

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

GARY HAMILTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000997

APPENDIX

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

GARY CLIFFTON HAMILTON,

DEFENDANT.

2012-GS-39-01527 AND
2014-GS-39-01485

JULY 28, 29, 30, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BRANDI HINTON, ESQUIRE
ATTORNEY FOR THE STATE

TEAL JOHNSON, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes			Accept
				Court Def.	Plaintiff		
99	Morris, David R	W	M			x	
113	Renfro, David S	W	M				x
33	Day, Linda W	W	F				x
94	Miller, Melissa P	W	F			x	
100	Newton, Jesse L	W	F				x
46	Farmer, Donnie A	W	M			x	
91	McDonald, Mary M	W	F				x
128	Simmons, Jimmy D	W	M		x		
39	Dowell, Daniel A	W	M			x	
80	Land, Aimee E	W	F				x
85	Malone, William B Jr	W	M				x
	Gravely, Karen S	W	F				x
13	Bolds, Ivan W	W	M				x
88	Matthews, Queeny M	B	F				x
43	Evette, Dan A	W	M		x		
108	Pittman, Susan D	W	F			x	
32	Crocker, Joseph D	W	M		x		
66	Herd, Andrea H	W	F			x	
118	Rookard, Carrie B	W	F			x	
68	Hickey, Debbie L	W	F				x
158	Wright, Ameer H	W	F			x	
111	Prince, Brook S	W	F				x
29	Clark, Danny W	W	M			x	
154	Williams, Nathan S	W	M		x		
24	Capps, Joseph C	W	M			x	

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26	Chappell, Marshia A	W	F				x
40	Durham, Steve E	W	M				x
156	Wimphrie, Barbara A	B	F				x

1 JULY 28, 2014

2 (WHEREUPON, Court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: This will be the case of State v.
5 Hamilton. Solicitor.

6 MS. HINTON: Yes, Your Honor, just logistically,
7 we do have some pretty lengthy pretrial motions.
8 Specifically the Jackson v. Denno will take a little bit
9 of time as we have five people that will be testifying as
10 to that. And then some other pretrial motions that I
11 believe we've pretty much informed Your Honor of our
12 responses and motions that we've filed. But I just wanted
13 to let you know, logistically, that before opening
14 statements we would prefer to go ahead and have those
15 heard.

16 THE COURT: All right. The -- I got a copy of a
17 CD or a DVD that wouldn't play, so I haven't been able to
18 see any of that. I have read your paperwork that I
19 received. Are there more, Ms. Johnson, that may come up
20 that -- y'all help me. If we get our jury selected, do we
21 need them to be back this afternoon or is it going to be
22 starting in the morning?

23 MS. HINTON: I -- and I don't mean to speak for
24 Ms. Johnson. I would prefer to go ahead and try to have
25 them back. I think that if we do a very quick lunch for

1 the attorneys that we could get openings and maybe one
2 witness in.

3 THE COURT: How about our pretrial motions?
4 When are we going to do those?

5 MS. HINTON: I would like -- once we select a
6 jury, I would like, if it's okay with Your Honor, to go
7 ahead and excuse them for lunch because it will probably
8 take, I would think, probably an hour and a half or so to
9 do our pretrial motions.

10 THE COURT: Okay. If they get out of here by
11 one o'clock for lunch then you're talking about, you're
12 talking about a twenty minute lunch, I think, Ms. Hinton,
13 then have them back here at three o'clock so everybody
14 keeps on the move. Ms. Johnson might have another view of
15 that.

16 MS. HINTON: She may. The only reason I ask
17 that, Your Honor, is our first witness is our child. And
18 if I could get her done today, I would prefer that.

19 THE COURT: Let's try to -- we'll try to do that
20 if we can, maybe even later. Do you think we can -- if we
21 come back at two o'clock, can we get all the pretrial
22 done? Well, maybe we could -- could we delay the Jackson
23 Denno until late today if you wanted -- we could do that
24 after the first witness.

25 MS. HINTON: I don't have a particular

1 opposition to that, Your Honor.

2 MS. JOHNSON: Judge, I would just prefer to go
3 forward with the Jackson v. Denno.

4 THE COURT: Okay. How about the witness that
5 was not going -- that had to leave, is that going to be an
6 issue? Is that witness going to be here?

7 MS. HINTON: I think the forensic interview in
8 general is an issue. I think we may have temporarily
9 resolved it. I don't know. That was something that we
10 wanted to address with you, as well. And then we have a
11 prior bad acts motion. He needs to be arraigned on the
12 direct presentment. And then Ms. Johnson had a motion to
13 disqualify the child as a witness.

14 THE COURT: All right. Okay.

15 MS. HINTON: I think that --

16 MS. JOHNSON: I will still have a double
17 jeopardy motion and just an issue about the competency of
18 my client that I would like to make the court aware of.

19 THE COURT: Okay. Has he been evaluated?

20 MS. JOHNSON: He has, Your Honor. And I would
21 ask the court to make this report a court's exhibit. But
22 I do want to make the court aware that I do have
23 reservations about his competency.

24 THE COURT: Maybe I can review that at lunch
25 time, as well.

1 (WHEREUPON, Court Exhibit Number 1 was marked for
2 identification.)

3 THE CLERK: The jury is outside waiting.

4 THE COURT: Yeah. We'll get them in.

5 Ms. Johnson, do you have any witnesses that may be

6 ---

7 MS. JOHNSON: No, Your Honor.

8 THE COURT: You've seen the state's list, I
9 guess?

10 MS. JOHNSON: The only witness may be my client.

11 THE COURT: Okay.

12 All right. So this is a criminal sexual conduct with
13 a minor first degree and a lewd act on a minor that we're
14 going with. I'll announce the case to the jury and then
15 we'll see where we stand for our lunch break.

16 Okay. Let's have our jury come in.

17 MS. JOHNSON: Judge, I'm under the impression I
18 get ten strikes as opposed ---

19 THE COURT: Right.

20 MS. JOHNSON: --- to the state's five?

21 THE COURT: Five and ten. We'll get one
22 alternate. How long ---

23 MS. HINTON: Your Honor, I'd feel more
24 comfortable with two. I'm anticipating maybe two and a
25 half days.

1 THE COURT: Two alternates?

2 MS. HINTON: Please.

3 THE COURT: Okay. Strikes will be one and two
4 on that.

5 MS. HINTON: Thank you.

6 MS. JOHNSON: Thank you, Your Honor.

7 (WHEREUPON, the jury panel entered the open court at
8 approximately 12:08 p.m.)

9 THE COURT: All right. Ladies and gentlemen, I
10 apologize for the delay. You somewhat know the protocol.
11 We've selected a jury already this morning. I need to ask
12 you some questions to determine your eligibility to serve
13 on the case that we're about to begin today and select a
14 jury from. You're a qualified juror, but these questions
15 will need to be asked of you to determine your suitability
16 to serve on the particular case that we're about to begin.

17 I have indictments that the State of South Carolina
18 brought against Mr. Gary Clifton Hamilton. Mr. Hamilton
19 has a charge of committing a lewd act upon a minor. That
20 charge, according to the indictment, occurred between
21 August the 1st, 2011 and August the 31st, 2011. And the
22 allegations state that Mr. Hamilton was over fourteen
23 years of age and lewdly and wilfully committed or
24 attempted to commit a lewd and lascivious act upon the
25 body or body parts of an individual, a child with the

1 initials [Minor], that child being under sixteen years of
2 age, with the intent of arousing, appealing to or
3 gratifying the passions or sexual desires of himself or of
4 the child.

5 There's also an indictment that charges between those
6 same dates of August 1 to August 31 of 2011 that Mr.
7 Hamilton committed a sexual battery upon that individual,
8 [Minor], who was less than eleven years of age, constituting
9 a criminal sexual conduct with a minor in the first
10 degree.

11 Mr. Hamilton has entered a plea of not guilty to
12 these charges. By placing that not guilty plea in, the
13 state has the full burden of proof beyond a reasonable
14 doubt to convince twelve fair and impartial juror that he
15 is guilty of these charges he's presumed innocent of,
16 obviously, now.

17 Ladies and gentlemen, is there any member of the jury
18 panel who has any prior knowledge about these particular
19 alleged incidents that happened in August of 2011; either
20 through news media, through living in the neighborhood and
21 hearing about it at the coffee shop, or any source
22 whatsoever. If you have prior knowledge about this
23 charge, would you please stand?

24 (No response.)

25 THE COURT: Thank you. There is no response.

1 Is there any member of the jury panel related by
2 blood or marriage to Mr. Gary Clifton Hamilton? If so
3 would you please stand?

4 (No response.)

5 THE COURT: Is there a member of the jury panel
6 who has a close business or a social, a personal
7 relationship with Mr. Hamilton? If so would you please
8 stand?

9 (No response.)

10 THE COURT: Thank you. There is no response.

11 Several witnesses may be called upon to testify in
12 this case, ladies and gentlemen. Among those witnesses
13 would be Shauna Galloway-Williams, Minor [REDACTED], Michele
14 Hendrix, Michael Collins, Julie Ann Hamilton, Brenda
15 Hamilton, Michael Lark, Suzann Owens, Christine Wilson,
16 Allison Wilson, Freddie Durham, Dr. Mary Fran Crosswell,
17 Brandy Peppers, Mary Jane Bryant, Sarah Davis, Gina Owens,
18 Khristy Justice. Is there any member of the jury panel
19 related by blood or marriage to any of these potential
20 witnesses? If so would you please stand?

21 (No response.)

22 THE COURT: Is there a member of the jury panel
23 who has a close business or a social, a personal
24 relationship with any of these potential witnesses? If so
25 would you please stand?

1 Yes, ma'am. Your name, please?

2 THE JUROR: Adison Johnson. I know Freddie
3 Durham.

4 THE COURT: You know?

5 THE JUROR: Freddie Durham.

6 THE COURT: You know Freddie Durham. Is that a
7 personal friend of yours?

8 THE JUROR: Yes.

9 THE COURT: Do you see that person frequently?

10 THE JUROR: No.

11 THE COURT: How often would you interact with
12 that individual?

13 THE JUROR: Probably a couple of months. Not
14 often.

15 THE COURT: Okay. Do you visit in the home and
16 ---

17 THE JUROR: No.

18 THE COURT: Would the fact that you know this
19 person affect your ability to be a fair juror if that
20 individual -- I think you said that was Freddie -- what
21 was the name of the individual again?

22 THE JUROR: Freddie Durham.

23 THE COURT: Freddie Durham. If that individual
24 testified, would that affect your ability to be a fair
25 juror? Would you believe that testimony over other

1 testimony? Or could you weigh that testimony with all the
2 evidence to reach a fair verdict in the case?

3 THE JUROR: Yes.

4 THE COURT: The fact that you know this person
5 would not interfere with your impartiality?

6 THE JUROR: No.

7 THE COURT: You believe you could be fair to
8 both sides?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you. You may be seated.

11 Is there any member of the jury panel a contributing
12 member of any organization whose primary concern is that
13 of promotion of law enforcement or victims' rights; such
14 as the Trooper's Association, Sheriff's Association, MADD,
15 SADD, PAR, CAV? If you are a contributing member of any
16 of those organizations, would you please stand?

17 (No response.)

18 THE COURT: Thank you. There is no response.

19 Is there any member of the jury panel expressed or formed
20 an opinion in any way about the facts in this case? If so
21 would you please stand?

22 (No response.)

23 THE COURT: Is there a member of the jury panel
24 aware of any bias or prejudice that would interfere with
25 your ability to be a fair juror in this case if you were

1 selected? If so would you please stand?

2 (No response.)

3 THE COURT: Is there any member of the jury
4 panel or a member of your immediate family involved in law
5 enforcement in any way? If so would you please stand? If
6 you or a member of your immediate family is involved in
7 law enforcement?

8 All right. Let me begin over here. If you would
9 state your name for the record, please.

10 THE JUROR: Andrea Herd, and my dad is retired
11 from the Pickens County Sheriff's Office.

12 THE COURT: All right. If you would remain
13 standing.

14 Yes, sir.

15 THE JUROR: Daniel Dowell. My brother-in-law is
16 a Pickens County police officer.

17 THE COURT: If you would remain standing.

18 Yes, ma'am.

19 THE JUROR: Peggy Brown. My husband is an
20 investigator with the Greenville County Sheriff's Office.

21 THE COURT: Okay. Thank you. If you'll remain
22 standing.

23 Yes, ma'am.

24 THE JUROR: Kathy Womack. My husband is a
25 reserve officer with the Pickens County Sheriff's Office.

1 THE COURT: If you would remain standing.

2 Yes, sir, your name, please.

3 THE JUROR: Avery Anders. My son-in-law is a
4 lawyer.

5 THE COURT: Your son-in-law is a lawyer. Okay.

6 Those of you who are standing, the fact that you have
7 family members in law enforcement, presumably law
8 enforcement personnel will be testifying in this case. If
9 you believe that because of that relationship you have
10 with family members that are in law enforcement, or a
11 lawyer in one case, would affect your ability to be a fair
12 juror, we have other jurors we can select for this case.
13 For those of you who are standing, if you believe that you
14 could be fair to both sides and you could weigh all the
15 evidence impartially and decide the case on all the
16 evidence and the law that I give you and that alone, then
17 certainly you're qualified. If you believe you could
18 fulfill that requirement, I'm going to ask you to be
19 seated. If you have any hesitancy at all that you could
20 not be a fair juror, please remain standing.

21 Let the record reflect that all the jurors have been
22 seated.

23 Is there any member of the jury panel or a member of
24 your immediate family ever been charged, arrested or
25 accused of any sex crime against an individual or a crime

1 against a child or has any member of the jury panel or a
2 member of your immediate family ever been the victim of
3 that as a child or as an adult? If you were the victim of
4 a crime against you of a sexual nature or abusive nature
5 or if you or a family member have ever been accused of
6 that, would you please stand?

7 What I'd like to do is talk with you with the court
8 reporter and the lawyers here if you would just come to
9 the bar, please.

10 Yes, sir, if you would come forward. If you would
11 state your name, please, for the court reporter.

12 THE JUROR: Jeff Hogan.

13 THE COURT: Okay.

14 THE JUROR: My daughter and her two brothers,
15 particularly my daughter that I adopted and my daughter
16 was sexually molested when she nine and ten, by her
17 mother's boyfriend and we adopted her ---

18 THE COURT: Would that affect your ability to be
19 a juror in this case?

20 THE JUROR: I'm morally strong, but I will tell
21 you, I love kids. I'm on the board of directors for the
22 children's home over in Seneca. So I ---

23 THE COURT: Would that event that happened
24 affect your ability to be a fair juror?

25 THE JUROR: (No verbal response.)

1 THE COURT: I'll excuse you from the trial in
2 this case.

3 THE JUROR: That's a fair question. I'm sorry I
4 just ...

5 THE COURT: I appreciate your position. If
6 you'll just have a seat, you don't need to respond to any
7 other questions I ask. I don't want to put you in an
8 awkward position.

9 THE JUROR: Thank you.

10 THE COURT: If you'll just have a seat. Thank
11 you, Mr. Hogan.

12 Yes, sir, your name, please.

13 THE JUROR: Clay Watkins.

14 THE COURT: All right. Mr. Watkins.

15 THE JUROR: My cousin has been accused of
16 molesting his daughter.

17 THE COURT: Your cousin. How long ago did that
18 happen?

19 THE JUROR: You mean the accusations? About a
20 year ago.

21 THE COURT: Do you believe that would interfere
22 with your ability to be a fair juror in this case?

23 THE JUROR: It's iffy.

24 THE COURT: If it's iffy, let's let you wait for
25 another trial. If you'll have a seat, you don't need to

1 respond to any other questions I ask. You can have a
2 seat. Thank you, sir.

3 Yes, ma'am. If you would state your name for the
4 record, please.

5 THE JUROR: Samantha Rackley.

6 THE COURT: Yes, ma'am.

7 THE JUROR: I was molested.

8 THE COURT: You were a victim years ago?

9 THE JUROR: Yes.

10 THE COURT: Would that affect your ability to be
11 a fair juror in this case?

12 THE JUROR: No, sir.

13 THE COURT: You could be fair to both sides?

14 THE JUROR: Yes.

15 THE COURT: Thank you. You may be seated.

16 THE REPORTER: What was your name again?

17 THE JUROR: Samantha Rackley.

18 THE COURT: At this time I'm going to have the
19 attorneys to please stand and introduce themselves to the
20 jury. Solicitor.

21 MS. HINTON: Thank you, Your Honor.

22 Good afternoon. My name is Brandi Hinton. Seated
23 with me is Courtney Landsverk. We are assistant
24 solicitors in Pickens County. Also seated with us is
25 Khristy Justice from the Central Police Department.

1 THE COURT: Ms. Johnson

2 MS. JOHNSON: My name is Teal Johnson. I'm an
3 attorney here in Pickens County. Seated next to me is my
4 law clerk, Daniel King. He's a third year law student in
5 Charleston. I'm proud to represent Gary Hamilton who is
6 seated at counsel table. He has a hard time getting up.
7 But he's here. Thank you.

8 THE COURT: Thank you.

9 Ladies and gentlemen of the jury, is there any member
10 of the jury panel related by blood or marriage to any of
11 these attorneys or members of their staff? If so would
12 you please stand?

13 (No response.)

14 THE COURT: Is there a member of the jury panel
15 who has a close business or a social, a personal
16 relationship with any of these attorneys or members of
17 their staff? If so would you please stand.

18 (No response.)

19 THE COURT: Thank you. There's no response.

20 Is there any member of the jury panel who has ever
21 been involved in any litigation in which either of these
22 attorneys represented you or represented the opposing
23 party? If so would you please stand?

24 (No response.)

25 THE COURT: Thank you. There's no response.

1 Mr. Gary Hamilton is in this courtroom today desiring
2 to have fair and impartial jurors to hear this case. The
3 state of South Carolina is here with the same desire. Not
4 only is that both parties' desire, but that's what they
5 deserve under our constitution, under the law of South
6 Carolina, to have twelve fair and impartial jurors to hear
7 this case and determine what the facts are. Is there any
8 member of the jury panel aware of any reason whatsoever
9 that in this particular case you believe you could not be
10 fair to both the state and to Mr. Hamilton, and render a
11 verdict that would speak the truth on the evidence that's
12 presented, the law that I give you and that alone? If for
13 any reason you believe in this case you could not be fair,
14 would you please stand?

15 (No response.)

16 THE COURT: Thank you. There is no response.

17 Any other questions from the state?

18 MS. HINTON: No, Your Honor.

19 THE COURT: From the defense?

20 MS. JOHNSON: No, Your Honor.

21 THE COURT: Let's empanel a jury.

22 THE CLERK: Again, if you will stand as I call
23 your name, please, so the attorneys can see you.

24 Juror number 99, David Morris.

25 What does the state say?

1 MS. HINTON: Please present Mr. Morris.

2 THE COURT: And the defense?

3 MS. JOHNSON: Please excuse the juror.

4 THE CLERK: Okay. If you would have a seat,
5 sir.

6 Juror number 113, David Renfro.

7 MS. HINTON: Please present Mr. Renfro.

8 THE CLERK: And the defense?

9 MS. JOHNSON: Please swear the juror.

10 THE CLERK: If you would come forward, please,
11 sir, and have a seat in the jury box.

12 Juror number 33, Linda Day.

13 What says the state?

14 MS. HINTON: Please present Mrs. Day.

15 THE CLERK: And the defense?

16 MS. JOHNSON: Please swear the juror.

17 THE CLERK: If you would come forward, please,
18 ma'am, and have a seat in the jury box.

19 Juror number 94, Melissa Miller.

20 What says the state?

21 MS. HINTON: Please present Mrs. Miller.

22 THE CLERK: And the defense?

23 MS. JOHNSON: Please excuse the juror.

24 THE CLERK: If you would have a seat, please,
25 ma'am.

1 Juror number 100, Lynn Newton.

2 What says the state?

3 MS. HINTON: Please present Mrs. Newton.

4 THE CLERK: And the defense?

5 MS. JOHNSON: Please swear the juror.

6 THE CLERK: If you would come forward, please,
7 and have a seat in the jury box.

8 Juror number 46, Donnie Farmer.

9 What says the state?

10 MS. HINTON: Please present Mr. Farmer.

11 THE CLERK: And the defense?

12 MS. JOHNSON: Please excuse the juror.

13 THE CLERK: If you would have a seat, please,
14 sir.

15 Juror number 91, Mary McDonald.

16 What says the state?

17 MS. HINTON: Please present Mrs. McDonald.

18 THE CLERK: And the defense?

19 MS. JOHNSON: Please swear the juror.

20 THE CLERK: If you would please come forward and
21 have a seat in the jury box.

22 Juror number 128, Jimmy Simmons.

23 What says the state?

24 MS. HINTON: Please excuse Mr. Simmons.

25 THE CLERK: If you would return to your seat,

1 please, sir.

2 Juror number 39, Daniel Dowell.

3 What says the state?

4 MS. HINTON: Please present Mr. Dowell.

5 THE CLERK: And the defense?

6 MS. JOHNSON: Please excuse the juror.

7 THE CLERK: If you would return to your seat,
8 please, sir.

9 Juror number 80, Aimee Land.

10 What says the state?

11 MS. HINTON: Please present Mrs. Land.

12 THE CLERK: And the defense?

13 MS. JOHNSON: Please swear the juror.

14 THE CLERK: If you would come forward, please,
15 ma'am, and have a seat in the jury box.

16 Juror number 85, William Malone.

17 What says the state?

18 MS. HINTON: Please present Mr. Malone.

19 THE CLERK: And the defense?

20 MS. JOHNSON: Please swear the juror.

21 THE CLERK: If you would come forward, please,
22 sir, and have a seat in the jury box.

23 Karen Gravely.

24 What says the state?

25 MS. HINTON: Please present Ms. Gravely.

1 THE CLERK: And the defense?

2 MS. JOHNSON: Please swear the juror.

3 THE CLERK: If you would come forward, please,
4 ma'am, and have a seat in the jury box.

5 Juror number 13, Ivan Bolds.

6 What says the state?

7 MS. HINTON: Please present Mr. Bolds.

8 THE CLERK: And the defense?

9 MS. JOHNSON: Please swear the juror.

10 THE CLERK: If you would come forward, please,
11 sir, and have a seat in the jury box.

12 Juror number 88, Queeny M. Matthews.

13 What says the state?

14 MS. HINTON: Please present Mrs. Matthews.

15 THE CLERK: And the defense?

16 MS. JOHNSON: Please swear the juror.

17 THE CLERK: If you would come forward, please,
18 ma'am, and have a seat in the jury box.

19 Juror number 43, Dan Evette.

20 What says the state?

21 MS. HINTON: Please excuse Mr. Evette.

22 THE CLERK: If you would return to your seat,
23 please, sir.

24 Juror number 108, Susan Pittman.

25 What says the state?

1 MS. HINTON: Please present Mrs. Pittman.

2 THE CLERK: And the defense?

3 MS. JOHNSON: Please excuse the juror.

4 THE CLERK: If you would return to your seat,

5 please, ma'am.

