THE COURT: Are you 43? How old are you?

DEFENDANT: Yes, Your Honor.

THE COURT: All right. I've got this as a

484

violent crime on CSC, a most serious offense, mandatory electronic monitoring under section 23-3-540. I've made the determination under the statute that it's not consensual. And I made the determination under the other statute that the jury found that the offense involved penetration of the victim's genital opening as defined under section 16-3-655.

He has to register as a sex offender. I think all of those things are automatic.

All right. Y'all cuff him and bring him around.

(Pause.)

THE COURT: There's no block checked on this sentence sheet for no parole offense.

MR. MAYE: I'm unaware of that, Your Honor. If the CDR code is correct, I think that will automatically apply --

THE COURT: Well, anything that carries 20 years or more is a no parole offense as a possible punishment.

All right. If there's nothing else, Mr. Jones, criminal sexual conduct with a minor in the first degree carries a mandatory minimum of 25 years up to life imprisonment. I've considered your age. I've

485

considered the fact that you basically are going to have to serve every -- almost every bit of any time I give you, if not all of it. I've considered that it's a strike, a most serious strike, and that if you are ever released from prison, you're going to have all kind of restrictions placed on you as a sex offender.

SENTENCE OF THE COURT

THE COURT: So the sentence of the Court on criminal sexual conduct with a minor in the first degree is that you be committed to the South Carolina Department of Corrections for 30 years plus pay the costs and assessments. The sentence on lewd act is 15 years.

The sentences run concurrently. You're given credit for jail time under section 24-13-40, that will be calculated and applied by the department of corrections. I've written on your sentence sheet to give you credit for 667 days served.

Again, I found on the CSC charge, it is not consensual, that the jury found penetration under section 16-3-655. Electronic monitoring is required under section 23-3-540. Sex offender registry is required. Sex offender registry is automatic. Pay your court costs within 180 days of being released

486

from maximum incarceration in prison.

Do you understand your sentences?

DEFENDANT: Yes, Your Honor.

THE COURT: All right. Good luck, sir.

(Whereupon, the defendant leaves the courtroom.)

THE COURT: Thank y'all very much, folks. Y'all want to step back in the jury room.

(Whereupon, the jury was excused by the Court.)

END OF PROCEEDINGS

487

CERTIFICATE

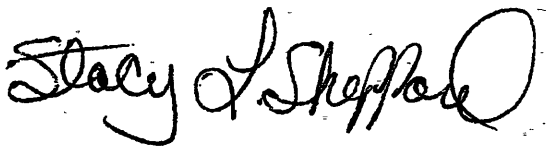
STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 2nd of February, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 3, 2010



Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE A. JONES,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS....1

TABLE OF AUTHORITIES....2

STATEMENT OF ISSUE ON APPEAL....3

STATEMENT OF THE CASE....4

ARGUMENT....5

CONCLUSION....8

PETITION TO BE RELIEVED AS COUNSEL....9

TABLE OF AUTHORITIES

Cases

Jackson v. Virginia, 443 U.S. 307 (1979) 6

State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999) 6

State v. Marshall, 273 S.C. 552, 257 S.E.2d 740 (1979) 6

State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008) 7

Statutes

S.C. Code Ann. § 16-3-651(h) (2003) 6

S.C. Code Ann. § 16-3-655 (2006) 5

Constitutional Provisions

U.S. Const. amend. XIV 7

STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the charge of first degree criminal sexual conduct with a minor as the state failed to prove sexual battery because the prosecutrix stated that her head was covered with a pillow during the alleged sexual act and that she did not see anything, but only "felt something" in connection with her genitals whereas sexual battery requires an actual intrusion into one's genital opening(s)?

STATEMENT OF THE CASE

Appellant George Albert Jones was convicted of first degree criminal sexual conduct with a minor and lewd act upon a minor during the February 2010 term of the Edgefield County General Sessions Court before the Honorable William P. Keesley, Judge. Appellant was sentenced to imprisonment for an aggregate period of thirty years.

Appellant appealed his convictions and sentences. This brief follows.

ARGUMENT

The lower court erred in denying appellant's motion for a directed verdict of acquittal on the charge of first degree criminal sexual conduct with a minor as the state failed to prove sexual battery because the prosecutrix stated that her head was covered with a pillow during the alleged sexual act and that she did not see anything, but only "felt something" in connection with her genitals whereas sexual battery requires an actual intrusion into one's genital opening(s).