6 Juror number 32, Joseph Crocker.

7 What says the state?

8 MS. HINTON: Please excuse Mr. Crocker.

9 THE CLERK: Okay. If you would return to your

10 seat, please, sir.

11 Juror number 66, Andrea Herd.

12 What says the state?

13 MS. HINTON: Please present Mrs. Herd.

14 THE CLERK: And the defense?

15 MS. JOHNSON: Please excuse the juror.

16 THE CLERK: If you would return to your seat,

17 please, ma'am.

18 Juror number 118, Carrie Rookard.

19 What says the state?

20 MS. HINTON: Please present Mrs. Rookard.

21 THE CLERK: And the defense?

22 MS. JOHNSON: Can you repeat that number?

23 THE CLERK: Juror number 118.

24 MS. JOHNSON: Please excuse the juror.

25 THE CLERK: If you would return to your seat,

1 please, ma'am.

2 Juror number 68, Debbie Hickey.

3 What says the state?

4 MS. HINTON: Please present Mrs. Hickey.

5 THE CLERK: And the defense?

6 MS. JOHNSON: Please swear the juror.

7 THE CLERK: If you would come forward, please,
8 ma'am, and have a seat in the jury box.

9 Juror number 158, Ameer Wright.

10 What says the state?

11 MS. HINTON: Please present Mrs. Wright.

12 THE CLERK: And the defense?

13 MS. JOHNSON: Please excuse the juror.

14 THE CLERK: If you would return to your seat,
15 please, ma'am.

16 Juror number 111, Brook Prince.

17 What says the state?

18 MS. HINTON: Please present Mrs. Prince.

19 THE CLERK: And the defense?

20 MS. JOHNSON: Please swear the juror.

21 THE CLERK: If you would come forward, please,
22 ma'am, and have a seat in the jury box.

23 Juror number 29, Danny Clark.

24 What says the state?

25 MS. HINTON: Please present Mr. Clark.

1 THE CLERK: And the defense?

2 MS. JOHNSON: Please excuse the juror.

3 THE CLERK: If you would return to your seat,
4 please, sir.

5 Juror number 154, Nathan Williams.

6 What says the state?

7 MS. HINTON: Please excuse Mr. Williams.

8 THE CLERK: If you would return to your seat,
9 please, sir.

10 Juror number 24, Joseph Capps.

11 What says the state?

12 MS. HINTON: Please present Mr. Capps.

13 THE CLERK: And the defense?

14 MS. JOHNSON: Please excuse the juror.

15 THE CLERK: If you would return to your seat,
16 please, sir.

17 Juror number 26, Marshia Chappell.

18 What says the state?

19 MS. HINTON: Please present Mrs. Chappell.

20 THE CLERK: And the defense?

21 MS. JOHNSON: Please swear the juror.

22 THE CLERK: If you would come forward, please,
23 ma'am, and have a seat in the jury box.

24 This will be for the first alternate.

25 Juror number 40, Steve Durham.

1 What says the state?

2 MS. HINTON: Please present Mr. Durham.

3 THE CLERK: And the defense?

4 MS. JOHNSON: Please swear the juror.

5 THE CLERK: If you would come forward, please,

6 sir, and have a seat in the jury box.

7 Juror number 156, Barbara Wimphrie.

8 What says the state?

9 MS. HINTON: Please present Ms. Wimphrie.

10 THE CLERK: And the defense?

11 MS. JOHNSON: Please swear the juror.

12 THE CLERK: If you would come forward, please,

13 ma'am, and have a seat in the jury box.

14 THE COURT: Any matters we need to take care of

15 as far as the selection of the jury in this case? From

16 the state?

17 MS. HINTON: No, Your Honor.

18 THE COURT: From the defense?

19 MS. JOHNSON: No, Your Honor.

20 THE COURT: Ladies and gentlemen who were not

21 selected for the trial of this case, I can excuse you at

22 this time. You may be excused for the rest of the day. I

23 need you to call back after six o'clock on the phone --

24 telephone number you've been given. There will be

25 instructions for you there as to whether or not you need

1 to -- when you need to report back or when you need to
2 call back in. Thank you very much for your patience with
3 us today. You're excused at this time.

4 Everyone else, please remain seated while the jury is
5 excused.

6 (WHEREUPON, the jury panel exited the open court at
7 approximately 12:45 p.m.)

8 THE COURT: Ladies and gentlemen, you've seen
9 the process by which you were selected to be the jurors on
10 this case. These attorneys, parties, feel like you're the
11 best twelve to hear the case to determine what the facts
12 are. You've notice we have two alternate jurors. They're
13 as much a part of the jury as anyone else. Sometimes in
14 the course of a trial, this may take more than one day,
15 and certainly won't take till the end of the week, but
16 emergencies come up. If an illness befalls one of you, we
17 certainly hope not, but if that were to happen, rather
18 than starting the process all over again, the alternates,
19 the last two selected, will step into the shoes of one of
20 you that may have that emergency come in your life. So
21 they'll be operating as jurors, be listening as all other
22 jurors do, and every bit a part of the jury panel as
23 anyone else.

24 It's obvious that you're here at a sacrifice, and
25 we're going to do everything within our power to keep the

1 trial running in a smooth manner. You may have some
2 apprehension about being here. You may have never been in
3 a courthouse before, never been in a courtroom, never
4 talked to a lawyer, and now you've been selected to be the
5 judge of the facts. You may find that to be a little
6 disconcerting to you about being a judge, thinking to
7 yourself, I've never had any legal dealings at all, never
8 been to law school. Let me assure you, ladies and
9 gentlemen, that you're bringing into this courtroom every
10 skill you're going to need to be a fact finder, to be a
11 judge of the facts. Because what you bring into this
12 courtroom are the everyday experiences that you've enjoyed
13 in the workforce and in the social activities, in the
14 home. You're bringing into this courtroom the good
15 commonsense with which you've been blessed. And that's
16 what you're going to be utilizing as you listen to the
17 case, you observe what takes place here in the courtroom.
18 And I'm confident that you'll have every skill you need to
19 be a fact finder, to be the judge of the facts.

20 I'll be judging the law. I'm referred to as the
21 judge wearing the job. My duty is to be the judge of the
22 law. Your duty is to be the judge of the facts to
23 determine just what the facts are.

24 Part of my job is to not only conduct the trial but
25 rule on the admissibility of evidence that's offered

1 during the course of the trial. Sometimes there may be an
2 objection made. Some trials there are no objections. But
3 if there is an objection made, my job is to rule on that
4 objection. Frequently I can say sustained or overruled
5 and we move on to the next question or exhibit.
6 Sometimes, as you may have already observed, I'll be
7 huddling with the attorneys when they come up here to the
8 bench and we can whisper and resolve an objection or a
9 scheduling issue or whatever it may be. Sometimes, even
10 in the course of a trial, there's stages in which a legal
11 matter comes up. There may be one that arises during the
12 course of the trial. And when those matters do come up,
13 often it might be necessary for you to go back to your
14 jury room while I resolve that legal matter. It may be
15 that I have to hear evidence that wouldn't even be
16 properly presented to a jury. It may be hearing argument
17 of counsel or searching law book, reviewing testimony.
18 Whatever it may be, I want to make the very best decision
19 I possibly can as the judge of the law. Sometimes it
20 requires me to hear those matters that wouldn't properly
21 be presented to a jury. While you're a judge, just like I
22 am, as I've instructed you, when all the evidence is in
23 and you have an opportunity to review that evidence and
24 apply the law that I've given you to that back in your
25 jury room doing your deliberations, even though I'm a

1 fellow judge like you, I won't be back there participating
2 because that's not my prerogative. Yours is to be the
3 fact finder, not mine. So we do have different roles to
4 fulfil.

5 Trials take place in stages. The lawyers may have an
6 opening statement to you to give you an overview of what
7 you can expect to happen. Then there will be testimony
8 given from the witness stand. There may be exhibits
9 introduced of the examination and cross examination by the
10 witnesses. When all the evidence is, they'll have a
11 chance to address you in a closing statement again. Then
12 I'll instruct you on the law. Until that time you
13 shouldn't be discussing the case, one with another or let
14 anyone else discuss it with you. You're making a high
15 commitment to these parties and that is that you're going
16 to remain open to all the evidence coming in and it would
17 be improper for you to start speculating on the case to
18 analyze a witness after we take a break after a witness
19 has testified. You haven't heard everything that is to be
20 presented. You certainly haven't heard my instruction on
21 the law. So while the case is in progress, you shouldn't
22 be discussing it one with another, with family, with
23 friends. You may meet up with family at lunch time or
24 even have lunch with a fellow juror. It would be improper
25 to be speculating and discussing what you may be expecting

1 or even after hearing testimony, it would be improper to
2 be discussing the case with anyone. Your family and your
3 loved ones are obviously going to be curious. Did you get
4 picked for a trial? What's it about? Certainly you can
5 tell them the nature of the case, but it would be improper
6 for you to talk about any of the details of the case with
7 your family members.

8 When this case is concluded, a verdict has been
9 reached, you'll have an opportunity to share with your
10 loved ones, with your friends, your business associates,
11 your experience as a juror. But while the case is in
12 progress is not the time to be doing that. I repeat what
13 you may have overheard me tell the earlier jury that was
14 selected, once you're sitting in a jury box, the Chief
15 Justice of our Supreme Court has issued an order that's to
16 be related by trial judges such as I to those of you who
17 are serving on an actual case, not to do any kind of
18 discussion about the case with social media friends, with
19 any kind of independent research. You may hear words used
20 that you want to run and google the word or go to the
21 library and check on some archived newspapers or whatever.
22 That would be improper, ladies and gentlemen, for you to
23 do any kind of extracurricular matters to try to find what
24 the facts are. You're going to hear all the facts that
25 you need to make a decision from this courtroom and that's

1 what your obligation is to make that decision from what
2 takes place here and not from any extraneous sources
3 outside.

4 Part of my job is to not only rule upon the
5 admissibility of evidence, but to conduct the trial.
6 Normally we'll take breaks every hour, hour and a half,
7 depending on the length of the witness. If you need a
8 break and I haven't called for a break, please get my
9 attention. Your job is to be a good listener. If you're
10 uncomfortable in anyway and can't focus on what's being
11 presented, then you may need a break.

12 You've already had an interaction with your clerk of
13 court, Mr. Welborn. He'll be in the courtroom here; maybe
14 one of his associates. The bailiffs are around to serve
15 you. Over to your left, Mr. Evans is here and Mr. Grant
16 in the back. Mr. Carr is here, probably behind me. Any
17 of these bailiffs will certainly help you in anyway. The
18 young lady with her back to you is the court reporter, Ms.
19 Hanks, taking down everything that's said during the
20 course of the trial. She'll be marking any exhibits and
21 keeping up with matters of that nature. She'll certainly
22 be of assistance to you if you need it. Hudson Smith is
23 the young man seated to my left, a law school graduate,
24 admitting to the South Carolina bar, my law clerk and a
25 valuable asset. You may see him coming and going as the

1 trial takes place to take care of some matters back at the
2 office. Any of these folks will certainly assist you in
3 any way.

4 Sometimes in our comings and goings, at lunch time or
5 in the evening or morning, you may see one of the lawyers
6 in the courthouse elevator or the stairwell or coming in
7 the front door. If either of these lawyers -- any of them
8 seem a little distant to you and high-hat you in some way,
9 perhaps even walk a different direction, please don't hold
10 that against them or their client. These lawyers have
11 been trained to avoid an appearance, even, of an
12 impropriety in any manner. And if they're seen talking to
13 a juror, even though it may be innocent conversation about
14 the weather or otherwise, it can be perceived wrong and
15 they want to avoid that. So if they seem to be distance,
16 I assure you they're friendly by nature, but during the
17 course of the trial they may seem a little distant.
18 Please don't hold that against them.

19 Makes me proud that you've accepted the
20 responsibility to serve as jurors on this case, to be fair
21 and impartial to both sides and ultimately render a
22 verdict that will be based on the law and the evidence and
23 speak the truth.

24 I understand from the lawyers that we do have some
25 legal matters before the trial starts that may need to be

1 taken care of. Hopefully we can get some exhibits marked
2 to help expedite the case. You've had a long morning
3 already. I'm going to give you an extended lunch break.
4 It normally won't be this long. But we're going to see if
5 we can work through some of these legal matters, get us a
6 bite to eat ourselves and hopefully be ready to start back
7 in just a little while. I'm going to ask you to be back
8 and ready to proceed with the opening statements at three
9 fifteen. That gives you a little over two hours to enjoy
10 the city of Pickens. We're going to be working here in
11 the courtroom for a while, then get us a bite to eat and
12 take care of some of those matters. I try to estimate as
13 best I can. Hopefully that little over two hours will
14 accommodate us to get those done. If we need a more
15 extended time, I'll certainly let you know. If you'll
16 come back and just report to your jury room, you can get
17 to know each other then. Mr. Evans will show you where
18 you are to report back.

19 As you come and go, some of you may want a front row
20 seat. Some of you may want a back row seat. You may want
21 to sit on the left side or the right side. The last two
22 jurors who were picked are the alternates. They'll be --
23 once the trial begins, they'll be occupying the two seats
24 on the back here, in no particular order. They can use
25 those two seats. As I've said, they are part of the jury,

1 as well. There's also a designated seat for the
2 foreperson. The foreperson is the -- often you may find
3 later as we participate when you're back there in your
4 jury room and may need some -- a question to ask, there
5 may be someone who has a sick child that needs to call and
6 check on or may need the thermostat adjusted if it can be
7 done or a cup of coffee, whatever it may be. As jurors,
8 we need to have sort of a liaison with the court and with
9 the clerk's office, a person who can write out the need
10 that any juror has to ask the clerk's office or if it's a
11 legal question for me, to write that out. Oftentimes when
12 trials are presented there might be some photographs or a
13 document that's presented to the jury that may be shown on
14 a screen, it may be passed around. One of the lawyers can
15 show that to the foreperson, let he or she look at it,
16 pass it around. Ultimately what the foreperson is going
17 to do is when all the evidence is in and the case is ready
18 for your disposition, what the foreperson will do is
19 facilitate that discussion, make sure every member of the
20 jury has his or her input into their view of the facts, on
21 behalf of that jury fill out the verdict form that will be
22 provided at the end of the trial. The foreperson will
23 occupy the seat on the front row closest to the witness
24 stand here. I'm going to appoint Ms. Newton to be the
25 foreperson. It doesn't mean she has anymore vote than

1 anyone else. But we need to have that liaison with the
2 clerk's office and with the court, so she'll fulfill that
3 role as the foreperson. The alternates will sit in their
4 seats. The rest of you, as I say, can come and go in
5 whichever seat you like. You may get accustomed to a seat
6 and want that one. Hopefully the jury can agree on, even
7 now, where they'll sit and not have an issue here. I'm
8 sure we won't.

9 We're going to take a lunch break. If you'll go with
10 Mr. Evans now. Report back at three fifteen. We'll be
11 ready to proceed at that time.

12 (WHEREUPON, the jury exited the open court at
13 approximately 1:00 p.m.)

14 THE BAILIFF: One of the jurors has a question.

15 THE COURT: Let me take care of this.

16 Let me get a little bearing on what we've got to do
17 and whether we might take a lunch break first. But we
18 have a Jackson v. Denno hearing that has four or five --
19 five witnesses?

20 MS. HINTON: Yes, Your Honor.

21 THE COURT: Is there an oral or a written
22 statement?

23 MS. HINTON: It's both.

24 THE COURT: Two separate events, times or is it
25 all at one time?

1 MS. HINTON: It's going to be three separate
2 times.

3 THE COURT: All right. So we've got three
4 statements?

5 MS. HINTON: Yes, sir. Both a combination of
6 oral and written.

7 THE COURT: Okay. Then we have the issue of the
8 Lyle matters for the state. We have the issue of the
9 capability of the witness to testify. I assume that's
10 still before us. I don't have -- Ms. Johnson, I don't
11 have a motion from you. I guess it was filed. But I do
12 have the response, a the copy of that I can get during the
13 break. I need to review the evaluation report. I
14 probably can do that, I think, first. We'll probably take
15 our break now.

16 Ms. Johnson, you mentioned some other matters. I
17 can't remember; I didn't write them down.

18 MS. JOHNSON: Your Honor, I have a double
19 jeopardy.

20 THE COURT: Double jeopardy was one. And ---

21 MS. JOHNSON: And depending on the video issue,
22 if this video issue is not resolved, we might have ---

23 THE COURT: Okay. How long is the video?

24 MS. HINTON: It's about forty minutes, Your
25 Honor.

1 THE COURT: Okay. So I need to watch that
2 sometime, too.

3 MS. HINTON: And Judge, ---

4 THE COURT: Do I need to see that?

5 MS. HINTON: I'm happy to provide you with the
6 copy that we intend to introduce. I did watch the one
7 that I provided to you, so it maybe -- some provide -- I
8 sorry, require a specific program to view. So I don't ---

9 THE COURT: I've got it on my home computer and
10 I've got it on my office computer, and neither one of them
11 would show anything, so ...

12 MS. HINTON: Okay. Well, I'm happy to provide
13 you with this copy. And in addition to that, we need to
14 do an arraignment on his lewd act charge.

15 THE COURT: Right. We'll do that now. Is the
16 video, the forty minutes video, is it redacted in any
17 manner?

18 MS. HINTON: It is not redacted, Your Honor. I
19 think a lot of that depends on the prior bad act motion as
20 there are some discussions of that.

21 THE COURT: Okay.

22 MS. HINTON: So I don't know if you want to take
23 the prior bad act up first.

24 THE COURT: I thought we'd do them at one time.

25 MS. HINTON: That's fine.

1 THE COURT: Anything else, Ms. Johnson?

2 MS. JOHNSON: I would just ask that the state
3 sequester all their witnesses. I do have just a minor in
4 limine motion to keep out any testimony regarding this
5 child's sister. I don't ---

6 THE COURT: That won't happen ---

7 MS. HINTON: I mean, we'll reference that she
8 has a sister, but that's it. Nothing of any allegations.

9 THE COURT: That she has a sister would be all
10 right?

11 MS. JOHNSON: And that's fine. She just was --
12 she had a forensic exam. I just don't want any of that to
13 come in.

14 THE COURT: Okay. All right. That'll be out.
15 Witnesses will be sequestered except the chief prosecuting
16 witnesses. Of course, any of the victims are allowed to
17 be here under the statute.

18 All right. Which case was direct presentment, the
19 ---

20 MS. HINTON: It was the lewd act, Your Honor,
21 and I have a certified copy of the indictment for Ms.
22 Johnson and also for the court.

23 THE COURT: All right. Ms. Johnson, you've gone
24 over this charge with your client?

25 MS. JOHNSON: To the best of my ability, Your

1 Honor.

2 THE COURT: Okay. You believe he's aware that
3 -- when were you put on notice of this charge?

4 MS. JOHNSON: It's been sometime within the past
5 six weeks I was put on notice that this case would be
6 called in mid-June and, I believe, two weeks thereafter --
7 I'm not positive about the dates -- I was apprised of this
8 arraignment or this direct presentment.

9 Your Honor, I tried to explain to my client the best
10 I can.

11 THE COURT: Do you have any -- are you prepared
12 yourself to go forward on that?

13 MS. JOHNSON: I am, Your Honor, and this kind of
14 goes to my double jeopardy argument, which I would like to
15 address to the court.

16 THE COURT: Okay. All right.

17 So Mr. Hamilton, you can remain seated. Do you
18 understand you're being charged with the criminal sexual
19 conduct with a minor in the first degree and then also
20 with lewd act?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Lewd act on a minor. Have you had a
23 chance to talk with your attorney about this?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you ready to proceed on both of

1 those charges today? You're pleading not guilty to them?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir.

4 All right. Let me -- I don't want to -- I'll let my
5 law clerk see the video because I guess we need to do
6 that. So y'all be ready to start back about ten minutes
7 till by that clock? I don't know how that clock compares
8 with others. Ten till two, you'll be ready to reassemble
9 then?

10 MS. HINTON: That's fine, Your Honor.

11 MS. JOHNSON: Yes, Your Honor.

12 THE COURT: I'll have a chance, hopefully, to
13 watch the video in that time. We'll see if we can't get
14 the computer to work with that one. I don't know why the
15 other one didn't work. It could be that I was not doing
16 it right. I was going to give you the one that you
17 presented earlier to see if you could get it to work.

18 MS. HINTON: And I'll tell you, Judge, I do have
19 to go into the actual computer setting and open it up
20 under the D drive to make it work on my computer, as well,
21 so that may have been the whole problem.

22 THE COURT: Oh, that might be why I couldn't get
23 it to work.

24 MS. HINTON: Could be.

25 THE COURT: All right. Let me give you that one

1 back.

2 MS. HINTON: Sure.

3 THE COURT: If it's the same thing, if you could
4 bring me one or get it to me.

5 MS. HINTON: And that's the one we would be
6 introducing, Your Honor.

7 THE COURT: Okay. Right here?

8 MS. HINTON: Yes, Your Honor.

9 THE COURT: Okay.

10 MS. JOHNSON: Your Honor, and if I may, this is
11 the motion I filed. And I apologize that it's got hole
12 punches in it.

13 THE COURT: Have you got a copy of it?

14 MS. JOHNSON: I do, Your Honor.

15 THE COURT: Okay.

16 MS. JOHNSON: And I just would ask to be heard
17 on that.

18 THE COURT: Okay. We'll see if we can get all
19 this done when we get back.

20 MS. JOHNSON: Thank you, Your Honor.

21 THE COURT: Be back about ten till.

22 (WHEREUPON, the court stood at recess for a lunch
23 break.)

24 (WHEREUPON, Court Exhibit Numbers 2 and 3 were marked
25 for identification.)

1 (WHEREUPON, State Exhibit Numbers 1 through 8 were
2 marked for identification.)

3 THE COURT: All right. I've looked at the
4 background information about your client finding made by
5 the evaluation. Unless I see something that leads me to
6 the contrary conclusion, the brief interaction I had with
7 your client, I believe that he would be competent under
8 State v. Blair to proceed in this case.

9 All right. We have, Ms. Johnson, you indicated a
10 double jeopardy argument with the interview or with the
11 Jackson Denno?

12 MS. JOHNSON: It's the lewd act and CSC. And
13 briefly, Your Honor, ---

14 THE COURT: Okay.

15 MS. JOHNSON: --- I do object to the
16 arraignment, the process that we just went through. I
17 think it's totally wrong, inherently wrong, what the
18 solicitor's office did. And you know, I realize I am
19 prepared, but I still would ask for a continuance based on
20 the fact that, you know, they indict somebody last week
21 and then we've got trial this week. I just think there's
22 something wrong about that. I don't have any law to
23 support that, Your Honor, but it's just wrong.

24 THE COURT: Why was this directly presented?
25 Why was it not presented when the other charge was, Ms.

1 Hinton?

2 MS. HINTON: Your Honor, I cannot tell you why a
3 warrant was not issued for it at the time. However, I
4 will tell you in conversations with the victim and in
5 reviewing the file with the defendant, it became evident
6 that that was an appropriate charge. I do have some case
7 law supporting the fact that we can go forward on both
8 charges if Your Honor would like me to cite that.

9 And as far as notice, you know, this was -- over a
10 month ago, I did provide Ms. Johnson with the waiver, a
11 copy of it, so that she would be on notice of it, and of
12 the allegations. I don't see any prejudice to them.
13 We're not talking about any other incident other than the
14 one that we're already here for. And frankly, his own
15 confession is that he rubbed on her vagina for two
16 minutes. So as far as any prejudice, I just don't see
17 that as being a basis for not being able to go forward.
18 But again, I do have some case law where that we can go
19 forward on two offenses if Your Honor would like to hear
20 that.

21 THE COURT: Have you shared that with Ms.
22 Johnson?

23 MS. HINTON: I haven't, Your Honor, because I
24 just got it over lunch. However, I'm happy to cite it to
25 you and then provide her with a copy of the case.

1 THE COURT: All right.

2 MS. JOHNSON: And Judge, if I may have a chance
3 to respond.

4 THE COURT: Yes, ma'am.

5 MS. JOHNSON: We're certainly prejudiced here.
6 This is punitive. We go from looking at twenty-five years
7 to looking at forty years, a minimum of forty years. You
8 know, she can provide case law, but it's just wrong. You
9 know, it goes into my double jeopardy argument. She knew
10 about this two years ago, and then I get indicted a month
11 -- or I'm told I'm going to be indicted. This is a very
12 serious case. We have spent numerous hours preparing for
13 this defense. You know, I just think it's unacceptable.

14 THE COURT: I'll be glad to hear your cases, Ms.
15 Hinton.

16 MS. HINTON: Thank you, Your Honor. The first
17 one will be -- I know I'm going to butcher this --
18 *Gavieres v. United States*, G-A-V-I-E-R-E-S, 220-US-338 at
19 342. It says the applicable rule is that where the same
20 act or transaction constitutes a violation of two distinct
21 statutory provisions, the test to be applied to determine
22 whether there are two offenses or only one is whether each
23 provision requires proof of a fact which the other does
24 not. It goes on to quote that a single act may be an
25 offense against two statutes. And if each statute

1 requires proof of an additional fact, which the other does
2 not, an acquittal or conviction under either statute does
3 not exempt the defendant from prosecution and punishment
4 under the other.

5 That was actually, I believe, Your Honor, a case
6 where they actually tried him on one charge and then came
7 back later and tried him on another charge. So I think
8 that there are separate and distinct elements in this
9 case. Obviously one requires penetration, the other one
10 does not. I think that falls within the case law, Your
11 Honor, and so we would ask to be allowed to go forward on
12 both.

13 MS. JOHNSON: Your Honor, and if I may respond
14 ---

15 THE COURT: Yes, ma'am.

16 MS. JOHNSON: --- at the appropriate time.

17 THE COURT: Be glad to hear from you, Ms.
18 Johnson.

19 MS. JOHNSON: Well, I mean, let me get the
20 issues straight. We're objecting based on the prejudice
21 -- or based on the notice. We were noticed thirty days
22 ago that we were going to indicted. And also when this
23 happened over two or three years ago. But also we're
24 objecting to this on a double jeopardy grounds. Your
25 Honor, the landmark case is actually Blockburger v. United

1 States, 284 U.S. 299. The applicable rule is that where
2 the same act or transaction constitutes a violation of two
3 distinct statutory provisions, the test is to be applied
4 whether there are two offenses or only one. And we summed
5 it up, let's see -- you know, just going over the
6 elements, this case has been highly criticized, but there
7 are no U.S. Supreme Court cases that overrule this case.
8 Some prefer to look at the test as the same elements test,
9 but Blockburger says it's a same facts same. And that's
10 the issue; same facts.¹ Not the same elements, but same
11 facts. And I'm going to go into the same facts.

12 I would direct the court's attention to South
13 Carolina -- excuse me -- State v. Norton, which is a -- I
14 guess litigated the issue of lewd act and CSC with a
15 minor, but here the court found that two statutes had
16 different elements and therefore do not violate double
17 jeopardy. And I think that's what Ms. Hinton is going to
18 be hanging her hat on. But you know, we believe in that
19 case the court ignores the rule at reason, the crime of
20 first degree criminal sexual conduct committed with a
21 minor requires that a sexual battery. Battery; touching.
22 Sexual battery, as defined, requires intrusion, however
23 slight, of any person -- of any part of a person's body
24 into the genital or anal openings of another person's
25 body. Criminal sexual conduct with a minor further

1 requires that the victim be less than eleven years of age.
2 The crime of committing a lewd act on a minor, on the
3 other hand, does not require sexual battery; rather the
4 person committing the crime must be act with the intent of
5 appealing to the lust or passion of himself or the child.
6 The crime refers to victims under the age of fourteen.
7 And I will discuss that. This holding is incorrect
8 because the court failed to look at the underlying facts
9 required by the two statutes. And the facts can be --
10 facts require lewd or lascivious act upon the body of a
11 child under sixteen with the intent to arouse, appeal or
12 gratify the lust, passions or sexual desires of a child or
13 actor. And then a sexual battery; sexual act or
14 intrusion, however slight, into the genital or anal
15 openings.

16 Okay. So the comparison. CSC with a minor versus
17 lewd act. You've got an intrusion versus a touch. An
18 intrusion is a touch. You've got genital or anal openings
19 versus the body; the body. You've got an eleven year old
20 versus a sixteen year old. You've got a sexual intrusion
21 or a sexual manner or nature. Breaking down the basic
22 facts for each element shows the inherently identical
23 facts required to prove both. It's kind of like one of
24 those circles that you did in high school where a CSC is
25 always going to be a lewd act. A lewd act isn't always

1 going to be a CSC. But you've got an intrusion is always
2 a touch. The genital and anal openings are part of the
3 body. An eleven year old is always younger than a sixteen
4 year old. And a sexual intrusion is an act in a sexual
5 manner or nature, which must always be done to arouse the
6 passions of or desires of the actor or child.

7 And so for those reasons, we would, I guess, make a
8 motion to elect or to have the state elect which charge
9 they would like to proceed on. But we think by allowing
10 the state to proceed on both charges, under the
11 circumstances, is a violation of the double jeopardy
12 clause of the constitution, Your Honor.

13 And for the record, I'm happy -- if the state wants
14 to go forward on a lewd act today, I'm happy with that.
15 But for them to have their cake and eat it, too, I think
16 that's wrong.

17 THE COURT: Are you disagreeing that lewd act is
18 not a lesser included offense of criminal sexual conduct
19 with a minor or do you believe that the court has been in
20 error in making that decision?

21 MS. JOHNSON: Judge, I don't think it ever was.
22 I mean, we believe it is. But, you know, I can't ---

23 THE COURT: You believe that lewd act is a
24 lesser included?

25 MS. JOHNSON: It should be. But is it ---

1 THE COURT: Are there any cases -- all the cases
2 have been adverse to you; Campbell v. State, Brock ---

3 MS. JOHNSON: Just what I cited, Your Honor.

4 THE COURT: You cited the Norton case?

5 MS. JOHNSON: I cited the Norton case, and that
6 is not favorable to me, but we think the reasoning is
7 wrong. And again, it's like one of those co-eccentric or
8 eccentric circles; I don't know the term. But a CSC is
9 going to always include a lewd act. A lewd act doesn't
10 include -- doesn't necessarily have to have a CSC.

11 And we would ask the court to look at Terry v. State,
12 and I'm not familiar with that, but that ...

13 THE COURT: Terry v. State of South Carolina?

14 MS. JOHNSON: Yes, sir. And I'm citing from
15 that, it's 383 S.C. 361. Clearly a severe incident of
16 child abuse may constitute a sexual battery and in turn
17 CSC with a minor. However, one who sexually abuses a
18 child is not necessarily guilty of CSC with a minor. For
19 example, an inappropriate touching of a child without
20 penetration of the child's genital or anal openings would
21 constitute sexual abuse, but not necessarily rise to the
22 level of sexual battery in a charge of CSC with a minor.
23 Instead, such sexual abuse could warrant a charge of lewd
24 act upon a child. And that's, again, Terry v. State,
25 that's a 2009, looks like a South Carolina Supreme Court

1 case. But I'm not overly familiar with this case, Your
2 Honor.

3 But just so the record is abundantly clear, I object
4 to this arraignment and I object to the state having -- or
5 proceeding against my client on two charges.

6 THE COURT: Anything, Ms. Hinton, in response?

7 MS. HINTON: Your Honor, just that the
8 applicable case law is in our favor and that there has not
9 been a surprise or prejudice to this defendant by lack of
10 notice.

11 THE COURT: All right. Your motion, Ms.
12 Johnson, is certainly protected on the record. I'll
13 respectfully deny it. We'll proceed on both of the
14 charges.

15 Are there -- how about the issue of the victim
16 testifying. Can we handle that next?

17 Do you have any matters, Ms. Johnson, to show that
18 there needs to be a forensic interviewer to check her
19 competency or is there any cases or any evidence that you
20 have that she's not capable of testifying?

21 MS. JOHNSON: I'm not asking for a forensic
22 interview, Your Honor. I'm asking for a forensic
23 psychiatrist or psychologist who's independent of the
24 Julie Valentine Center or any of the state agents.

25 THE COURT: What evidence do you have that the

1 victim would not be competent to testify?

2 MS. JOHNSON: Your Honor, I have already made a
3 court's exhibit or asked the court -- I would ask the
4 court to make a court's exhibit of tables that we composed
5 off of the forensic video. Let me back up, Your Honor.
6 You know, I take issue with what Ms. Hinton said in her
7 reply to my motion. Number one, I was making the motion
8 to give the court advance notice of, you know, this
9 serious motion. It's essentially a continuance request.
10 But that I didn't state, you know, the matter with
11 particularity. I think there's a savings clause where I
12 asked for a hearing in this case. But I don't have access
13 to this victim. You know, my access to this victim is off
14 of what I see on the video. And off of what I see on that
15 video is a three year old child. I've got three tables
16 that I've made court's exhibits where there are eighty-
17 one, what we call, leading and suggestive questions, Your
18 Honor. Table B is twenty-four questions of I don't know.
19 And Table C is probably the best indicator of her
20 inability to testify. It's called non-responsive answers.
21 And I can certainly pass up these tables.

22 THE COURT: Does the solicitor have a copy of
23 that?

24 MS. HINTON: Yes, Your Honor.

25 MS. JOHNSON: I gave the solicitor the copy,

1 Your Honor. You know, she was asked did Gary put his
2 finger in your butt one time or more than one time? And
3 she gives an unintelligible answer. I ate some breakfast.
4 And then, [Minor], you've saying that Gary took your panties
5 off? Yeah, that's the hole I draw. Let's see. What did
6 Gary do after you got off the mattress? I don't know. He
7 did perfect things to make me sick. He did perfect things
8 to make me sick and then my daddy brought Princess and the
9 ant and the grasshoppers were in the ants. Did you ever
10 leave that part of the house? Talking about Gary's house.

11 THE COURT: What number are you -- you're
12 reading, but I don't know what page you're on.

13 MS. JOHNSON: I apologize, Your Honor. I'm on
14 page three.

15 THE COURT: Okay.

16 MS. JOHNSON: I'm at 51. Did you ever leave
17 that part of the house? Yeah. Tell me how you left that
18 part of the house? They're referring to Gary's house. I
19 got to my daddy house, daddy was sick and I watched
20 Charlie's Angels. Did you say something happened when you
21 guys were on the way to church? No. You didn't say that?
22 [Minor] interrupts. And there was my teacher. And there
23 was your teacher? I'm flipping over to page four. How
24 many times did that happen? Three, four, seven. Three,
25 four, seven? Affirmative. Did it happen more than one

1 time? I don't know. You don't know? Negative noise,
2 shaking her head. Oh, and that's the sky? That's the
3 sky. Well, Gary's got the sky. I apologize, Your Honor.
4 I'm flipping over. These are not marked. I'm flipping
5 over to page seven.

6 THE COURT: Which table are you on, again?

7 MS. JOHNSON: I'm on Table C, non-responsive
8 answers.

9 THE COURT: Okay.

10 MS. JOHNSON: You were talking about being in,
11 when Gary put his finger in your butt, in the back of your
12 house and you said something? And she replies, no, that's
13 the worm's girlfriend. Let's see. And I provided the
14 times that she says this on the video, if the court would
15 like to check that out. What question -- I'm on the
16 bottom of page eight. What questions do you have for me?
17 Animals and lions. Interrupting. What about animals and
18 lions? Minor, ignoring the interrupting. And mommy lions
19 and baby lions and mommy lions and daddy lions. And then
20 there was a small baby. I watched Lilo and Stitch.

21 And also, you know, I got -- you know, I think this
22 whole interview -- I don't want to use the word, but this
23 is the only word I can think of -- is just a total
24 bastardization of the process, Your Honor. In the first
25 fifteen minutes there's the phrase Gary put his finger in

1 your butt used by this interviewer, we counted fifteen
2 times. And again, that's all on the tape. But I also
3 have documentation for -- evidence from the child's
4 records that were just provided to me within the past
5 month, and hence, you know, I've got a duty to represent
6 my client and I made the tactical decision to request this
7 competency hearing. We've got a three year old child at
8 the time of this incident, who is now six years old, and
9 I'm sure the state is going to want to come in here and
10 say she's competent. They're not in a position to do
11 that. That is not their job. But I also have, from the
12 notes that I was just provided to this month -- I
13 apologize, Your Honor -- from the notes that we were
14 provided with this client, this child says things like she
15 only answers to Cinderella. And I know the state's going
16 to argue, that's normal six year old behavior. But,
17 again, they're not in a position to say that. Let's see
18 what else. And I can point the court ...

19 Judge, if you'll just give me a second to get my
20 papers in order, I will be able to provide the correct
21 information.

22 Judge, I mean, we just have the indication that this
23 child is talking in a baby voice, not willing to cooperate
24 sometimes. And my problems with her testifying, she's
25 incapable of expressing herself to the Judge and jury.

1 And a big thing that I forgot. This forensic interview,
2 at no point was this child asked to tell the difference
3 between like truth or a lie. We do not know if she's
4 capable of doing that. And you know, I think this
5 forensic interview is -- I mean, it's a mockery. But you
6 know, I think from this interview, she's clearly
7 incompetent. I don't know the six year old Minor. You
8 know, again, I just don't think the state is in a position
9 to be assessing the competence of a witness of theirs.
10 Again, she's incapable of expressing herself to Judge and
11 jury because in the interview she says that she gives
12 confusing comments. She frequently says I don't know to a
13 variety of different question. The understandable
14 allegations were cited by leading questions. The
15 interview lacks inherent cohesion because the witness
16 wasn't capable of expressing herself at the time. She
17 cannot possibly have remembered the alleged incident well
18 enough to suddenly testify to them now without
19 interference. She is incapable to understand the duty to
20 tell the truth, Your Honor. You know, the forensic
21 interview shows that she's giving contradictory
22 statements. She doesn't understand, she doesn't
23 understand the importance of telling the truth. And I
24 would just direct the court to State v. Needs. In order
25 to be competent to testify, a witness must have the

1 ability to perceive the event with a substantial degree of
2 accuracy. That's the whole case, that whether a three
3 year old child can come in here three years later and
4 report what happened, relay the event, after so much time.
5 But we're relying on a three year old that we have no idea
6 whether or not she's competent to go forward to remember
7 it, to communicate about it intelligently and to be
8 mindful of the duty to tell the truth under oath.

9 What I've seen of this child from that video, and
10 again that's my basic only interaction with her, you know,
11 besides the psychological notes that I was provided this
12 month, she is not competent on that video. And I just
13 think out of an abundance of caution, you know, let's make
14 sure **Minor** is competent, because there's so much on the
15 line here.

16 Again, the witness has never been questioned on the
17 duty to tell the truth. And the state has provided me
18 with no evidence that she can be mindful of telling the
19 truth.

20 THE COURT: Ms. Hinton, any response on these
21 issues about the victim's testimony?

22 MS. HINTON: Yes, Your Honor. First of all, I
23 don't know that the forensic interview is the issue that
24 we have right now. Under State v. Needs, which is 333
25 S.C. 134, the question is whether or not they're competent

1 to testify in court. And as Your Honor is familiar with
2 Rule 601, every witness is presumed competent until
3 otherwise told. I think that the state's intention is to
4 do a brief voir dire with the witness. And certainly if
5 Your Honor is inclined to do that, we're happy to do that,
6 too, so that she can -- that she can communicate that she
7 does understand it with accuracy, she remembers it, she
8 can communicate about it and she knows to tell the truth.

9 As far as the second issue of the court forensic
10 psychiatrist, Your Honor, which is In Re: Michael H., 360
11 S.C. 540, as cited by the defense counsel. That is very
12 distinguishable from this case in that in that case the
13 victim was having auditory hallucinations around the time
14 that these disclosures were made. The court said that
15 that was a compelling need to have that done. There has
16 been no compelling need shown here. There's been nothing
17 shown here as of yet that she cannot testify and
18 understand her duty to tell the truth. I think this is a
19 premature motion until we see what she's able to do on the
20 witness stand, Your Honor.

21 THE COURT: All right. Is the -- I'm assuming
22 the state intends to offer the interview in, as well as
23 the live testimony of the witness?

24 MS. HINTON: Well, Your Honor, and Ms. Johnson
25 and I spoke about this before, the state doesn't have a

1 problem not introducing the video. I think a lot of that
2 depends on your ruling on prior bad acts, because as
3 you're aware, the forensic interview talks a lot about
4 something that happened in another county, at his home in
5 Anderson County. So the state is okay with not
6 introducing it, as long as Ms. Johnson is not allowed to
7 exploit to the jury that we didn't introduce it. We think
8 that's a matter of law for Your Honor to decide. And in
9 fairness, we would concede not introducing it if that was
10 the agreement. I understand that Ms. Johnson can't
11 necessarily do that at this point, which is fine. But
12 otherwise, Your Honor, we do intend to introduce both her
13 testimony live and on the recording.

14 THE COURT: Ms. Johnson, do you want the
15 interview in?

16 MS. JOHNSON: No, Your Honor, I don't. But I
17 just -- I had to bring the court's attention to the
18 interview, because that's my only dealing with this child
19 at this point in reference to my other motion. You know,
20 I would just object to having the witness testify at this
21 time. I don't think she's competent.

22 THE COURT: All right. So let's not mix apples
23 and oranges. So if the forensic interview is not into
24 evidence, the issue now is whether or not the six year old
25 victim is a competent witness?

1 MS. JOHNSON: Correct.

2 THE COURT: Okay.

3 MS. JOHNSON: And, you know, we've got a six
4 year old victim. And I would just point to In Re: Michael
5 H. The factor are: the nature of the exam, victim's age,
6 effects of the exam, probative value to issue, remoteness
7 in time to act -- we've got something that happened three
8 years ago, August of 2011 -- evidence already available to
9 defendant. Again, this is about six year old [Minor] versus
10 three year old [Minor]. We've got a child that's doubled
11 her age, her life. And based on Rule 403, we think it's
12 unfair, unfairly prejudice. It's a confusion on the
13 issues. It's misleading the jury. It's cumulative. And
14 I ---

15 THE COURT: Cumulative? How would it -- her
16 testimony today would be cumulative?

17 MS. JOHNSON: Well, I apologize, Your Honor.
18 I'm just going off some notes.

19 THE COURT: Okay.

20 MS. JOHNSON: So I'll retract that. But, you
21 know, again, that's the whole issue. For the court to
22 voir dire her, and I mean no offense to Your Honor, we're
23 not psychologists here. We're not psychiatrists here. We
24 don't know the coaching and the prepping that this office
25 has done with this child. And that is why I'm asking for

1 a neutral party to assess this child. And I don't think
2 this office can do that.

3 THE COURT: Is the child available now?

4 MS. HINTON: Yes, Your Honor, she's here.

5 THE COURT: Not in the courtroom?

6 MS. HINTON: Not in the courtroom, but she's
7 present in the courthouse.

8 THE COURT: Let me speak with the attorneys just
9 for a minute up here.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: All right. In consulting with the
13 attorneys about the procedure to have on the issue of the
14 competency -- possible competency of the victim, I gave
15 them several alternatives, but together I think we've
16 agreed that the best procedure for everyone involved is
17 for -- well, first of all, I've made the decision that I
18 will deny the motion of the defendant to have an
19 independent court appointed psychiatrist to conduct an
20 interview of the competency of the witness. I certainly
21 understand the argument of a three year old versus a six
22 year old now, but the witness, I understand from the
23 state, is going to be testifying, so the competency will
24 be judged from that testimony here.

25 While I'm denying the motion of the defendant for an

1 independent court forensic psychiatrist on this issue, I
2 certainly will allow the defense to revisit that if, once
3 the witness is called and testifies, if there's any issue
4 whatsoever about the possible competency of her being able
5 to perceive the events and communicate them intelligently,
6 any question at all about her ability to know
7 truthfulness, obviously I'll certainly revisit that if the
8 motion of the defendant -- if we have to have extensive
9 voir dire if need be. If I'm convinced that a
10 psychiatrist is needed, then we'll recede and do what we
11 need to do to get that done. Based on what I have now, I
12 see no need for a forensic psychiatrist to make that
13 determination. I may change my mind down the road.
14 That'll take care of that issue.