The state alleged that appellant engaged in sexual misconduct with the prosecutrix from April 2007 through June 2008. At trial, the prosecutrix testified that when she was nine years old, her father, who is appellant, had her lie on the couch, and then put a pillow over head. The prosecutrix testified that she was told to pull down her pants and thereafter, she felt something in her "wrong spot." The prosecutrix testified that she also felt appellant rub the outside of her private spot. R. 137, l. 4 – p. 139, l. 25. Later, in April 2008, the prosecutrix tested positive for genital herpes. R. 119, l. 1 – p. 120, l. 5. Appellant testified at trial and denied committing any sexual act on his daughter. R. 391, l. 21 – p. 392, l. 15. Medical tests indicated that appellant tested positive for herpes. R. 192, l. 16 – p. 195, l. 5.

At the close of the state's case, defense counsel motioned for a directed verdict of acquittal on the criminal sexual conduct charge on the ground that "there was no penetration ...as to the incidents as described by the alleged victim." R. 339, l. 13 – p. 340, l. 10. The court denied the directed verdict motion. R. 340, l. 14 – p. 341, l. 11.

One is guilty of first degree criminal sexual conduct with a minor if the actor engages in sexual battery with a victim who is less than eleven years old. S.C. Code Ann. § 16-3-655 (2006). Sexual battery is defined as "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." S.C. Code Ann. § 16-3-651(h) (2003). See, State v. Marshall, 273 S.C. 552, 257 S.E.2d 740 (1979).

In the case at bar, it is clear that we are dealing with the limited senses and interpretations of a nine year old girl. Certainly, a child of this age is unable to describe the feel of vaginal entry. This is a subject too mature for a child to assess. Therefore, it would have been imperative for the prosecutrix to actually see and visualize the perpetrator using himself or an object to effect any genital intrusion upon her. The prosecutrix did not have this advantage of sight because her head was covered with a pillow at the occurrence of the alleged sexual act. In other words, the prosecutrix needed to see the actor perform these acts in order to corroborate what she believed she felt what was being done to her body. Therefore, the state failed to prove sexual battery, which in turn meant that the state failed to prove the charge of first degree criminal sexual conduct with a minor in the case against appellant. For example, see State v. Marshall, supra, where the court held that feeling on body parts would not constitute sexual battery. See also, State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999), where the Court held that fondling and/or inappropriate private touching would not constitute sexual battery.

Due process requires the state to prove beyond a reasonable doubt all of the elements of the offense charged in order to obtain a conviction. Jackson v. Virginia, 443 U.S. 307 (1979). A case should only be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2008). A trial judge should grant a directed verdict

motion when the evidence merely raises a suspicion that the accused is guilty, as suspicion implies a belief or opinion as to guilt that is based on facts and circumstances that do not amount to proof. State v. Moore, supra. Here, the case hinged on the allegation via the prosecutrix's belief that sexual battery occurred despite the fact that she had a pillow over her head and could not see to corroborate whether sexual battery occurred. Also, regarding the issue of how the prosecutrix contracted herpes 2, note that the expert witness (medical doctor) testified that it is possible to obtain herpes 2 sans sexual contact. R. 252, l. 2 – p. 254, l. 3. In light of the state's insufficient evidence, the trial judge erred in denying appellant's motion for a directed verdict of acquittal on the offense of first degree criminal sexual conduct charged against him. The failure to grant this motion violated appellant's right to a fair trial guaranteed under the Fourteenth Amendment to the United States Constitution and article 1,§3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's criminal sexual conduct conviction should be reversed and his case remanded to the lower court for a new proceeding.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 16th day of May, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Edgefield County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE A. JONES,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for George A. Jones states:

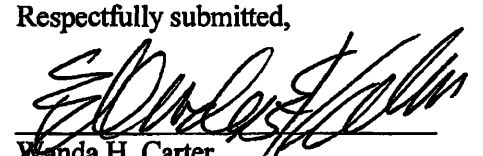
1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on February 5, 2010, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for George A. Jones.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

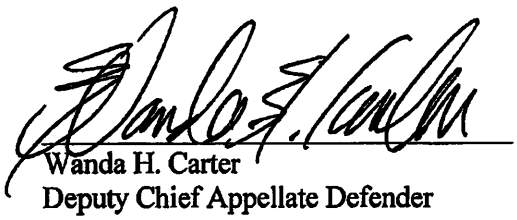
ATTORNEY FOR APPELLANT

This 16th day of May, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

May 16th, 2011



Wanda H. Carter
Deputy Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GEORGE A. JONES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on George A. Jones, #254442 at Broad River Correctional Institution, this 16th day of May, 2011.

Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 16th day of May, 2011.

(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

George Jones, Appellant.

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2012-UP-120
Submitted February 1, 2012 – Filed February 29, 2012

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter, of Columbia, and George Jones, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Salley W. Elliott, all of