15 The other matters we have are the prior bad acts
16 motion. Perhaps we should do the Jackson versus Denno
17 first and then I can see what comes out there about the
18 prior bad acts, then we'll take care of that one and then
19 any other clean-up that we have. Let's take care of the
20 Jackson versus Denno hearing at this time, if we could.

21 Solicitor, you can call you first witness on that.

22 MS. HINTON: Thank you, Your Honor. The state
23 would call Michele Hendrix.

24 MS. JOHNSON: And Judge, I would just simply
25 move that these witnesses be sequestered.

1 THE COURT: All right. You made that motion
2 earlier. I'll just depend on the state to make sure all
3 your witnesses are sequestered.

4 THE CLERK: Do you solemnly swear or affirm the
5 testimony you're about to give in this case to be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: If you would have a seat and state
10 your name for the record, please.

11 THE WITNESS: Michele Hendrix.

12 MICHELE HENDRIX,

13 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

14 IN-CAMERA TESTIMONY

15 DIRECT EXAMINATION

16 BY MS. HINTON:

17 Q. Michele, where are you employed?

18 A. I'm employed at the Anderson County Sheriff's
19 Office.

20 Q. And in what capacity?

21 A. I am currently assigned to the investigative
22 division.

23 Q. Okay. And did you have an opportunity to meet with
24 Gary Hamilton in reference to this case that we're here on
25 today?

1 A. I did.

2 Q. Okay. When did you meet with him?

3 A. I met with Mr. Hamilton originally -- let me double
4 check to make sure my dates are correct. I met with him
5 in person on April the 5th, 2012.

6 Q. All right. And where did you meet with him?

7 A. At his residence.

8 Q. Okay. Who was there with you?

9 A. It was myself and my partner, Investigator Collins,
10 and Mr. Hamilton was there and Mrs. Hamilton was there.

11 Q. And do you remember what room you were in in the
12 house?

13 A. We were in the living room.

14 Q. And at that time was he in custody at all?

15 A. No.

16 Q. What was the purpose of your discussions with him?

17 A. The purpose at this point was fact-finding. I had
18 just been assigned the case and wanted to just make
19 contact with him to speak with him.

20 Q. Okay. So did you mirandized him?

21 A. I did not.

22 Q. At the time that you met with him, did he appear to
23 be under the influence of any drugs or alcohol?

24 A. No.

25 Q. Did he appear to have any physical or mental

1 infirmities that would prevent his ability to understand
2 what you were asking him?

3 A. No.

4 Q. How long did you talk to him?

5 A. It wasn't long. I spoke with him briefly. I can't
6 give you an exact time frame. And then I actually, after
7 speaking with him, I spoke with his wife, too, while I was
8 there. So we weren't there very long.

9 Q. Did you threaten him at all during this
10 conversation?

11 A. No.

12 Q. Did -- and I think we established, was he under
13 arrest at the time?

14 A. No.

15 Q. Did you arrest him after that?

16 A. No.

17 Q. Okay. And can you please tell the court what
18 statements he -- what oral statements he gave to you that
19 day?

20 A. He told us that day -- I advised him of the actual
21 charges and what had been said. And he said that he was
22 familiar with the victim's mother and that she would come
23 and stay. She had an abusive husband, was in and out. He
24 denied touching any of the children. He said that, you
25 know, they would try to help out the victim's mother

1 anytime they could and gave her a place to stay.

2 Sometimes he would take the victim to church with him, but
3 his wife would always go to church with them. And he
4 again denied that he did not touch the children. And as I
5 was getting ready to leave, he even gave me some names of
6 some people he asked me to talk with in reference to the
7 case, and informed me that he wanted to make sure that I
8 understood that he was not really a grandfather to the
9 victim, but sometimes the victim did call him grandpa.

10 Q. Okay. Did he ever -- did you ever obtain a written
11 statement from him?

12 A. I did not.

13 Q. Okay. Was that the only oral conversation that you
14 had with the defendant?

15 A. We spoke a couple of times on the phone, but as far
16 as a statement, this is it.

17 Q. So nothing of substance when you spoke to him on the
18 phone?

19 A. No.

20 MS. HINTON: Your Honor, that's all I have for
21 this witness.

22 If you'll answer any questions Ms. Johnson may have
23 for you.

24 THE COURT: Any cross-examination?

25 MS. JOHNSON: Yes, Your Honor.

1

CROSS EXAMINATION2 **BY MS. JOHNSON:**

3 Q. Detective, you said you weren't there long?

4 A. I don't remember being there a long time.

5 Q. Okay. Five minutes, ten minutes?

6 A. I'd probably say twenty to thirty because I did -- I
7 talked to him, then I talked to his wife also.8 Q. Okay. And the man clearly has some mobility
9 problems?

10 A. Yes.

11 Q. And he had those then?

12 A. Yes.

13 Q. Okay. And you didn't ask him about his educational
14 level?

15 A. Not at that point. Again, I was fact-finding.

16 Q. All right. You didn't know that he was in special
17 education?

18 A. No.

19 Q. Okay. You didn't inquire as to whether he could
20 read or write?21 A. Not at that point, because I did not take a written
22 statement.23 Q. Okay. And there were no incriminating statements
24 that he made?

25 A. No.

1 Q. And he denied these allegations?

2 A. Yes.

3 Q. Okay.

4 MS. JOHNSON: That's all I have, Your Honor.

5 THE COURT: Thank you, ma'am. You may step
6 down.

7 MS. HINTON: Thank you, Your Honor. Next the
8 state would call Michael Lark.

9 MS. JOHNSON: And Judge, I do want to object to
10 this man's testimony. It is going to be cumulative. He
11 is a polygraph expert. I don't know why the state is
12 calling him. And I know we have to tiptoe around the
13 polygraph issue. I feel like I can't cross-examine this
14 man adequately without bringing up the issue of polygraph.
15 And so I'm going -- the polygraph is admissible, we know
16 that. I'm going to object to this man's testimony in its
17 entirety.

18 THE COURT: Let me hear it first; okay?

19 THE CLERK: If you would place your left hand on
20 the bible and raise your right.

21 Do you solemnly swear or affirm the testimony you're
22 about to give in this case to be the truth, the whole
23 truth and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you, sir. If you would have a

1 seat and state your name for the record, please, sir.

2 THE WITNESS: My name is Charlie Michael Lark.

3 **CHARLIE MICHAEL LARK,**

4 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

5 **IN-CAMERA TESTIMONY**

6 **DIRECT EXAMINATION**

7 **BY MS. HINTON:**

8 Q. Mr. Lark, do you sometimes act as a consultant for
9 law enforcement agencies around this area?

10 A. Yes, ma'am, I do.

11 Q. Have you acted as a consultant for Anderson County
12 before?

13 A. Yes, ma'am, I have.

14 Q. Were you acting as a consultant for them on April
15 the 19th of 2012?

16 A. Yes, ma'am, I was.

17 Q. In your capacity as a consultant did you meet with
18 Gary Hamilton?

19 A. Yes, ma'am, I did.

20 Q. Okay. Where were you when you met with him?

21 A. At Anderson County Sheriff's Office in an interview
22 room.

23 Q. Okay. Were you alone with him at that time?

24 A. It was just he and I in the room, but it was a one-
25 way mirror and to the best of my knowledge, or so I've

1 been told, Mr. Collins was on the other side of the
2 window.

3 Q. Okay. But within the room with you and Mr.
4 Hamilton, it was just the two of you?

5 A. It was just the two of us.

6 Q. Okay. Now, I've provided you with Court's Exhibit
7 Number 3. Do you recognize that?

8 A. Yes, ma'am.

9 Q. What is that?

10 A. That is my consent form.

11 Q. Okay. And what is a consent form? Can you explain
12 that?

13 A. A consent form, basically I explain to them that a
14 polygraph test is a -- is voluntary. They're not under
15 duress, not being coerced. Somebody is not trying to get
16 him to do something that he does not want to. That nobody
17 is making him any promises. That he had a right to
18 consult with an attorney if he wishes. If he gives me
19 permission to ask the questions I need to ask on the
20 polygraph, there is a disclaimer that he authorized me to
21 report the results to Anderson County Sheriff's Office.
22 And basically, below that it says that he will not take
23 legal action against me or Anderson County Sheriff's
24 Office as a result of the polygraph or of the results.

25 Q. Okay.

1 A. He states that he has no physical and mental
2 condition, and there is no physical and mental ailment
3 which might be impaired and he fully understands that he
4 can terminate the polygraph at any time.

5 Q. Okay. Now, when you went through -- did you go
6 through that waiver -- that consent form?

7 A. Yes, ma'am. I went through the waiver with him and
8 got him to initial the lines to the left of each
9 paragraph.

10 Q. Okay. And did he initial each one?

11 A. Yes, ma'am, he did.

12 Q. Did he appear to understand what was going on?

13 A. Yes, ma'am, he did.

14 Q. Okay. Was he handcuffed at the time of y'all's
15 interview?

16 A. No, ma'am, he was not.

17 Q. Okay. And you did not -- other than the consent,
18 you did not waive -- I'm sorry -- read him any Miranda
19 rights; correct?

20 A. No, ma'am. The Miranda rights was read, to the best
21 of my -- it was read by Mr. -- Detective Michael Collins.
22 It was read prior to me talking to him.

23 Q. Okay. And did he appear to be under the influence
24 of any drugs or alcohol?

25 A. He told me that he had not had any -- used any

1 illegal drugs in the last twenty-four hours. He said he
2 had quit about ten years prior to that.

3 Q. Okay.

4 A. He had been -- he told me that he had not had any
5 alcohol in the last twenty-four hours. He told me that he
6 had not been under the care of a psychiatrist in the past.
7 And he appeared to me to be competent and sat there -- in
8 talking with him.

9 Q. Okay. Did you threaten him at all?

10 A. No, ma'am.

11 Q. Did you arrest him after you spoke with him?

12 A. No, ma'am.

13 Q. Okay. And just for your reference, can you please
14 read to the court the questions that you asked Mr.
15 Hamilton and what his responses were?

16 MS. JOHNSON: Judge, again, I'm going to object
17 to this, just so the record is clear.

18 THE COURT: Okay. This is -- I'll allow you to
19 cross-examine and I'll be glad to hear from you. We'll
20 get the testimony in first and then we'll hear your
21 objection.

22 A. The relevant test questions that I asked on the
23 test, have you ever put your finger in [Minor] 's vagina?
24 Have you ever put any part of your finger in [Minor] 's
25 vagina? Have you ever touched [Minor] 's vagina with your

1 finger? And following the ---

2 Q. What were his answers to those questions?

3 A. Oh, I apologize.

4 Q. That's all right.

5 A. His answer was no on each one; he had never -- he
6 said he had never touched her vagina with his finger. He
7 had never put his finger in her vagina. And he denied any
8 of that ever happening.

9 Q. Okay. Did he ever give you a statement contrary to
10 that?

11 A. Yes, ma'am. Following the test he admitted that on
12 one occasion he had taken Minor to church at Crossroad
13 Church of God in Central, and when he was getting Minor
14 out of the car seat, that he put his finger in her vagina.
15 And he said that was the only time that it happened.

16 Q. Okay. Did that end your ---

17 A. That ended my conversation with him. I left and
18 Detective Collins talked to him after that.

19 Q. Okay.

20 MS. HINTON: And Your Honor, just for the
21 record, it's marked as a Court's exhibit because we
22 obviously don't intend to introduce it. And we would only
23 refer to it as a polygraph for the purposes of the Jackson
24 v. Denno.

25 Mr. Lark, please answer any questions Ms. Johnson may

1 have.

2 THE WITNESS: Thank you.

3 **CROSS-EXAMINATION**

4 **BY MS. JOHNSON:**

5 Q. Mr. Lark, you never mirandized Mr. Hamilton?

6 A. No, ma'am. There was a detective that mirandized
7 him prior to me going in there.

8 Q. Okay. So you didn't mirandized him; you were
9 relying on somebody else to mirandized him?

10 A. Yes, ma'am.

11 Q. But you're acting as ---

12 A. I'm a private citizen.

13 Q. But you're acting as an agent of law enforcement?

14 A. Yes, ma'am.

15 Q. Who's paying you to do this?

16 A. Anderson County Sheriff's Office paid me to do this.

17 Q. Okay. So you're their agent. Now, I want you --
18 I'm going to refer you to your test results, as well as
19 the statement of consents that you have.

20 A. Okay.

21 Q. I would like you to point me to where you advise my
22 client that the polygraph could not be used against him in
23 court?

24 A. I didn't.

25 Q. Okay. And I'd also like you to point me to where

1 you share in your notes that the polygraph would be shared
2 with Anderson County?

3 A. It says that I authorize this examiner to report the
4 entire results of this examination to Anderson County
5 Sheriff's Office.

6 Q. Okay. But you never told them -- or my client, this
7 could be used against him in a proceeding like this today?

8 A. No, ma'am. He was advised that prior to me going in
9 there.

10 Q. You assume he was?

11 A. Well, yes, ma'am. I was told by the detective that
12 he had been mirandized.

13 Q. I'm talking about a specific polygraph test. Not
14 statements but polygraph. You never told him that the
15 polygraph could be used against him in court?

16 A. No, ma'am.

17 Q. Okay. And you tell him that he fails this
18 polygraph?

19 A. I don't know exactly how I said it, but something to
20 that effect. I told him there was a section I was having
21 problems with questions.

22 Q. Okay.

23 A. I might not have used the word failed.

24 Q. Okay. You never go into any interrogation with him?

25 A. Pardon?

1 Q. You don't go into any interrogation with him? You
2 just ask him these basic questions; is that correct?

3 A. I interviewed him after the polygraph, yes, ma'am.
4 That's post-test.

5 Q. Well, tell me about this pre-test. I want to know
6 about the pre-test. What kind of questions did you get
7 for your baseline for a pre-test?

8 A. Pre-test was just a general interview establishing
9 rapport with Mr. Hamilton. I got his side -- during
10 pretest you get his side of the story. I asked him how he
11 knew [Minor]. And I asked him during the pretest if he had
12 ever had any occasion to touch her vagina for any reason
13 ---

14 Q. No, no, let me stop you. Let me ask you the
15 questions that you got to get a baseline. Forget about
16 the questions about [Minor], but the questions you used
17 asking ---

18 A. You're talking about comparison questions?

19 Q. Right.

20 A. Ma'am, I don't have that in front of me. More than
21 likely ---

22 Q. Well, that's pretty important information.

23 A. Well, I've got it on a form in the car, but I don't
24 have it in front of me. I mean, it was comparison
25 questions. I don't have -- I don't know what they were.

1 Q. So you don't know what you told him before the test
2 happened?

3 A. I do know what I told him, ma'am.

4 Q. You just said you didn't. You didn't know what you
5 asked him.

6 A. I don't know what, I don't know what the comparison
7 questions were.

8 Q. Okay.

9 A. Comparison questions are probable lies. And that's
10 what, that's what that was coming up.

11 Q. Okay. And ---

12 A. I did write it down and I do have it, but I don't
13 have it in front of me.

14 Q. You have no way of knowing whether Mr. Hamilton
15 understood these rights or this statement?

16 A. He told me he did. And he appeared to be competent
17 to me.

18 Q. But you have no way of knowing that?

19 A. I'm not a psychiatrist, ma'am.

20 Q. Exactly. This signature right here under statement
21 of consent, that doesn't look like a signature of a first
22 or second grader to you?

23 A. Ma'am, there's people that's got college educations
24 that's got ugly signatures.

25 Q. Okay. I'll agree with that. Now, it's obvious that

1 Mr. Hamilton has medical problems?

2 A. Yes, ma'am.

3 Q. You have no way of knowing whether those medical
4 problems affected the test?

5 A. Ma'am, I asked him prior to -- that goes back into
6 the pretest -- I asked him what medications he was on. He
7 told me he was on insulin. To the best of my knowledge he
8 did insulin three times a day. Said he took blood
9 pressure medicine. He took an aspirin. And he took
10 Crestor. And he had taken all those medications and he
11 told me that his sugar level was good that day, that he
12 was in good shape.

13 Q. When did you go to medical school, Mr. Lark?

14 A. Never went to medical school.

15 Q. Okay. So you're not in a position to adequately
16 assess his medical condition? Yes or no?

17 A. No.

18 Q. Okay. Thank you. That's all I have.

19 THE COURT: All right. Thank you, sir. You may
20 step down.

21 MS. HINTON: Your Honor, the state would call
22 Michael Collins.

23 THE CLERK: If you would place your left hand on
24 the bible and raise your right hand.

25 Do you solemnly swear or affirm the testimony you're

1 about to give in this case to be the truth, the whole
2 truth and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you, sir. If you would have a
5 seat and state your name for the record, please.

6 THE WITNESS: My name is James Michael Collins.

7 **JAMES MICHAEL COLLINS,**

8 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **IN-CAMERA TESTIMONY**

10 **DIRECT EXAMINATION**

11 **BY MR. RICHARDSON:**

12 Q. Investigator Collins, where are you currently
13 employed?

14 A. I am currently employed with the South Carolina Law
15 Enforcement Division.

16 Q. Were you ever employed with Anderson County?

17 A. I was.

18 Q. Were you employed with them in April of 2012?

19 A. I was.

20 Q. In what capacity were you employed with them?

21 A. I was a criminal investigator.

22 Q. Did you become involved in the case with Gary
23 Hamilton?

24 A. I did.

25 Q. All right. Detective Hendrix previously testified.

- 1 Did you go with her to Mr. Hamilton's house?
- 2 A. I did.
- 3 Q. Back in 2012?
- 4 A. Yes, ma'am.
- 5 Q. Did y'all have occasion to speak with Mr. Hamilton
- 6 at that point?
- 7 A. We did.
- 8 Q. Okay. Was he in custody at that time?
- 9 A. He was not.
- 10 Q. Was Miranda read to him at that time?
- 11 A. It was not.
- 12 Q. Did he appear to be under the influence of any drugs
- 13 or alcohol?
- 14 A. He was not.
- 15 Q. Did he appear to have any physical or mental
- 16 infirmities that would prevent him from being able to
- 17 speak with you?
- 18 A. No.
- 19 Q. Okay. Did you threaten him at all?
- 20 A. No, ma'am.
- 21 Q. Was he under arrest at the time?
- 22 A. He was not.
- 23 Q. Was he under arrest after that?
- 24 A. He was not.
- 25 Q. Okay. Now, did you meet with Mr. Hamilton again?

- 1 A. I did.
- 2 Q. Okay. And was that on April the 19th of 2012?
- 3 A. It was.
- 4 Q. Were you aware that prior to you speaking with Mr.
- 5 Hamilton that he was going to speak with Michael Lark?
- 6 A. I was aware.
- 7 Q. Okay. Did you mirandized him prior to him speaking
- 8 to Michael Lark?
- 9 A. Yes, ma'am, I did.
- 10 Q. Okay. I'm going to reference you to State's Exhibit
- 11 Number 1. Do you recognize what that is?
- 12 A. Yes, ma'am.
- 13 Q. What is that?
- 14 A. This is the advisory of rights from the Anderson
- 15 County Sheriff's Office.
- 16 Q. Okay. And what of those rights do you advise him
- 17 of?
- 18 A. I advised him that before you're asked any questions
- 19 he must first understand his rights. You want me to read
- 20 them verbatim?
- 21 Q. Please.
- 22 A. It states: You have the right to remain silent.
- 23 Anything you say may be used against you in court. You
- 24 have a right to speak to a lawyer for advice before you
- 25 are asked any questions and have him with you during any

1 questioning. If you cannot afford a lawyer, one will be
2 appointed for you before any questioning, if you wish. If
3 you decide to answer questions now without a lawyer
4 present, you will still have the right to stop answering
5 questions at any time. You also have the right to stop
6 answering at any time or until you speak with a lawyer.

7 Q. Okay. Did Mr. Hamilton sign that?

8 A. He did.

9 Q. Okay. Was there a witness to that signature?

10 A. There was.

11 Q. Who was that?

12 A. His daughter.

13 Q. Do you know her name? Can you tell me?

14 A. Julie Ann Hamilton, I believe.

15 Q. Okay. And again, did he appear to be under the
16 influence of any drugs or alcohol at that time?

17 A. He did not appear so.

18 Q. Did he appear to have any physical or mental
19 infirmities that would prevent him from speaking with you?

20 A. He did not appear so.

21 Q. Did you threaten him at any time?

22 A. I did not.

23 Q. Was he under arrest at that time that you advised
24 him of his rights?

25 A. He was not.

1 Q. Okay. Did he appear to freely waive those rights
2 and speak to Michael Lark?

3 A. Yes, ma'am, he did.

4 Q. Okay. Were you listening to the interview with
5 Michael Lark?

6 A. I was.

7 Q. Okay. And in that interview were you able to hear
8 what was going on?

9 A. Yes, ma'am.

10 Q. Did you hear Mr. Hamilton make any incriminating
11 statements?

12 A. Yes, ma'am, I did.

13 Q. And what was that that you heard?

14 A. After he spoke with Mike Lark, he stated that he did
15 touch Minor, but he barely -- but his finger barely went
16 inside of her vagina.

17 Q. Okay. At that time did you enter the room?

18 A. I did.

19 Q. Did you take him for questioning?

20 A. I did.

21 Q. Was it just you by yourself?

22 A. At that time it was.

23 Q. All right. And where did you take him?

24 A. I took him to another interview room because Mr.
25 Lark's equipment and everything was still in that room.

1 Q. Okay. Did you advise him of his rights at that
2 time?

3 A. I did not advise him. I reminded him that he was
4 still under that first advisory.

5 Q. And what was his response?

6 A. He stated that he understood and he still wished to
7 talk with me at that time.

8 Q. And did he proceed to talk with you at that time?

9 A. Yes, ma'am, he did.

10 Q. Did he provide you with oral statements?

11 A. Yes, ma'am, he did.

12 Q. And what was the question and answer session that
13 y'all went through?

14 A. After we sat down, I reminded him that he was still
15 under -- he still had his rights. He chose to speak with
16 me. The first story that he provided was that it must
17 have happened at church. He was helping [Minor] out of the
18 car and he stated that his -- he had picked her up by her
19 waist and his finger might have touched her vagina at that
20 point. He stated that [Minor] was wearing a dress and had
21 on panties. At that point, I challenged his statement and
22 said I didn't understand how he went from grabbing her
23 around the waist and picking her up to his finger lifting
24 -- I mean, to his hands lifting up her dress, moving her
25 panties out of the way and inserting his finger inside of

1 her. He didn't really have a response to that. After a
2 few minutes of going back and forth again, he stated that
3 when he was picking her up she almost fell and then when
4 he tried to catch her, that's when his finger -- that's
5 when his hand might have touched her vagina. Again, I
6 challenged his story. I told him that just based on
7 looking at him, he had some injuries to his hands, he had
8 mobility issues getting around, I said it was hard for me
9 to believe that he was picking her up out of the car when
10 she appeared -- I mean, when she seemed old enough to be
11 walking and able to get herself out of the vehicle. And I
12 basically, you know, told him that he chose the waistline
13 to tell me that he picked her up by the waistline because
14 that was the area close to her vagina and it would help
15 explain the accidental touching. Again, he fully didn't
16 come back with any response. After that, he told me ...
17 His third story was that he -- that Minor had used the
18 restroom while they were sitting in the parking lot of the
19 church and he went to go clean her. Initially he stated
20 that he didn't have anything on his hand and that -- he
21 said he actually used a wipe and that while he was
22 cleaning her that his finger might have touched her
23 vagina. Again, I challenged him as to, if you were wiping
24 her then why would she say that your finger went inside of
25 her vagina? At that point he stated that he didn't do

1 anything to her. And then after several minutes of,
2 again, going back and forth, he just finally yelled, I did
3 it. And I asked him to explain to me what he did. And he
4 provided me with a written statement.

5 Q. Okay. And State's Exhibit Number 2, do you
6 recognize what that is?

7 A. Yes, ma'am. That is the written statement provided
8 by Mr. Hamilton.

9 Q. Okay. Now, you typed that written statement for
10 him; is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And why did you do that?

13 A. Again, because of the interest to his hands, his
14 lack of education. At that point I had my sergeant come
15 in before I started the statement. We went through his
16 statement. I made sure that everything was clear and that
17 he understood everything; that it was the way that he
18 wanted it to read. My sergeant was in the room with me
19 the entire time. I read it back to him. He stated he
20 understood. He initialed, he signed it, then I witnessed
21 it and my sergeant witnessed it.

22 Q. When we say he, are we referring to Mr. Hamilton?

23 A. Yes, ma'am.

24 Q. Okay. Can you read to the court that statement
25 verbatim, please?

1 A. It says: Statement of Gary Hamilton, [REDACTED]
2 [REDACTED], Liberty, South Carolina 29657. DOB,
3 [REDACTED]/57. Social security number, [REDACTED]. Education,
4 special ed, eleventh grade completed. And it was taken on
5 4/19/2012. It states: This statement was written for me
6 by Investigator Collins of the Anderson County Sheriff's
7 Office and was given wilfully and voluntarily. [Minor] and
8 her sister came to stay with us for -- came to stay at our
9 house at [REDACTED] [REDACTED] in Liberty, South Carolina,
10 for about a week because their mama did not have anywhere
11 else for them to stay. On one Sunday night I took [Minor]
12 to, I took [Minor] to church with me at the Crossroads
13 Church of God in Central, South Carolina. It was just me
14 and [Minor] after I dropped my son Gregory off at his
15 church. We got there early so no one else was there yet.
16 While we were waiting, I went around to the backseat and
17 put my hand between [Minor]'s legs and rubbed on her vagina
18 underneath her panties. I just rubbed on it and did not
19 stick my finger inside of her. I rubbed on her vagina for
20 a few minutes. I was standing outside the car with the
21 backdoor open and [Minor] was still in the backseat. I
22 stopped on my own. There was no one else in -- there was
23 no one else at the church. I did not say anything to
24 [Minor] and she did not say anything to me. I remember that
25 [Minor] was wearing a dress and panties. I do not remember

1 what color they were. After I stopped, I went and sat on
2 the steps of the church and Minor came and sat with me.
3 We waited for another thirty to forty minutes before
4 somebody else got there. We went to the church service,
5 went and picked up my son and then went home. Nothing
6 else happened with me and Minor. That was the only time
7 that I had ever touched Minor. And he initialed it and
8 signed it.

9 Q. Okay. And after that statement did you arrest him?

10 A. I did not.

11 Q. Why not?

12 A. Based on his statement, the incident took place in
13 Central, which is outside my jurisdiction. At that time I
14 informed him of that information and that it would be
15 forwarded to the Central Police Department. I also
16 advised him that based on Minor's statement, our
17 investigation may still be presented to a solicitor's
18 office. And he was provided a copy of his statements,
19 which I believe he threw in the trash prior to going back
20 out with his family.

21 Q. Okay.

22 MS. HINTON: Your Honor, I don't have any
23 further questions.

24 Please answer any questions Ms. Johnson may have.

1 **CROSS EXAMINATION**

2 **BY MS. JOHNSON:**

3 Q. After he talked to another person who was not law
4 enforcement, you coerced a statement out of him. You used
5 that information to pressure and force him to give various
6 statements leading up to the one you wanted to get. Yes
7 or no?

8 A. No.

9 Q. Well, why didn't you stop with the first version?
10 Why isn't that in this statement?

11 A. Because it didn't seem plausible to me.

12 Q. Because you were keep -- you keep on challenging
13 him. Challenge is, no, man, this didn't happen? Or were
14 you yelling at him and calling him a liar and banging on
15 the desk?

16 A. No.

17 Q. Be honest, Investigator.

18 A. No, I was not.

19 Q. So you didn't use any threats?

20 A. No, ma'am.

21 Q. No force?

22 A. No, ma'am.

23 Q. Now, how tall are you, Investigator?

24 A. Six foot six.

25 Q. Okay. You're a pretty fit guy?

- 1 A. I like to think so.
- 2 Q. Okay. Athletic?
- 3 A. Yes, ma'am.
- 4 Q. And we've got somebody who's the exact opposite of
5 you? Cannot move, barely; has a very hard time walking
6 and ambulating. Agree with me?
- 7 A. Yes.
- 8 Q. You get him in a room by yourself -- no, wait, you
9 said your sergeant was in there?
- 10 A. Not initially, no.
- 11 Q. Okay. Only until you got the -- what you wanted to
12 get from him did you get him in there to witness the
13 statement? You didn't have him in there the whole time,
14 the whole interrogation; did you?
- 15 A. Because I wasn't taking a written statement at that
16 time.
- 17 Q. Well, let's talk about that written statement. This
18 isn't a written statement. This is a statement you wrote;
19 correct? You had a computer there?
- 20 A. Yes. I ---
- 21 Q. He didn't write it?
- 22 A. No.
- 23 Q. Because of his physical limitations. And also you
24 note that he's special ed with eleventh grade -- whatever
25 that means. What does special ed mean to you?

- 1 A. I asked him how far did he go in school? He said he
2 was in special ed and he completed the eleventh grade.
- 3 Q. That's not the question I asked. What does special
4 ed mean to you? When somebody is in special ed, what does
5 that mean to you?
- 6 A. That they have some type of special education.
- 7 Q. Are they in regular classes?
- 8 A. I have no idea, as far as I know, but no.
- 9 Q. Okay. They might have problems learning?
- 10 Intelligence -- what's the word I'm looking for -- lower
11 intelligence; correct? Doesn't that -- when somebody says
12 special education; doesn't that connote that there's
13 something wrong?
- 14 A. It could, yes, ma'am.
- 15 Q. Okay. So in order -- when you've got somebody that
16 says they're in special education, don't you want to take
17 the special precautions and make sure that this is the
18 accurate statement of the defendant; correct? You want
19 this to be accurate?
- 20 A. I do that with all ---
- 21 Q. Okay. What kind of phone do you have, Investigator?
- 22 A. Currently?
- 23 Q. Yes, sir.
- 24 A. An iPhone.
- 25 Q. Okay. Now, there is -- I don't have an iPhone. I'm

1 too poor to have one, but I know there's a video recording
2 device and I know that there's a sound recording device;
3 correct?

4 A. Yes.

5 Q. And you can't tell me that Anderson County is too
6 cheap to buy one of these fifty dollar recorders or to go
7 buy a video recorder. So we don't know what happened that
8 led up to this statement that he supposedly gave, other
9 than what you're saying. And, you know, you use the term
10 challenge, I use the term intimidation. Because you've
11 got this man who cannot get out of this room with an
12 officer who's very athletic. You've got your sidearm;
13 don't you, sir?

14 A. I usually do.

15 Q. Okay. And let's face it, you're a lot smarter than
16 he is or you wouldn't be where you are today. And also, I
17 think it's rather curious, you've got the family that
18 witnessed these rights. That's out in the lobby; is that
19 correct?

20 A. Yes, ma'am.

21 Q. You didn't bring the family in when you interrogated
22 him; did you?

23 A. No.

24 Q. Okay.

25 MS. JOHNSON: That's all I have.

State of South Carolina -vs- Gary Clifton Hamilton (2012-GS-39-01527 and 2014-GS-39-01485)
Motions Hearing

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1 THE COURT: Thank you, sir. You may step down.

2 MS. HINTON: Thank you, Your Honor. The state
3 would call Khristy Justice.

4 THE CLERK: Do you solemnly swear or affirm the
5 testimony you're about to give in this case to be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. If you would have a seat
10 and state your name for the record, please.

11 THE WITNESS: Khristy Justice.

12 **KHRISTY JUSTICE,**

13 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **IN-CAMERA TESTIMONY**

15 **DIRECT EXAMINATION**

16 **BY MS. HINTON:**

17 Q. Where are you employed?

18 A. Central Police Department.

19 Q. Okay. In what capacity are you currently employed
20 there?

21 A. Chief of Police.

22 Q. All right. Back in 2012, were you employed there?

23 A. Yes, ma'am.

24 Q. In what capacity?

25 A. Investigator.

1 Q. Okay. In your capacity as an investigator, did you
2 have an opportunity to speak with Mr. Hamilton in
3 reference to this case?

4 A. I did.

5 Q. Okay. Where were you when you spoke to him?

6 A. Central Police Department.

7 Q. And was that on ---

8 A. April 26th, 2012.

9 Q. Thank you. And who was present with you when you
10 spoke with him?

11 A. Officer Durham.

12 Q. Okay. Was he in custody at that time?

13 A. No, ma'am.

14 Q. Did he appear to be under the influence of any drugs
15 or alcohol?

16 A. No, ma'am.

17 Q. Did he seem to have any physical or mental
18 limitations?

19 A. No, ma'am.

20 Q. Now, he informed you that he was special ed; is that
21 correct?

22 A. He did.

23 Q. Okay. Did he seem to understand what was going on?

24 A. Yes, ma'am.

25 Q. How many people have you questioned before?

1 A. Hundreds. Hundreds.

2 Q. Are you trained to know whether or not someone is
3 competent to give you a statement?

4 A. Yes, ma'am.

5 Q. Okay. Was Mr. Hamilton competent at that time to
6 give you a statement?

7 A. Yes, ma'am.

8 Q. Did you threaten him at all?

9 A. No.

10 Q. Was he under arrest at the time of the statement?

11 A. No, ma'am.

12 Q. And did you mirandized him?

13 A. I did.

14 Q. And what are the Miranda rights that you gave him?

15 A. It's dated 4/26/2012 at 12:50 p.m. Number one,
16 before asking any questions you must understand your
17 rights. You have the right to remain silent. Anything
18 you say can be used against you in court. You have the
19 right to talk to a lawyer for advice before we ask any
20 questions and have him with you during questioning. If
21 you don't have any money to pay a lawyer's fee, the court
22 will appoint one to represent you without cost, if you
23 wish. And if you decide to answer questions now without
24 an attorney -- a lawyer present, you will still have the
25 right to stop answering at any time until you talk to a

1 lawyer. Underneath that is the waiver. I have read this
2 statement of my rights and I understand what my rights
3 are. I'm willing to make a statement and under -- and
4 answer questions. Excuse me. I do not want a lawyer at
5 this time. I understand and know what I am doing. No
6 promises or threats have been made to me and no pressure
7 or coercion of any kind has been used against me. He
8 signed it, he initialed by each one that I read. In fact,
9 I had him initial, you know, each one as we went down it.
10 I explained some things in the waiver. He signed it, I
11 signed it, Officer Durham signed it.

12 Q. Okay. And are you referring to State's Exhibit
13 Number 3?

14 A. Yes, ma'am.

15 Q. And was that before you spoke to him at all, did you
16 give him those rights?

17 A. Yes, ma'am.

18 Q. All right. And did you obtain any oral statements
19 from him?

20 A. I did.

21 Q. All right. And can you go through those with the
22 court?

23 A. Sure. That's primarily why I had Officer Durham
24 the room with me, so I could focus on the interview and he
25 took the notes. I skipped the part that, you know, there

1 was no question about. He knew why he was there, and we
2 just got right down to the heart of it.

3 Q. Okay.

4 A. He said he knew he was there about what happened at
5 the church. He said that he accidentally touched her
6 vagina when he was getting her out of the booster seat.
7 He stated his hand went to her panties and that his finger
8 went into her vagina for about two minutes. Then he
9 stated that his finger did not go into the victim's
10 vagina, but he did rub on it for a few minutes. Then as
11 he's telling me this, he's demonstrating on his hand how
12 he rubbed on her vagina. He just kept saying he was sorry
13 and that it was an accident. I did ask him if he knew
14 what the difference between an accident and I'm sorry,
15 because he kept saying it was an accident, it was an
16 accident. And I explained to him, you can't accidentally
17 pull panties over to the side and insert your finger into
18 the vagina, that's not an accident. And, you know, there
19 was times when he got a little upset and teary eyed. And
20 then he says, well, I'm sorry. I'm sorry. He stated that
21 he was a Godly man, that God had forgiven him for it and
22 he knows what he had done was wrong. We talked about the
23 polygraph and he brought up the specific questions that
24 Ms. Johnson was asking earlier. He said that they asked
25 him about the color of his sweater and told him to lie

1 about it, and he didn't know why. So I explained to him
2 why that was. When he kept telling the different stories
3 about how his finger went into her vagina, there was the
4 booster seat incident, it was the, she almost fell out of
5 the car and he reached and caught her and his finger may
6 have accidentally went into her vagina. I reread the
7 statement that I received from the victim's mother, and
8 there was a portion in there that implied that he may have
9 masturbated by the way that the victim had stated that he
10 was trying to pull his pee-pee ---

11 MS. JOHNSON: Judge, I'm going to object to
12 this. I apologize. It's just hearsay based on what she's
13 -- what the mama said.

14 THE COURT: I'll allow it for the purpose of
15 this hearing.

16 A. I asked him if he -- you know, based upon what the
17 victim had stated to her mother that he was trying to pull
18 his pee-pee off and then he yelled and peed, it seemed to
19 me that maybe he was masturbating while he was doing it.
20 And I asked him did he masturbate while he was touching
21 her. And his words were, quote, my dick don't work
22 anymore, that he has to sit on the toilet to pee. Talked
23 about, you know, why he would do it if there was no sexual
24 gratification. He said, I don't why I did it, I just did
25 it. I'm sorry. I just don't know why I did it. Let's

1 see. We talked about some other, we talked about some
2 other people in the home. We talked about his daughter
3 being molested by his stepson's father, which wasn't
4 really relevant at the time. That's pretty much the gist
5 of the conversation. And then we got into the written
6 part.

7 Q. Okay. The written statement, did you write that
8 statement for him?

9 A. I did.

10 Q. And why did you do that?

11 A. Because he can't, he can't write.

12 Q. Okay. Despite the fact that he cannot write, did he
13 still appear to understand what was going on?

14 A. Yeah. What I wrote in that statement was verbatim
15 what he told me.

16 Q. And how do you go about writing a statement for
17 someone?

18 A. I write it as he's speaking with me. And I put at
19 the top, you know, I'm writing this for him. And then we
20 start his own words.

21 Q. Okay. And then do you ever read it back to them?

22 A. I do.

23 Q. Are there waivers on the statement form, as well?

24 A. Yes.

25 Q. Okay. Did you read those to him?

1 A. I did.

2 Q. Did he sign that?

3 A. Yes.

4 Q. Okay. Did he sign after you read the statement to
5 him?

6 A. Yes, ma'am.

7 Q. Okay. And we're referring to State's Exhibit Number
8 4. Could you please read that into the record?

9 A. I, Gary C. Hamilton, am not under arrest for nor am
10 I being detained for any criminal offenses concerning the
11 events I am about to make known to Detective Justice.
12 Without being accused of or questioned about any criminal
13 offenses or burden of facts I'm about to state, I
14 volunteer the following information of my own free will
15 for whatever purpose it may serve. I'm fifty-four years
16 of age and I live at [REDACTED], Liberty, South
17 Carolina 29657. I begin by: I, Detective Justice, am
18 writing this statement for Gary Hamilton at his request.
19 Sometime before August 2011, I was taking [REDACTED] Minor to church
20 with me at night. We were in the car. I got out and
21 walked around the car to get her out. I got her out of
22 the booster seat. She sat in the backseat. She had on a
23 little dress and panties. I pulled her panties to the
24 side and started rubbing her vagina. He didn't say
25 anything -- she didn't say anything as far as I remember.

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1 She didn't cry. I didn't stick my finger in it. I just
2 rubbed on it for about two minutes and then I stopped and
3 walked over to the steps of the church. When I was
4 touching her, she was facing toward the backseat and I was
5 standing at the door of the car when I was doing it.
6 [Minor] then came to sit down beside me. Then people
7 started coming to church. I've never touched another
8 child other than [Minor]. I've never touched [Little Sister] and
9 she has never been to church with me. Neither [Minor] or
10 [Little Sister] ever went to bible school with me. I don't know
11 why I did this to [Minor], but it wasn't for sexual reasons.
12 My dick don't even get hard. I don't know why. And then,
13 the car we was in was my 1997 Chevy Lumina. It's black.
14 We were right in front of the fellowship hall when it
15 happened. End of statement. I have read each page of
16 this statement, consisting of two pages, each of which
17 bears my signature and corrections, if any, bear my
18 initials, and I certify the facts contained herein are
19 true and correct. Dated at 1067 West Main Street, this
20 26th day of April, 2012. Gary Hamilton signed it. And
21 myself and Officer Durham witnessed it. After this
22 statement, when he talked about that they were in front of
23 the fellowship hall, I had -- previously I had taken
24 pictures of that area in front of the church, beside the
25 church parking lot. I had that there before he ever

1 arrived on scene. And he did circle and initial the area
2 that he was parked at when it happened.

3 Q. Okay. And I'm going to show you State's Exhibit
4 Number 8. Is that what you're referring to?

5 A. Yes, ma'am.

6 Q. After this statement did you place Mr. Hamilton
7 under arrest?

8 A. I took the statements to the judge and she did do a
9 warrant and then I placed him under arrest.

10 Q. Please answer any questions Ms. Johnson may have.

11 A. Yes, ma'am.

12 **CROSS EXAMINATION**

13 **BY MS. JOHNSON:**

14 Q. Detective Justice, you're not a psychologist?

15 A. No, ma'am.

16 Q. Okay. So you have no way of knowing whether or not
17 my client understood what he signed?

18 A. No.

19 Q. Okay. And he told you that he was special
20 education?

21 A. Yes, ma'am.

22 Q. And you write that neatly up here?

23 A. Yes, ma'am.

24 Q. And you were in here when I asked Investigator
25 Collins, what does that mean to you?

1 A. It means that he may have a different limitation
2 than I would.

3 Q. Okay. So you don't know what his limitations are?

4 A. No.

5 Q. Okay. And you don't know whether he can understand
6 ---

7 A. No. I assume that he understands because he does
8 have a South Carolina driver's license.

9 Q. That's an assumption. But you also said you had to
10 explain to him what the difference was between I'm sorry
11 and an accident. You don't have that conversation with a
12 normal person with a normal IQ?

13 A. I did that out of courtesy, basically, because he
14 kept saying it was an accident, it was an accident.

15 Q. Courtesy to him because he didn't understand. Now,
16 you have the entire case file from Anderson; correct?

17 A. I have what they sent me. Whether it's the entire,
18 I can't testify to that.

19 Q. But you had Mr. Hamilton's previous statement from
20 Anderson?

21 A. Yes.

22 Q. There was no need to take another statement from
23 him?

24 A. Yes, there was.

25 Q. He already gave incriminating statements in

1 Anderson?

2 A. Yeah, but it happened in my jurisdiction and it's
3 going to be on my statement.

4 Q. And that was apparent by the Anderson statement.
5 There was no need for you to take a second statement from
6 him, or actually a third statement from him. And I'm
7 going to ask you the same question. I see over here
8 you've got a nice phone. I don't know if that's your
9 phone.

10 A. That's my work phone.

11 Q. It looks like a smart phone, and I don't know much
12 about these smart phones. But doesn't it have video
13 recordings on it or capability to use a video recording?

14 A. Sure. But I'm not one to put my phone into
15 evidence, so I prefer not to.

16 Q. I didn't ask you that, but you're able to produce
17 data that you could bring to court today without bringing
18 your phone; correct?

19 A. Yeah. I think that it has those capabilities.

20 Q. And I know, based on other cases I've done with you,
21 that you've got capabilities to record the defendant's
22 statement? Central has video recording?

23 A. We don't have a video room.

24 Q. But you've got a way to videotape people?

25 A. I've never went to court with you with one that I

1 have done a video on. No, I haven't.

2 Q. Mr. ---

3 A. Unless it was in -- that was Clemson Police
4 Department that he was interviewed at.

5 Q. Okay. So you can clearly take somebody to Clemson
6 Police Department ---

7 A. But he has mobility issues and that wasn't an option
8 at that point.

9 Q. And that's another issue. We understand that. But
10 I know you've got a recorder on your phone or one in
11 Central Police Department?

12 A. That's why I have somebody else in there with me to
13 witness ---

14 Q. Was he there the entire proceedings?

15 A. The entire time.

16 Q. And let's talk about that. What size room are you
17 in?

18 A. Probably a twelve by twelve room.

19 Q. Okay. So two people ---

20 A. Very comfortable.

21 Q. So two people on basically, I mean, an immobile,
22 almost paralyzed man? You've got your sidearm on you,
23 Chief?

24 A. No, I don't.

25 Q. But your officer did; didn't he?

1 A. Actually I don't like them to take them into the
2 interview room because I think it's intimidating.

3 Q. Okay.

4 A. So I make them put it into a lockbox.

5 Q. But you've got two people, two on one against a
6 limited man. And you took a statement that you didn't
7 have to take?

8 A. I feel like I did have to take it. Since it did
9 happen in my jurisdiction, I wanted to follow up on
10 certain questions. For instances, the location that it
11 happened. About the masturbation, because I didn't see
12 anything related to that in Anderson's. So, yeah, I did
13 feel like I needed to take an additional statement.

14 Q. And another thing you said that was curious. The
15 man is talking about that he didn't know why to lie to
16 Mike Lark. There's something wrong there. The man
17 doesn't understand the proceedings against him. He's
18 coming to you to say, I don't know why he was asking me
19 about these colors. It doesn't make any sense. He
20 clearly has some issues. And you said something about
21 notes. I've not been provided a copy of any notes.

22 MS. JOHNSON: Your Honor, I don't know if this
23 is a discovery violation or not.

24 MS. HINTON: Judge, they were provided.

25 MS. JOHNSON: They were not provided. Show me

1 where they were provided.

2 MS. HINTON: Just a moment, Your Honor. Your
3 Honor, in the discovery, they're listed as notes from
4 Anderson County, because at the time that we had them,
5 they were not identified specifically limited to Central's
6 investigation. So under the discovery response, on May
7 the 17th of 2012, number nine provided Anderson County
8 Sheriff's Office incident report, eighteen pages. I also
9 confirmed with Ms. Johnson on July the 8th of 2014 that
10 she had received all those items in discovery, which is
11 listed on number nine on mine, Anderson County Sheriff's
12 incident report, eighteen pages. If you count through the
13 pages, that includes the handwritten notes that are in
14 there, as well.

15 MS. JOHNSON: Ms. Hinton is clearly mistaken.
16 That's Anderson. We'll count them, because I've not seen
17 these notes.

18 MS. HINTON: Your Honor, there are no Anderson
19 County notes. Those are the only notes that we have. So
20 if there are notes, they're of the Pickens County -- I'm
21 sorry, Central notes.

22 MS. JOHNSON: You're saying Anderson County
23 Sheriff's Office incident report. I counted the incident
24 reports to make sure. I've not seen these notes from
25 Central.

1 THE COURT: Who prepared the notes?

2 MS. HINTON: They're Freddie Durham's notes,
3 Your Honor. He will be testifying next.

4 MS. JOHNSON: Yeah, I had to ask Ms. Hinton
5 today who Freddie Durham was, because I didn't know.

6 MS. HINTON: Well, his name is not on the notes,
7 Your Honor. Otherwise, we would have identified them as
8 Central's notes, but they are his handwritten notes.

9 THE COURT: Is he from Anderson?

10 MS. HINTON: He's from Central, Your Honor.

11 THE COURT: Let's see if we can't get a copy of
12 the notes. She doesn't have the notes? You said you sent
13 them to her?

14 MS. HINTON: I did, Your Honor. I'm happy to -- --
15 run a copy. Mine have notes on them. I'd prefer to copy
16 some other notes.

17 MS. JOHNSON: I've not been -- as an officer of
18 the court, I've not been provided with those notes.

19 MS. HINTON: Your Honor, if I may. The Anderson
20 County report is fifteen pages. The handwritten notes are
21 three pages. So that would be the eighteen pages. That
22 would make up the eighteen pages.

23 MS. JOHNSON: Well, she hasn't provided me the
24 notes, Your Honor.

25 THE COURT: Let's get a copy and let you review

1 them now and you can explain to me the notes that you need
2 more time on or we can take whatever time you need to
3 review those.

4 MS. JOHNSON: We got eighteen pages of Anderson
5 County stuff, Your Honor. Nothing from Central.

6 MS. HINTON: Your Honor, some of the Anderson
7 County -- I don't want to go back and forth, Your Honor,
8 but some of the Anderson County stuff was provided later.
9 We didn't have Mike Lark's stuff until later. I'm sure
10 she's counting that in the number of -- regardless, we're
11 not calling Mr. Durham until tomorrow, so we'd just ask
12 Ms. Johnson to have an ability to review them over the
13 evening.

14 THE COURT: Any other notes that she might not
15 have?

16 MS. HINTON: Those are the only handwritten
17 notes, Your Honor.

18 THE COURT: How many of them were sent or were
19 they sent?

20 MS. HINTON: It's our position that they were,
21 Your Honor, based off of the page count and the
22 confirmation twice that she had everything in evidence. I
23 didn't receive any response to my July 8th email. But
24 they were sent May 17th. And then I also confirmed July
25 the 8th. And that included the page numbers, as well.

1 MS. JOHNSON: Your Honor, ---

2 THE COURT: She's got eighteen pages, and you
3 said eighteen pages, but three of them are different, I
4 guess.

5 MS. JOHNSON: She sent me eighteen pages from
6 Anderson. And that's what I counted. She did not send me
7 any notes. I have my law clerk here.

8 MS. HINTON: Your Honor, he wasn't even around
9 in 2012. I mean, this is just -- never mind.
10 Your Honor, I'm providing her with a copy of the
11 notes right now.

12 THE COURT: How many pages are those?

13 MS. HINTON: There are three. I have an extra
14 copy, Your Honor, if you would like to look at them, as
15 well.

16 MS. JOHNSON: Judge, I would just simply ask
17 for, you know, a chance to review these notes, continue
18 this hearing. You know, my opening hinges on the Jackson
19 v. Denno. So I really would like to not go forward until
20 ---

21 THE COURT: How could your opening hinge on
22 that?

23 MS. JOHNSON: Well, it doesn't hinge on it, but
24 it certainly ...

25 THE COURT: All right. Is Mr. -- you've got one

1 more witness to testify in the Jackson Denno?

2 MS. HINTON: It's Mr. Durham, Your Honor, and
3 his testimony will be brief, as most of it is going to be
4 duplicative. So I would limit it to just a few
5 statements. But it would be the basis -- based off of
6 those notes and then he would actually testify tomorrow
7 afternoon.

8 MS. JOHNSON: Judge, I'm not prepared to go
9 forward.

10 THE COURT: All right. Let's suspend this
11 testimony. Ms. Justice, you step down and we'll continue
12 the Jackson v. Denno hearing tomorrow. And we'll proceed
13 with the opening statements and the first witness. And
14 there will be no mention whatsoever of any statements,
15 now, given in your opening. You can certainly do an
16 opening without that. But I'll rule on any ---

17 MS. JOHNSON: May I approach ---

18 THE COURT: Yes, ma'am.

19 MS. JOHNSON: --- with the prosecutor?

20 (WHEREUPON, a bench conference was held off the
21 record.)

22 THE COURT: All right. We're going to have the
23 jury come in and I'm going to discharge them for the day.
24 And then we'll ask the clerk to -- I mentioned with the
25 attorneys that one juror felt like she may know or be

1 related to a witness that she didn't bring up at the time.
2 I'll have her stay and I'll ask her some questions. We'll
3 be ready to start back in the morning.

4 If our jury is ready, you can have them come in,
5 please.

6 THE CLERK: Do you want me to swear them?

7 THE COURT: No. Let's wait till tomorrow.

8 (WHEREUPON, the jury entered the open court at
9 approximately 3:46 p.m.)

10 THE COURT: I apologize for keeping you waiting,
11 ladies and gentlemen, Madam Forelady. We have gone
12 through some legal matters. Sometimes matters come up
13 with witnesses and all that I need to resolve. I believe
14 it's going to take a little while longer. Don't know
15 quite how long. But rather than keeping you waiting, by
16 the time I think we finish, it would be unfair for the
17 attorneys to have to make their opening statements to you
18 today and perhaps not even have a witness. So I think it
19 might behoove us all to just let you break for the day.
20 We'll continue working on some of these matters and not
21 require the attorneys to have to split their opening
22 statements with you.

23 If you'll be back at nine thirty in the morning,
24 we'll be ready to start back. We may have some matters,
25 again, in the morning to take care of if we don't get them

1 completed this afternoon. Hopefully when we get started
2 tomorrow some of these legal issues that I need to resolve
3 will be taken care of and the case can move in a smooth
4 manner from then.

5 Let me remind you again about not discussing the
6 case. Don't let anyone discuss the case with you. That
7 would be improper. You don't know anything about the case
8 yet. I've heard some legal matters, but you've not heard
9 any of the evidence. So until you have the case for you
10 to decide after I've instructed you on the law, it would
11 be improper for you to discuss it with anyone and don't
12 let anyone discuss it with you. I don't know whether
13 there will be any news media discussing the case. If that
14 were to be the case, if there's a newspaper article or
15 something on television, you can have a loved one or
16 friend clip it for you or tape it for you and you can read
17 all about it later. But while the trial is going on,
18 remember to restrain from any contact.

19 Certainly, remember again, the Chief Justice order to
20 you that you are not to do any kind of social media about
21 the case that you're now involved in. I'm sure you'll
22 follow that instruction.

23 We'll be ready to start at nine thirty in the
24 morning, ladies and gentlemen. If you'll go with Mr.
25 Evans now and report back at nine thirty in the morning, I

1 won't keep you waiting any longer than we have to.

2 (WHEREUPON, the jury exited the open court at
3 approximately 3:49 p.m.)

4 THE COURT: Yes, ma'am, if you can just come
5 right around here. Let me just ask you a couple of
6 questions. I thought you were coming that way. If you
7 would just have a seat right here. You're Ms. McDonald;
8 right?

9 THE JUROR: Yes, sir.

10 THE COURT: Let me just administer an oath to
11 you.

12 Do you swear or affirm the testimony you're about to
13 give me will be the truth, the whole truth and nothing but
14 the truth, so help you-God?

15 THE JUROR: Yes, sir.

16 THE COURT: Thank you, ma'am. I understand from
17 the clerk that you shared with him that you thought you
18 might know or be related to one of the witnesses in the
19 case. Is that true?

20 THE JUROR: Yes, sir. When I was downstairs I
21 told you -- the foreman -- that's all I seen. I seen her
22 sitting outside and I didn't know what trial she was in.

23 THE COURT: Okay. And that was in the first
24 case that I qualified the jury in?

25 THE JUROR: Yeah. I didn't know if that was --

1 if she's going to be in that case or this case, you know.

2 And it's like I say ---

3 THE COURT: You know her by sight, but you're
4 not sure ---

5 THE JUROR: Of her name because we're distant
6 cousins.

7 THE COURT: Very distant. Okay. So do you
8 remember the name of that person?

9 THE JUROR: Brenda.

10 THE COURT: Brenda someone?

11 THE JUROR: Uh-huh (affirmative). I don't know
12 what her last name is because I've only met her husband
13 one or two times and that was years and years and years
14 back.

15 THE COURT: Would you recognize her husband now?

16 THE JUROR: No.

17 THE COURT: Okay. So if this Brenda does
18 testify and if she testifies for the state or for the
19 defense and you recollect who she is or who her husband
20 is, if you believe that with more information you may feel
21 that -- an inability to be a fair juror, then certainly
22 you can let us know that. But for what you know right
23 now, do you believe that that would impair you of being a
24 juror, if Brenda whoever does testify?

25 THE JUROR: No, sir. I'm just here to serve.

1 THE COURT: Okay. But if she's a relative of
2 yours and testifies, would that cause you to put more
3 credence in what she says than any other witness?

4 THE JUROR: No.

5 THE COURT: You could weigh her testimony like
6 you could anyone else's?

7 THE JUROR: Yes. I'd just be honest.

8 THE COURT: And again, once she does testify, if
9 she does, and you -- if that causes you to recollect other
10 things, you could let us know then; is that true?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Are there any questions
13 that the state would have or that the defense would have
14 for this juror that you would want me to ask her about?
15 You've heard her testimony, I think.

16 MS. HINTON: Your Honor, I have one. I'm not
17 sure if it's more appropriate in her presence or not.

18 THE COURT: If you'd just write it out.

19 MS. HINTON: Sure.

20 THE COURT: And Ms. Johnson, if you have any
21 questions you want me to ask if you'll write them out I'll
22 be glad to talk to this juror.

23 This comes up every now and then, Ms. McDonald. You
24 shouldn't feel bad about it. Even during a trial
25 sometimes you worked with someone or whatever happens; I

1 didn't realize that was a person I was in high school with
2 or whatever.

3 THE JUROR: But I just seen her downstairs and I
4 thought, well, is she going to be in this trial or this
5 one or the other one? So I just wanted to ---

6 THE COURT: I believe you answered the question
7 I had downstairs that it wouldn't impair your ability in
8 that trial, as well.

9 Anything from the defense?

10 MS. JOHNSON: No, Your Honor.

11 THE COURT: Now, if Brenda, whose name you don't
12 know, were to be a witness and if she -- if you found out
13 that she was related to either the victim in this case or
14 to the defendant in this case, would that affect your
15 ability, do you think? If she was a close relation to the
16 one who is the complaining victim or to the defendant
17 even, would that ---

18 THE JUROR: It would not, no.

19 THE COURT: It would not affect you if she were
20 married to the defendant or if she was the grandmother of
21 the victim that ---

22 THE JUROR: No. Like I say, we're just real
23 distant. Like I say, it's so distant, I don't even know
24 her last name.

25 THE COURT: Okay. You believe you could be fair

1 even in those circumstance?

2 THE JUROR: Yes, sir.

3 THE COURT: All right. Thank you, Ms. McDonald.
4 If you could just be back at nine thirty in the morning;
5 okay?

6 THE JUROR: Okay.

7 THE COURT: Thank you very much.

8 (WHEREUPON, the juror exited the open court at
9 approximately 3:53 p.m.)

10 THE COURT: All right. Any matters as far as
11 this juror, from either side?

12 MS. JOHNSON: Yes, Your Honor.

13 THE COURT: All right. Ms. Johnson.

14 MS. JOHNSON: I would ask that Ms. McDonald be
15 replaced by the first alternate for a host of reasons, the
16 first of which is she is distantly related to my client's
17 estranged wife. Had I know that ahead of time, I probably
18 would have used up one of my strikes.

19 Also, she said she recognized Brenda's husband.
20 Well, I'm sure my client has gone through some physical
21 metamorphosis, but that is her husband. And my client
22 tells us he knows this lady also. So just out of an
23 abundance of caution, we would just ask that the alternate
24 be seated.

25 THE COURT: Does the state has a position on

1 that?

2 MS. HINTON: Your Honor, I think she answered
3 all the questions appropriately. However, if the
4 defendant recognizes her, there's some chance that she may
5 end up recognizing him, especially if he testifies. So I
6 think it may just be cleaner to strike her and move on
7 with an alternate.

8 THE COURT: All right. I believe she's
9 qualified now, but I certainly left her an opening to find
10 that as the case develops she might have those matters to
11 come up. Since we have two alternates and since both
12 parties wish to have an alternate appointed, then I'll
13 discharge Ms. McDonald from the jury with the consent of
14 both sides, based on the defendant's motion. I'll just
15 ask the clerk to give her a call later this evening. Or
16 if she wants to come in tomorrow, then if you can get a
17 hold of her just tell her that we won't need her services
18 tomorrow.

19 All right. Let's take a break. Ms. Johnson, you
20 just let me know if you're ready -- if you feel like
21 you're ready to proceed any time soon. If not, we'll
22 start back early in the morning. So let's take about a
23 ten minute break, fifteen minute break. Just let the
24 clerk know when you're ready to proceed with this Ms.
25 Justice's cross-examination.

1 MS. JOHNSON: Thank you, Your Honor.

2 (WHEREUPON, the court stood at recess for a short
3 break.)

4 (WHEREUPON, Court Exhibit Number 4 was marked for
5 identification.)

6 THE COURT: All right. Ms. Justice, if you'll
7 come back around. Let me remind you, you're still under
8 oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: You ready to proceed, Ms. Johnson,
11 with your cross-examination?

12 MS. JOHNSON: Yes, Your Honor.

13 **CROSS EXAMINATION CONTINUED**

14 **BY MS. JOHNSON:**

15 Q. Some of the items in the notes weren't reduced to
16 the statement; is that correct?

17 A. Correct.

18 Q. And you didn't have Mr. Hamilton's family present
19 with him?

20 A. His wife stayed in the car.

21 Q. But they weren't in the interview room with you and
22 ---

23 A. No.

24 Q. Okay. And he told you that he couldn't read or
25 write?

1 A. He told me he couldn't write.

2 Q. Okay.

3 A. And he had an eleventh grade special education.

4 Q. Okay. And you had no way of assuring whether or not
5 he could understand?

6 A. He said he understood.

7 Q. Okay. But you have no -- you had no way of knowing?

8 A. (No verbal response.)

9 MS. JOHNSON: That's all I have, Your Honor.

10 THE COURT: Any redirect?

11 MS. HINTON: No, Your Honor.

12 THE COURT: Thank you, ma'am. You may step
13 down.

14 THE WITNESS: Thank you.

15 MS. HINTON: Your Honor, the state would call
16 Freddie Durham.

17 MS. JOHNSON: And Judge, would you like me to
18 make my objection now or later?

19 THE COURT: Just over the lack of information?

20 MS. JOHNSON: Yes, Your Honor.

21 THE COURT: All right. You can swear him.

22 THE CLERK: Do you solemnly swear or affirm the
23 testimony you're about to give in this case to be the
24 truth, the whole truth and nothing but the truth, so help
25 you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you, sir. If you would have a
3 seat and state your name for the record, please.

4 THE WITNESS: Fredrick Durham.

5 THE COURT: All right. Ms. Johnson, be glad to
6 hear your objection.

7 MS. JOHNSON: Your Honor, I would just object to
8 this officer's testimony in its entirety. Number one, for
9 a discovery violation rule. I've asked Madam Court
10 Reporter to make the letter from the solicitor's office,
11 as well as these notes that I was just provided, a court
12 exhibit, I believe it's Court Exhibit Number 4. I would
13 ask that it be excluded on that basis. I would also ask
14 that anything this officer testifies be excluded on the
15 basis that a lot of it bolsters -- excuse me -- it's
16 cumulative as to what Detective Justice has already
17 testified to. And certainly, you know, on a 403 basis,
18 it's highly prejudicial. That's my objection, Your Honor.

19 THE COURT: All right. I'll hear his testimony
20 in the Jackson v. Denno hearing and rule upon it
21 accordingly.

22 You may proceed, Solicitor.

23 MS. HINTON: Thank you, Your Honor.

24 **FREDERICK DURHAM,**

25 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

1

IN-CAMERA TESTIMONY

2

DIRECT EXAMINATION

3

BY MS. HINTON:

4

Q. Freddie, where are you currently employed?

5

A. I'm currently employed at a trucking company called

6

Venture Express.

7

Q. Okay. Were you previously employed with the Central

8

Police Department?

9

A. Yes, I was.

10

Q. And how long did you work there?

11

A. From November 2011 till June 2014.

12

Q. Okay. Were you present with Detective Justice when

13

she spoke to Gary Hamilton in reference to this case?

14

A. Yes, I was.

15

Q. And did you hear the Miranda rights that she read to

16

him?

17

A. Yes.

18

Q. Did you witness the rights that she gave him?

19

A. I did.

20

Q. Let me show you State's Exhibit Number 3 and 4,

21

which is the waiver of rights and the written statement of

22

Mr. Hamilton. Is your signature on those pages?

23

A. Yes, they are, both of them.

24

Q. And what does your signature on those pages denote?

25

A. That I was a witness.

1 Q. Okay. So does that mean that you were present the
2 entire time?

3 A. That's correct.

4 Q. Were you present through his entire oral
5 questioning?

6 A. That's correct.

7 Q. Were you present the entire time that he gave a
8 written statement to Ms. Justice?

9 A. That's correct.

10 Q. Did he appear to have any mental or physical
11 infirmities that would impair his ability to understand
12 what was going on?

13 A. I don't believe so.

14 Q. Okay. Did he appear competent to you?

15 A. I believe he did.

16 Q. Did he appear to be on any drugs or alcohol?

17 A. No, he didn't.

18 Q. Did y'all threaten him in anyway?

19 A. No, we didn't.

20 Q. Okay. Now, when Detective Justice was questioning
21 him, were you taking written notes?

22 A. I was.

23 Q. And was that at her request?

24 A. That was.

25 Q. And I don't want to go into everything that he said

1 because Detective Justice has already testified. But
2 could you briefly state some of the statements that he
3 gave to you?

4 A. I'm sorry.

5 Q. Could you briefly tell the court some of the
6 statements that he gave to you?

7 A. Some of the things that I made note of is that Mr.
8 Hamilton stated that he was a Godly man and that God had
9 forgiven him. Mr. Hamilton stated that he knows it was
10 wrong. On page two, or the second page of it, Mr.
11 Hamilton stated that if he had to do it over again, it
12 wouldn't happen again. He also stated that he knows for a
13 fact that it was the only -- that he was the only one that
14 touched Minor.

15 Q. Okay. Did you have any other involvement with any
16 other statements given by Mr. Hamilton in this case?

17 A. He did state that he did touch Minor.

18 Q. Okay. Is that the extent of your involvement in the
19 case?

20 A. Pretty much.

21 Q. Did you ask him any questions yourself?

22 A. I didn't ask him any questions. Detective Justice,
23 at the time, was doing all the questioning. I just made
24 the notes.

25 Q. Okay.

1 MS. HINTON: Your Honor, that's all the
2 questions I have at this time.

3 Please answer anything Ms. Johnson has.

4 **CROSS EXAMINATION**

5 **BY MS. JOHNSON:**

6 Q. Officer, when did you make these notes?

7 A. During the time of questioning.

8 Q. Okay. When did you turn them over to the
9 solicitor's office?

10 A. I turned them over to Detective Justice or Chief
11 Justice immediately following the interview. That was the
12 last time I seen them, except for my copies.

13 Q. And were you aware that Mr. Hamilton couldn't read
14 or write?

15 A. He told us he couldn't read or write. But when he
16 asked -- when he was asked if he could -- did he
17 understand what we was talking about, asked the questions
18 -- understand the questions he was asked, he said yes.
19 And I believed him to understand them.

20 Q. But you wouldn't know? You're just assuming?

21 A. Yes.

22 Q. Okay. And you never did a report or anything?

23 A. No.

24 Q. And you would have no way of knowing what kind of
25 medication he was on?

- 1 A. No.
- 2 Q. Did you ask him about his medicine? Did you ask him
- 3 about his medicine?
- 4 A. I did not personally ask him about his medicine.
- 5 Q. Okay. But he's a fairly large fellow?
- 6 A. That's correct.
- 7 Q. And he was, in fact, when this happened over two
- 8 years ago; is that correct?
- 9 A. Yes.
- 10 Q. He still had the same mobility issues?
- 11 A. I believe so, yes.
- 12 Q. Okay. And how big a room is he in -- or excuse me
- 13 -- was he placed in with you and Detective Justice?
- 14 A. It was probably an eight by ten.
- 15 Q. Pretty small room?
- 16 A. Small room, but yes.
- 17 Q. And he didn't write a statement; is that correct?
- 18 A. That's correct.
- 19 Q. Okay. Detective Justice, with her own hand, wrote
- 20 that statement?
- 21 A. That's correct.
- 22 Q. Okay. And do you or does Central Police Department
- 23 have the capabilities to record a statement electronically
- 24 to preserve it for court?
- 25 A. In that room we don't.

1 Q. Okay. Just -- have you got a recorder, iPhone or
2 video camera?

3 A. I'm sure they have something of that nature, but
4 there was nothing in that room at that time.

5 Q. Okay. But there are other places within the police
6 department that you could have gone to maybe?

7 A. That's our interrogation room. And we don't have a
8 recorded room at the Central Police Department.

9 Q. Okay.

10 MS. JOHNSON: That's all the questions I have,
11 Your Honor.

12 THE COURT: All right. Thank you, sir. You may
13 step down.

14 Any other witnesses from the state?

15 MS. HINTON: None from the state, Your Honor.

16 THE COURT: Anything from the defense?

17 MS. JOHNSON: Judge, at this time I will call
18 Gary Hamilton to the stand for the purposes of this
19 Jackson v. Denno hearing only.

20 THE COURT: All right. Come around and be
21 sworn, please, sir.

22 (WHEREUPON, off-the-record discussions were held.)

23 THE COURT: Can you get up in this chair all
24 right, sir?

25 THE DEFENDANT: Yeah, I guess. I can try it.

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133

1 THE COURT: All right. Let's see. If not we
2 can put a chair down on the ---

3 THE DEFENDANT: Help me.

4 THE CLERK: Let me swear you in first.

5 Do you solemnly swear or affirm the testimony you're
6 about to give in this case to be the truth, the whole
7 truth and nothing but the truth, so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you, sir. Do you want to use
10 this chair?

11 THE DEFENDANT: Let me see if I can sit in this.
12 Better get that one because that a little one.

13 THE COURT: Right.

14 THE CLERK: Why don't you just sit down right
15 here in this chair.

16 THE COURT: Sit down there by the court
17 reporter. That'll be fine. I'll be able to hear you.

18 THE COURT: Okay.

19 THE CLERK: If you would state your name for the
20 record, please.

21 THE WITNESS: My name is Gary Hamilton.

22 GARY C. HAMILTON,

23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 IN-CAMERA TESTIMONY

25 DIRECT EXAMINATION

1 **BY MS. JOHNSON:**

2 Q. Mr. Hamilton, how old are you?

3 A. I'm fifty-six.

4 Q. Okay. How far did you go in school?

5 A. I went to the eleventh grade, but I went through
6 special education.

7 Q. Okay. And what grade were you in -- or excuse me.
8 How old were you when you quit school?

9 A. I was sixteen.

10 Q. Why did you quit school?

11 A. Well, I couldn't even tell you that because I didn't
12 think there was no need going no more, I reckon, because I
13 couldn't read and write. I tried my best.

14 Q. Okay. Let's back up. What did you learn to do in
15 school?

16 A. I'm good with my hands.

17 Q. Okay. Like handy work?

18 A. Building bird houses and stuff like that.

19 Q. Okay. Who does your reading and writing for you?

20 A. My brother, Eddie. He brings me my mail. He sits
21 down and he reads it.

22 Q. Okay. What kind of work did you do most of your
23 life?

24 A. Well, I done saw mill work. I was a laborer.

25 Q. You were a laborer?

1 A. I was a laborer.

2 Q. Okay.

3 A. I, you know, worked at the saw mill. I worked there
4 about five years. I went to doff cloth at Mayfair. I
5 quit it. And I went to Bad Creek.

6 Q. And what did you do at these places?

7 A. I doffed cloth at Bad Creek -- I mean, Mayfair. And
8 then ---

9 Q. Were you on a line, like assembly work?

10 A. No. It just -- I would take up quills and doff
11 cloth.

12 Q. Okay.

13 A. But I went to Glenwood on a clean-up crew.

14 Q. Okay.

15 A. I quit that crew. I went to clean-up crew and I
16 went to Bad Creek. That's where I got my back hurt at. I
17 slipped up and fell.

18 Q. Okay. So most of your life you've been doing labor?

19 A. Yeah.

20 Q. Okay. Can you do math? Can you do arithmetic?

21 A. No, not that good.

22 Q. Okay. What other problems do you have?

23 A. Well, like I said, I can't read and write. My legs
24 is -- they swell and bust open, which right now my ankles
25 is running.

- 1 Q. Is the pant leg wet? No?
- 2 A. It's on my ankle.
- 3 Q. Okay. And when you say bust open ---
- 4 A. It swells up and it busts. I was in the hospital
- 5 about a week with it.
- 6 Q. Okay. And how -- have you been large all your life?
- 7 A. Do what now?
- 8 Q. Have you been a big man all your life?
- 9 A. Pretty well, yeah.
- 10 Q. Okay. When have you started having all these health
- 11 problems?
- 12 A. About a month ago. That's when my health just
- 13 started going down.
- 14 Q. Well, I meant, how long have you used the assistance
- 15 of a walker?
- 16 A. Well, my back, my back when I ruptured a disc, I've
- 17 been on -- I've been disabled going on about twelve years.
- 18 Q. Okay. How long have you had a problem walking?
- 19 A. Well, it's been -- like I said, I've been walking
- 20 with this cane about twelve years.
- 21 Q. And I don't mean to offend you, but how long -- I
- 22 mean, you carry some weight on you. How long have you had
- 23 this significant amount of weight on you?
- 24 A. Well, I've been big all my life.
- 25 Q. And how much do you weigh, Mr. Hamilton?

1 A. I weigh about three sixty, three eighty, somewhere
2 around there.

3 Q. Okay. And how much did you weigh at the time this
4 happened?

5 A. What? When I got hurt?

6 Q. No. How much did you weight -- let me rephrase that
7 -- when the police started talking to you?

8 A. I weighed about three forty, somewhere around there.
9 I was losing my weight.

10 Q. So roughly the same size? You've still a big guy?

11 A. Yeah.

12 Q. Not able to move very well?

13 A. No.

14 Q. Did you ever need a wheelchair?

15 A. Yeah. I was in an electric wheelchair. Well, I
16 walked some, but you know, I used it when I'd go out and
17 walk, you know, out in the yard.

18 Q. Okay. Why weren't you in the electric wheelchair
19 when you went to the police?

20 A. Because I couldn't get it in the car.

21 Q. Okay. Well, let's talk about these statements;
22 okay? When you met with polygraph -- the polygraph man,
23 Mike Lark, what was your understanding?

24 A. Well, really I didn't understand taking that. I
25 ain't never took one.

1 Q. Okay. Did he explain to you what you were doing?

2 A. Yeah, but like I said, I can't understand why he
3 wrote the color down and telling me -- asked me my
4 sweater. He asked it to me, said blue. I said blue. He
5 said, well, don't say that.

6 Q. So you didn't understand that?

7 A. Uh-uh (negative).

8 Q. Did you tell them that?

9 A. Yeah. I told him -- I asked him, I said, why did
10 you say that for? He said that just goes along with the
11 test.

12 Q. Okay. So were you confused?

13 A. Yeah, I was, because like I said, I haven't never
14 took one.

15 Q. Okay. Okay. How did he treat you?

16 A. He treated me pretty good. But you know, like I
17 said, all the questions, when I was taking it, I was
18 saying no, you know, and my understanding I failed the
19 test. Why, I don't know.

20 Q. Okay. And that's what he told you?

21 A. Yeah. He told me.

22 Q. Okay. Now, when you talked to him afterwards --
23 we're talking about Mike Lark here -- what did you say to
24 him?

25 A. I told him that -- he asked me did I ever mess with

1 Minor ? And I told him, no, the only thing I done, I
2 cleaned her up.

3 Q. Okay. And was that written down, to your knowledge?

4 A. As far as I know, yeah, but I don't know whether it
5 was or not.

6 Q. Okay. Now, you talked to another guy, or another
7 investigator. Tell us about that, when you talked to the
8 investigator from Anderson?

9 A. He took me in a room and he got -- my opinion, he
10 got up over the desk and called me a liar.

11 Q. Okay. And was he doing anything physically
12 threatening?

13 A. He was yelling pretty good.

14 Q. Okay. Was he ---

15 A. He hit the desk.

16 Q. How many times?

17 A. At least twice.

18 Q. Okay. And how did that make you feel?

19 A. It made me -- I was scared.

20 Q. Okay. And did you tell him you were scared?

21 A. Yeah. But he still said, well, you might as well
22 own up to it because you're lying.

23 Q. Okay. So what happened then?

24 A. He wrote down the statement and read it back to me
25 and I signed it.

1 Q. Okay. And why did you sign it?

2 A. Because I didn't know -- really, I didn't know what
3 I was signing, really, because he read it to me. I
4 thought it -- I signed it because I didn't know really
5 what I was doing.

6 Q. Okay. Did he say anything else to you?

7 A. No.

8 Q. How long were you in there?

9 A. I was in there at least -- I don't know -- about
10 thirty minutes, somewhere around there.

11 Q. Was anybody else in there with you?

12 A. At that time he wrote the statement, no.

13 Q. Okay.

14 A. After he got the statement, he called a guy in, a
15 witness. But they wasn't nobody in that I'm aware at that
16 time. Just him.

17 Q. Okay. How big was the room?

18 A. I'd say about that pew to that right there.

19 Q. Okay. Now, you didn't write this statement; is that
20 right?

21 A. No, I did not.

22 Q. Why didn't you write the statement?

23 A. Because I can't write.

24 Q. Okay. Did you have some health problems that also
25 prohibited you from writing?

1 A. Well, my hand sometimes. I said, I can't read it, I
2 can't read it. I don't know how to write. I mean, you
3 know what I'm saying? The only thing I can write is my
4 name.

5 Q. Okay.

6 A. And I can't write it good.

7 Q. Okay. So just to sum it up, he was pounding on the
8 desk, calling you a liar and making you scared?

9 A. Yep.

10 Q. Okay. And why did you feel scared?

11 A. Because I haven't never been in no kind of trouble
12 or nothing.

13 Q. Okay. Now, you've been arrested for minor things;
14 is that correct?

15 A. Oh, yeah, minor things. Yeah. But something like
16 that, no.

17 Q. Okay. So you have had exposure with the police?

18 A. Yeah.

19 Q. But never subjected to an interrogation?

20 A. No.

21 Q. Now, was your family in the room with you?

22 A. No.

23 Q. Okay.

24 A. This the only thing that I -- when he read me my
25 rights.

- 1 Q. But they weren't in the room with you?
- 2 A. Yeah. At that time, yeah.
- 3 Q. Okay. You said thirty, thirty-five minutes, but you
- 4 don't know?
- 5 A. I don't really know how long I was in there, no.
- 6 Q. Okay. Did he say he was taking any other
- 7 precautions with you? Do you know what that means?
- 8 A. No.
- 9 Q. Okay. Let's talk about the Central event; okay?
- 10 You went -- why did you go to Central?
- 11 A. Because I got a card at the front door, told me to
- 12 come to Central.
- 13 Q. Okay. So you went?
- 14 A. Yeah.
- 15 Q. Okay.
- 16 A. I called and made an appointment and I went.
- 17 Q. Okay. And what happened in Central?
- 18 A. She took the statement, but I couldn't -- I said to
- 19 myself, why are they getting another statement?
- 20 Q. Okay. Well, why did you give another statement, is
- 21 what they're going to ask?
- 22 A. Why I give another statement because she ---
- 23 Q. She said you had to give another statement?
- 24 A. She said I had to give another one.
- 25 Q. Okay. Now, who else did you deal with over there in

1 Central?

2 A. I dealt with that one right there and -- I don't

3 know her name.

4 Q. Detective Justice. Chief Justice now.

5 A. Well, let's put it this way, the blonde headed

6 woman.

7 Q. Okay.

8 A. And that guy that just left the stand.

9 Q. Okay.

10 A. He was in there.

11 Q. Okay. So what did they say to you?

12 A. He told me, said, I'm going to take another

13 statement. And I said, -- I didn't say nothing because I

14 didn't know why they're taking another statement.

15 Q. Okay. Now, when you -- we saw this statement. Was

16 that what you said?

17 A. That's pretty well, because she -- I don't know what

18 all I said. Because actually I haven't never been in no

19 kind of trouble. I didn't know what, I didn't know what

20 to do.

21 Q. Okay. So were you trying to please her? Was she

22 putting words in your mouth?

23 A. Pretty well, yeah.

24 Q. You weren't volunteering information; she was giving

25 the information and you were just saying yea or nay?

1 A. Yeah.

2 Q. Okay. Now, your family wasn't with you in this room
3 either?

4 A. No. Brenda was out in the car.

5 Q. Okay. And, you know, let's talk about the mobility
6 issues.

7 A. I told her -- when they arrested me, I told her, I
8 said, you're going to have to go tell Brenda that -- at
9 that time I said my wife -- where she can drive the car
10 home.

11 Q. Okay. But your family wasn't with you in the room?

12 A. Nope.

13 Q. Okay. How did you feel with Detective Justice and
14 Officer Durham? How did they make you feel?

15 A. Well, like I said, I was scared all the way through
16 it.

17 Q. Okay. Did they do anything to make you feel scared?

18 A. No.

19 Q. Not like the guy in Anderson did?

20 A. No. Because like I said, you go before something
21 like that, you're going to be scared.

22 Q. Okay. Mr. Hamilton, you're going to have to answer
23 any questions Ms. Hinton has for you; okay?

24 A. Okay.

25

CROSS EXAMINATION

1 **BY MS. HINTON:**

2 Q. All right. Mr. Hamilton, you have two children; is
3 that correct?

4 A. I have one, I have one stepson -- well, I've got
5 three stepsons and one daughter.

6 Q. Okay. How many of them did you raise?

7 A. I raised, I raised Brenda's three boys. One of them
8 got killed in 2001.

9 Q. Okay.

10 A. Drunk driver hit him head-on.

11 Q. Okay. What about Julie Ann, did you raise her?

12 A. I raised Julie Ann, yeah.

13 Q. Okay. And they're adults now; right?

14 A. Yeah.

15 Q. And one of them has special needs; is that right?

16 Does one of your children have special needs? Are they

17 ---

18 A. Greg, he's mentally handicapped.

19 Q. And you raised him, as well?

20 A. Yep.

21 Q. That must have been pretty touch?

22 A. Not really.

23 Q. No? They don't require more help than the others?

24 A. Well, yeah. He can't -- Greg can't remember stuff.

25 You lay a five dollar bill there and you see him get it,

- 1 he goes, I didn't get it.
- 2 Q. So you have to remember stuff for him?
- 3 A. I never did do it. Brenda did it.
- 4 Q. Well, ---
- 5 A. His mama took care of him more than I did.
- 6 Q. All right. And Brenda is your wife?
- 7 A. Brenda's my wife.
- 8 Q. So you're married?
- 9 A. Yes, ma'am.
- 10 Q. How long you been married?
- 11 A. Twenty-five years.
- 12 Q. Okay. And you've worked a lot of different places;
- 13 right?
- 14 A. Yep.
- 15 Q. And you quit all those jobs until you got disabled;
- 16 correct?
- 17 A. I got hurt at Bad Creek.
- 18 Q. Okay. And ---
- 19 A. That's when -- you know, I've always been, you know,
- 20 really, you know what I'm saying, I don't know how to
- 21 explain it to you. I've always been not that good -- you
- 22 know, the disability, but I never did try to get on -- I
- 23 didn't get on my disability till I got hurt at Bad Creek.
- 24 Q. Right. So you're on disability because of your
- 25 back?

1 A. Yep.

2 Q. Okay. But you've worked?

3 A. I worked.

4 Q. Okay. Many jobs?

5 A. Yep.

6 Q. You're married?

7 A. (No verbal response.)

8 Q. You've raised kids?

9 A. (No verbal response.)

10 Q. Right?

11 A. Yep.

12 Q. Okay. All right. You have a house? Or you used to

13 have a house when you lived with Brenda; right?

14 A. Yep.

15 Q. Okay. And I'm sure you had to do chores around the

16 house. I'm sure Brenda made you do chores?

17 A. I got out and ride the lawnmower and cut grass,

18 yeah.

19 Q. Okay. All right. Day to day things. All right.

20 And you drive?

21 A. Yeah.

22 Q. And to get a license, you have to pass a test to get

23 a license?

24 A. I took -- I didn't take the written test. They

25 showed me the signs and stuff, you know, there was a book

- 1 and I studied the signs and all.
- 2 Q. Okay. So you were able to do that?
- 3 A. Yeah.
- 4 Q. So they gave you an oral test and you passed it?
- 5 A. Yeah.
- 6 Q. And then you had to do driving tests?
- 7 A. Yeah.
- 8 Q. And you passed that?
- 9 A. Yeah.
- 10 Q. Did you pass it the first time?
- 11 A. Nope.
- 12 Q. Did you fail parallel parking like me?
- 13 A. Yep.
- 14 Q. All right. Fair enough. You said that you've never
15 been in trouble before so you didn't really know what to
16 expect; right? You said that?
- 17 A. Not like this. I've been, you know, in jail, you
18 know, for, you know, little odd things besides -- you
19 know, I ain't been in no kind of trouble like that.
- 20 Q. Okay. But you have been in trouble before?
- 21 A. Oh, yeah.
- 22 Q. All right. And you've met with the police before on
23 different things; right?
- 24 A. I hadn't never been -- really, I hadn't never had my
25 rights read to me. You know what I'm saying.

1 Q. Well, you've been arrested before?

2 A. I've been arrested, but decided to have the right --

3 I just stayed over night.

4 Q. And you've been arrested several times before?

5 A. Two or three times, yeah.

6 Q. All right. And when you got these rights and you
7 signed them and you signed these statements, no one held a
8 gun to your head; did they?

9 A. Nobody held a bun to my head, no.

10 Q. Okay. And no one said, if you don't do this, I'm
11 going to hurt you or hurt your family? Nobody did that;
12 ---

13 A. No.

14 Q. --- did they? Okay. And you take medication for
15 your physical ---

16 A. I take sugar medicine and I take blood pressure
17 medicine. I take Crestor, what you call it, yeah,
18 Crestor, I take that. And when I went to the doctor this
19 last time, he gave me fluid pills to get the swelling to
20 go down out of my legs.

21 Q. Okay. And you take all those medicines on a daily
22 basis?

23 A. I take them all.

24 Q. Okay. And you remember to take those? You make
25 sure you take your medicine as prescribed?

1 A. Oh, yeah.

2 Q. Okay. And you gave a statement to Michael Collins;
3 correct?

4 A. Who's that?

5 Q. The tall black man that testified, you gave him a
6 statement?

7 A. I told him what -- yeah.

8 Q. And you gave Chief Justice right here, the blonde
9 lady, as you referred to her, you gave her a statement?

10 A. Yeah.

11 Q. Okay. And those statements were pretty similar;
12 weren't they?

13 A. I really didn't -- like I said, I didn't really know
14 what I was signing.

15 Q. Okay. And when Detective Justice here took your
16 statement, you drove to the police department that day;
17 didn't you?

18 A. I drove to the police department.

19 Q. You drove your wife there; right?

20 A. Yeah.

21 Q. Okay.

22 MS. HINTON: Your Honor, I don't have anything
23 else at this time.

24 THE COURT: Any redirect?

25 MS. JOHNSON: No, Your Honor.

1 THE COURT: All right. Thank you, sir. You can
2 return to your table.

3 Any other witnesses, Ms. Johnson?

4 MS. JOHNSON: No, Your Honor.

5 THE COURT: All right. Let me recap, working
6 backwards, there's the statement from Ms. Justice, the
7 statement from Mr. Collins in Anderson, the statement from
8 Lark. Is there one before that?

9 MS. HINTON: A statement at his home to
10 Detective Hendrix and also Investigator Collins. But
11 Detective Hendrix testified to it.

12 MS. JOHNSON: There was also the Freddie Durham.

13 MS. HINTON: Right. I didn't know if you wanted
14 to take that up separately.

15 THE COURT: He was in with Justice?

16 MS. HINTON: That's correct, Your Honor.

17 THE COURT: So that is one statement. He wasn't
18 separate from ---

19 MS. HINTON: He was not, Your Honor. And while
20 Ms. Johnson and I disagree on whether or not it's been
21 turned over, I mean, essentially Chief Justice can testify
22 to basically every statement that we would want to elicit
23 from Freddie Durham. However, we would just want him for
24 the purpose of that Miranda was done.

25 THE COURT: Okay.

1 MS. HINTON: So we can limit his testimony to
2 that. That's fine.

3 THE COURT: He will only testify as to the
4 activity in the room and Ms. Justice will testify to the
5 statement?

6 MS. HINTON: Yes, Your Honor. We're fine with
7 that.

8 MS. JOHNSON: Judge, at the appropriate time, I
9 would like to be heard.

10 THE COURT: Yeah. I want to get my -- y'all
11 have had the case for two years.

12 MS. JOHNSON: Yes, sir.

13 THE COURT: I've had it for two hours or a
14 little longer than that. I want to make sure that I know
15 where we're going first.

16 The first statement given to Hendrix, is the defense
17 opposed to that statement coming in?

18 MS. JOHNSON: Judge, at this point, no, we're
19 not opposed to that statement. Only because it's not
20 incriminating.

21 THE COURT: Okay.

22 All right. Solicitor, let me hear from you as to why
23 the statement given by Mr. Lark is admissible.

24 MS. HINTON: Well, Your Honor, I mean, the
25 reason we included it in the Jackson v. Denno is he's

1 acting as a consultant. However, he's not law
2 enforcement. So I believe you're asking under -- are you
3 asking under Jackson v. Denno or are you asking as it
4 being a polygraph exam? Or both?

5 THE COURT: Well, I mean, how is that statement
6 going to -- there was one statement made that he would
7 testify to, basically; right? That would be that he said
8 I penetrated?

9 MS. HINTON: Correct.

10 THE COURT: How would that statement be allowed
11 into evidence?

12 MS. HINTON: Because it came from a polygraph;
13 is that what you're asking?

14 THE COURT: Right. Yeah. How are we going to
15 dance around the polygraph?

16 MS. HINTON: Well, Your Honor, I think that --
17 and he has previously testified in court before as a
18 consultant. So the state's position would be that he
19 would say that he is a consultant, sometimes brought in
20 for investigative purposes. That he was speaking with the
21 defendant in an investigative capacity and that this is
22 the statement that he gave. The rest of the information
23 that we gave you today was simply for the Jackson v.
24 Denno. That is not the route we would take to elicit his
25 testimony.

1 THE COURT: But what he heard said was the same
2 thing that Collins heard; right?

3 MS. HINTON: Yes, Your Honor.

4 THE COURT: Everything that Lark would have
5 heard, Collins would have heard?

6 MS. HINTON: Correct. And if there's no issue
7 made by the defense in that you weren't in the room when
8 you heard that, you heard that through a double mirror,
9 whatever, we don't have a problem just allowing
10 Investigator Collins to testify to that. We're just
11 trying to cover all our bases in the event that that
12 becomes an issue.

13 THE COURT: Did he repeat the same statement
14 that Officer Collins ---

15 MS. HINTON: Not in the exact ---

16 THE COURT: --- after he came into the room?

17 MS. HINTON: A similar statement. They weren't
18 exact, but they were similar.

19 THE COURT: All right. Ms. Johnson, eliminated
20 are -- the Hendrix statement I guess I don't need to hear
21 from you on. Let me hear from you on the Lark statement
22 and then the Collins statement, then the Justice -- we'll
23 call it that -- the Justice statement.

24 MS. JOHNSON: Okay. Your Honor, I've prepared a
25 memo motion to suppress statements. I will hand over one

1 to Ms. Hinton and I would ask one to be made a court's
2 exhibit. And all of my arguments that I fail to make on
3 the record be incorporated into the record.

4 (WHEREUPON, Court Exhibit Number 5 was marked for
5 identification.)

6 MS. JOHNSON: Let me start from the back, I
7 believe. It's an interesting procedure what Central did.
8 I was not aware of Freddie Durham. And Freddie Durham's
9 statements are -- information is not in this motion. So
10 that gives more credence to the fact I didn't know about
11 Freddie Durham. But certainly the Freddie Durham/Justice
12 statements are cumulative, prejudiced -- prejudicial, and
13 you know, they're just trying to drive a nail in the
14 coffin trying to beat a, you know, man that's already
15 down. There was no reason for these two officers to take
16 a second statement from my client. And my law clerk just
17 pointed this out, that this is -- these officers were
18 trying to get around the Sixth Amendment. They knew that
19 my client could waive the Fifth Amendment, but because he
20 probably should have been arrested on the Anderson charges
21 but wasn't, the Sixth Amendment right to counsel did not
22 apply. But we would certainly argue that that is a
23 violation of his Sixth Amendment right to counsel.

24 THE COURT: Wait a minute. Spoon feed me on
25 that. His Sixth Amendment right to counsel is violated

1 because of Officer Justice taking a statement?

2 MS. JOHNSON: I need to be more clear. They're
3 just trying to go around it. They're just, you know,
4 backdooring that issue.

5 THE COURT: Just that he was mirandized in
6 Anderson and mirandized in Pickens County; right?

7 MS. JOHNSON: Correct. But the issue, and this
8 is going to be the issue with these 403 -- 404 motions, is
9 that Anderson could have arrested him. I mean, they
10 couldn't arrest him because they think it didn't happen in
11 their jurisdiction. But Central had the file. They just
12 got it from Anderson. They could have arrested him based
13 on that information. But they chose to get another
14 statement. Why, we don't know. And you know, to go
15 around ---

16 THE COURT: Anderson could have arrested him,
17 when you say they could have arrested him?

18 MS. JOHNSON: Anderson was investigating this
19 case. And they determined that it didn't happen in their
20 jurisdiction.

21 THE COURT: Okay.

22 MS. JOHNSON: So they sent the file to Central.
23 Based on that information, Central could have arrested
24 him. They didn't need another statement from him. So,
25 you know, we would argue that that is just totally

1 unnecessary. Now, you know, both statements, the Collins
2 statement and the Justice -- the Central statement -- or
3 the Anderson statement and the Central statement, I should
4 say, you know, Judge, Mr. Hamilton is not dealing with a
5 full deck. You know, he may be competent. He can't read
6 and write. I know the prosecutor loves to throw around
7 that he can drive. But I think, you know, it doesn't take
8 much to be able to drive. Clearly, this is an
9 intellectual activity. You've got to have some knowledge,
10 some ability, to understand what you're doing. And you
11 know, my position is that my client was in no way in a
12 position to knowingly and voluntarily waive his rights
13 under any circumstance. He didn't understand and
14 appreciate the consequences of waiving his rights to
15 remain silent. He didn't understand the consequences of
16 giving a statement.

17 And, you know, on page three of my motion, given the
18 only way the defendant had to communicate was through
19 verbal exchange, if an officer was going to take his
20 statement to preserve the integrity, we must demand that
21 it be done in a recording. And you know, these officers
22 can say, oh, well, we don't have these recording devices.
23 You know, I think that's hogwash because we all know that
24 they're got the capabilities of doing that. What is it
25 that they didn't want us to see? They didn't want us to

1 see how he got to these statements. They didn't want us
2 to see what led up to the statements. It's like, you
3 know, that statement about making sausage, you just want
4 to see the end result. You don't want to see what
5 happened. Well, in this case, when you've got a simple-
6 minded person who's got an IQ of 67, what is competent?
7 You've got to take every precaution.

8 And you know, I think by looking at his signatures on
9 these waiver of rights, I mean, they look like a second
10 grader's signature. Again, I'm not an expert in that.
11 But another thing is, you know, not only do we have
12 somebody that is intellectually challenged. We have
13 somebody that is physically challenged. And he's --
14 especially in the Anderson situation, he's dealing with
15 somebody who is capable of overpowering him and, you know,
16 just has superior athletic ability and is dealing with a
17 morbidly obese man who's -- you know, can barely move.

18 And you know, the same is said for Central, it's, you
19 know, let's tag-team him. You know, in this room with two
20 officers. You know, I find it surprising and curious that
21 the lady officer, or Ms. Hendrix, did not investigate or
22 interrogate my client. It was this, you know, bigger guy
23 that's six foot six and he's in there by himself with my
24 client. You know, we don't know what happened in there.
25 And my argument is, in this kind of circumstance, when

1 you've got somebody like this and he's told them -- it's
2 not like we're coming in here to court today saying, you
3 know, no, he's special ed, he -- no, they knew this. They
4 put it on their documents. This needs to be recorded, you
5 know, for everything to be right.

6 And I've got -- my conclusion is on page six -- pages
7 six and seven. Again, it just goes to the psychological
8 and physical pressures of the interrogation. The second
9 one is -- I'm sorry, let me back up. I think the law is
10 the totality of the circumstances. And one of those
11 issues is lack of education or low intelligence, which
12 we've got documentation of.

13 But back to my conclusions. You know, the Central
14 statements are extraneous. He had already given two other
15 statements covering the exact same material. These were
16 unnecessary. Again, he could not adequately and knowingly
17 waive his rights or understand or appreciate the
18 consequences of waiving his rights. He can't read or
19 write. And you know, we're saying that the state needs to
20 be required to record the entire interview in this
21 circumstance, which they did not -- I do not have any case
22 law, Your Honor, for that, but that is just our position.

23 And where law enforcement unquestionably knows that a
24 defendant cannot read or write in order to take a
25 statement, they must record it. They couldn't check -- he

1 couldn't check his statement for accuracy or consistency.
2 He could not know that it was actually his statement. He
3 could not verify that it was anything like what he said.
4 For these reasons and the others above, I would ask that
5 the court exclude all the statements. And it sounds like
6 there are five. I think we agreed on the Hendrix
7 statement. But the Lark statement, the Collins statement
8 and the Central statement with Justice and Freddie Durham,
9 as being duplicative, and based on my other reasons set
10 forth.

11 THE COURT: All right. Solicitor, I'll be glad
12 to hear about the last two statements. As I understand,
13 the Collins statement, was that an investigation going on
14 in Anderson County? Did they live in Anderson County?
15 They've always lived in Pickens County?

16 MS. HINTON: Yes, Your Honor. Just brief
17 background. Mother initially reported to Pickens County.
18 It was determined that the defendant lived in Anderson
19 County. That's where the prior bad act thing comes in.
20 The victim had disclosed that some things had happened at
21 his home. That's ---

22 THE COURT: His home is Liberty address, but
23 Anderson County; is that right?

24 MS. HINTON: Correct.

25 THE COURT: Okay.

1 MS. HINTON: So then the investigation was sent
2 to Anderson County. At that time he confesses to
3 something happening in Central at a church, which it
4 coincides with what the victim had said previously. And
5 that's why that part of the investigation was sent to
6 Central. So it was my understanding at that time the
7 investigations kind of broke apart. Central took the
8 church case. Anderson took the rest of the home case.

9 THE COURT: Is there a pending case in Anderson?

10 MS. HINTON: No, sir, there's not.

11 THE COURT: What is the basis upon which the
12 Collins statement should -- or excuse me -- the Justice
13 statement should come in?

14 MS. HINTON: Well, Your Honor, first, she's
15 entitled to, it being an investigation in her county, to
16 investigate the situation. If she didn't then we'd have
17 an argument from the defense that it was bad police work.
18 You know, she has been doing this -- she's been taking
19 hundreds of statements. She found him competent. She
20 never threatened him. She never coerced him. She never
21 deprived him of food or water. She never promised him
22 anything. He said he was never threatened by her. So it
23 certainly wasn't coerced. She mirandized him, which is
24 what is required. He witnessed each one of those. He
25 signed the waiver of rights. She then read his statement

1 back to him. He signed that he knew what he was talking
2 about. So the factors that Ms. Johnson lists on page five
3 of her memorandum, I mean, I don't think that those apply
4 for the most part to the statement. He's been found
5 competent by the Department of Mental Health. He's held
6 down a job. He's married. He's raised four children.
7 He's held jobs until he was physically disabled. Had
8 absolutely nothing to do with his mental disability. So
9 of course, Ms. Johnson argues that it's prejudicial. Yes,
10 of course, it is. That's why we want to bring it in.
11 It's whether it's substantially more prejudicial than
12 probative. And that's not the case, Your Honor. I mean,
13 I think under Jackson v. Denno, it's an appropriate
14 statement to be considered by the jury. And if Ms.
15 Johnson wants to argue outside of that, then that's for
16 the jury to consider. But under Jackson v. Denno, the
17 state feels that it's appropriate.

18 THE COURT: All right. Tell me about the Lark
19 statement. And then you can flow into the Collins
20 statement. Do you believe those are both admissible?

21 MS. HINTON: I do, Your Honor. Again, Miranda
22 was given. He was not in custody at the time. It was a
23 short meeting between the two of them. Certainly, first
24 with Mr. Lark, he was never threatened in anyway. Mr.
25 Hamilton's daughter was there. She witnessed the waiver

1 of rights. If she had any concerns about his competency
2 or his ability to do that, she could have raised it at
3 that time, which she didn't.

4 Mr. Lark questioned him and he made a statement. At
5 that point, you know, Mr. Lark turned the investigation
6 over to Investigator Collins. Investigator Collins then
7 took him into a room, questioned him. As far as raising
8 his voice or banging on the desk, I mean, that does not
9 amount to a threat or physical violence or anything like
10 that. They keep bringing up the fact that Mr. -- or
11 excuse me -- Investigator Collins is athletic. I mean,
12 the basis of whether or not a statement is admissible is
13 whether or not the police officer is more athletic than
14 you, then we're going to keep out a lot of statements.
15 And that's not, under Jackson v. Denno, what's required.
16 It's whether or not it was voluntary and whether or not he
17 was in custody. Miranda was read. He voluntarily gave
18 the statements. Again, he initialed and signed the
19 statements. And he was even given a copy of it. So at no
20 point do we meet any of the factors, again, to keep out
21 that statement under Jackson v. Denno.

22 THE COURT: I think Officer Collins testified
23 that he did not pound the table.

24 MS. HINTON: That's correct. That was his
25 testimony, Your Honor.

1 THE COURT: Was Mr. Hamilton arrested following
2 the Justice statement?

3 MS. HINTON: He was, Your Honor. My
4 understanding from Chief Justice's testimony is that she
5 then took his statement to the magistrate who issued a
6 warrant. At that time he was arrested and he had driven
7 his wife to the police station and Detective Justice at
8 the time went out and informed Ms. Hamilton of what was
9 going on.

10 THE COURT: Okay.

11 MS. JOHNSON: Judge, if I may have a chance to
12 respond, briefly.

13 THE COURT: Yes, ma'am.

14 MS. JOHNSON: You know, I think Ms. Hinton is
15 dead wrong. This is a man that's done labor all his life
16 because he has literally no intellectual abilities, very
17 limited. And any person can reproduce. I mean, it
18 doesn't take much to reproduce. You know, he has done day
19 laboring his whole life. He has not done any -- to my
20 knowledge and based on his testimony, he did nothing that
21 really involved his mind. And you know, again, we're
22 talking about the totality of the circumstances, his
23 physical health and his limited intellectual functioning,
24 which again, is not something we cooked up, not something
25 we're coming in here and trying to maximize. It is a

1 fact.

2 THE COURT: Well, I believe you mentioned, I
3 think it's Court Exhibit 1, the evaluation. And I noticed
4 as I reviewed it, and also I've heard his testimony which
5 -- his interchange with examination and cross examination.
6 He did have an IQ test as a teenager and also one as a
7 child. While one really was 67, I believe the other one
8 was 90, if I read that right. How about the ---

9 Yes, ma'am, did you want to respond to that?

10 MS. JOHNSON: Yes. And you know, I think the 67
11 is more recent. I could be wrong. I don't have ---

12 THE COURT: That's true. That was the teenager
13 years.

14 MS. JOHNSON: But, you know, I've also been
15 advised that he's had some car accidents and maybe some
16 brain trauma that I have not explored. But I do take
17 issue with that DBSN report, because he was not given
18 another IQ test, and that's something they should have
19 done.

20 THE COURT: All right. How about the -- before
21 I rule on these, how about the Lyle issue. What evidence
22 does the state intend to offer as far as prior bad acts?

23 MS. HINTON: Well, Your Honor, a lot of that
24 related to the forensic, which I think we've covered for
25 now. I do think that under Lyle and under Clasby, which

1 -- let me get the cite right now. I believe I provided
2 Your Honor with a copy of the motion. State v. Clasby,
3 which is 385 S.C. 148, it's a 2009 case from the State
4 Supreme Court. I believe that it is allowed in. I will
5 be honest with Your Honor. I don't really intend to go
6 into it. It is more that I think it is admissible. And
7 that if the victim were to start talking about it, I don't
8 want that to be grounds for a mistrial. Because I do
9 think that it's admissible. However, I do not intend to
10 exploit that information from her.

11 THE COURT: You're not going to ask her any
12 questions about it?

13 MS. HINTON: Not directly, Your Honor. Again,
14 if the forensic becomes an issue, that's different,
15 because it is laced with things about Anderson County.
16 But that was kind of the -- shifting gears, that's kind of
17 what our motion has become.

18 THE COURT: Okay. So the forensic interview,
19 I'm assuming that the child talked about some other events
20 happening in Anderson County?

21 MS. HINTON: She does, Your Honor. And that is
22 a lot of it. And again, I would ask that our memorandum
23 be incorporated into the record. But that is kind of the
24 basis for the motion, is that she will discuss, in the
25 forensic, things about Anderson.

1 THE COURT: Ms. Johnson.

2 MS. JOHNSON: Judge, we would certainly be
3 opposed to any 404 evidence. Anderson could have charged
4 my client, but they found that there was no probable
5 cause. The proof that is required for 404(b) evidence is
6 clear and convincing. Beyond a reasonable doubt, clear
7 and convincing, preponderance of the evidence and then
8 probable cause. So, you know, for them to come in and
9 want to admit this evidence that there was not even a
10 lesser standard of proof is wrong. And we rely on State
11 v. Tutton, it's 354 S.C. 319, about clear and convincing.

12 Also, this child's testimony is extremely nebulous,
13 extremely ambiguous. You know, this case was bounced
14 around from three different agencies. Nobody knows where
15 it really happened, if it happened. But again, we would
16 certainly be opposed to any 404(b) evidence coming in just
17 based on the simple fact that if Anderson thought there
18 was enough probable cause to arrest this person, they
19 would have.

20 THE COURT: What were the three agencies?

21 MS. JOHNSON: We had Pickens County.

22 THE COURT: Central and Anderson?

23 MS. JOHNSON: It got bounced to Anderson and
24 then it got bounced to Central.

25 MS. HINTON: And Your Honor, if I may briefly

1 respond to that.

2 THE COURT: Yes, ma'am.

3 MS. HINTON: Nowhere in Clasby does it require
4 that another agency have a charge for you to be able to
5 bring in a prior bad act. And what it mainly relies on is
6 that sexual misconduct was directed at the same victim and
7 the incidences occurred each time the defendant was
8 reunited with the victim, which is what we have in this
9 case, Your Honor.

10 THE COURT: Well, I don't know how long the
11 testimony on the victim will be as far as direct
12 examination or cross examination, realizing the age of the
13 child. If the interview is not initially going to be
14 offered by the state in its case in chief, then I'll
15 really have to -- I'm assuming, based on what the
16 solicitor just said, you're not going to be purposely
17 eliciting anything about a prior bad act from the witness;
18 is that correct?

19 MS. HINTON: That's correct, Your Honor. But I
20 don't want it to become a mistriable issue.

21 THE COURT: We'll see how gingerly you can deal
22 with her on direct examination. Then on the cross
23 examination, you'll have to make sure you phrase your
24 questions appropriately, Ms. Johnson, also, to avoid
25 anything being elicited on that. I'm assuming that Lyle

1 issue is a non-issue right now until we have something
2 coming in with the video, forensic interview or with a
3 statement that the state says they're not going to seek to
4 elicit from the witness.

5 As far as the statements, I've listened carefully to
6 the testimony of all the witnesses and I'm going to allow
7 the Hendrix statement in. Both parties pretty much agree
8 to that. I have tried to look at the totality of the
9 circumstances, certainly the age and background and
10 experience. I've had an opportunity to review the medical
11 report for Mr. Hamilton. I've heard his testimony. I've
12 interacted with him. I've, otherwise, listened carefully
13 to the officers' testimony and factored in any mental
14 deficiency that may be there, the educational factors.
15 Also deciding about the voluntariness of the statement and
16 custodial nature thereof. I've listened as the Miranda
17 warnings have been given.

18 I find that the Justice statement -- or the statement
19 taken by Officer Justice, the oral and the written
20 statement, will be allowed. Again, this is by a
21 preponderance of the evidence. I'm going to instruct the
22 jury they're going to have the decision to make as to
23 whether or not it was properly given, whether it was
24 voluntary, whether the warnings were adequately given.

25 I understand from the state that Officer Durham's

1 testimony as to that statement will only be as to the
2 issue of the -- any coercion or voluntariness in his
3 observations about that.

4 As far as the Collins statement, I will admit that
5 from Anderson County during their investigation as to what
6 rights were given, the nature of the statement. Mr.
7 Durham will not be testifying to any statements.

8 Mr. Lark, I'm going to disallow any statement that he
9 heard. I realize he's testified in my court before, but I
10 think in this particular case, the danger of prejudice
11 with something coming out about the polygraph is too much
12 concerning to me. I'm not going to allow that statement
13 in.

14 I will allow Mr. Collins, Officer Collins, to testify
15 to everything he's heard, the interactions he had with Mr.
16 Hamilton.

17 So those two statements I'll allow -- or three -- I
18 believe Ms. Hendrix, and not any matters as far as Mr.
19 Lark testifying to his statement or Mr. Durham. Although,
20 certainly Mr. Durham can testify to his observations while
21 in the room. I'm also concerned with that. Certainly not
22 saying that the information was not given, but there also
23 has been communication problems. I will remedy that
24 matter if he just testifies to his observations as to
25 rights being waived and so forth.

1 Okay. Everybody all right with where we're starting
2 tomorrow at nine thirty?

3 MS. HINTON: Just one point of clarification,
4 Your Honor. We're not discussing Mike Lark at all. Is
5 that ---

6 THE COURT: Right.

7 MS. HINTON: Okay.

8 THE COURT: Mr. Lark can be released from his
9 subpoena.

10 MS. HINTON: And going back to the Lyle issue,
11 Your Honor's ruling is not that if she were to say
12 something about it, that it would be a mistrial ---

13 THE COURT: I don't know that yet, ---

14 MS. HINTON: Okay.

15 THE COURT: --- Ms. Hinton. I'm trusting both
16 of the attorneys to steer clear of that. If it comes up
17 on direct examination there might be a motion. If it
18 comes up on cross examination, there might be a motion of
19 non-responsive. I'll depend upon you fine attorneys to
20 structure your questions accordingly. I understand, I
21 haven't -- like Ms. Johnson, I haven't had a chance to
22 interact with the six year old victim, but if it goes
23 there we'll just have to take a break and I'll see how it
24 was elicited, from which person, or whether it was
25 spontaneity on behalf of her. I'll make a ruling on any

1 motion for a mistrial or I'll make a ruling on any motion
2 for a Lyle charge. We'll just have to wait for tomorrow
3 on that. I can't tell you now that it won't be a
4 mistrial. I can't tell you that it will. We'll see how
5 it comes out and how much comes out. I would not expect
6 her testimony to be very long anyhow; would it?

7 MS. HINTON: Not from us, Your Honor. I have no
8 idea what Ms. Johnson has in store for us tomorrow.

9 THE COURT: We'll see how the direct goes and
10 how the cross examination goes, and we'll see whether a
11 door is opened by a question.

12 Any other matters -- and I think the clerk has called
13 to discharge the juror that we agreed to. Is there any
14 objection to the clerk or court reporter, my designee,
15 selecting one of the two? I think the alternates, the two
16 alternates, the law says that we randomly pick one of
17 them, number one and number two, so I'll just put number
18 one and number two in a box and let the clerk pick it out.
19 Is that satisfactory to both of you?

20 MS. HINTON: No objection, Your Honor.

21 MS. JOHNSON: No objection, Your Honor.

22 THE COURT: Okay. If he can do that at some
23 time and let me know and tomorrow I'll designate the -- or
24 before deliberations, we'll designate. Maybe they'll both
25 listen better if I don't designate them. We'll have one

1 before they start deliberations as to which one. We may
2 lose another juror. We might need them both. So we'll
3 just -- before deliberations, we'll certainly select one.
4 We still have both of them now.

5 Okay. Anything else for today?

6 MS. HINTON: Not from the state, Your Honor.

7 THE COURT: We'll have our jury sworn in in the
8 morning and be ready for your opening statements.

9 MS. HINTON: And Your Honor, just to -- for the
10 record, Mr. Hamilton is still out on bond because we have
11 not sworn the jury.

12 THE COURT: That's correct.

13 MS. HINTON: Okay. Thank you.

14 THE COURT: Tomorrow, you know, obviously, we'll
15 cross that bridge after the jury is sworn.

16 MS. HINTON: Okay. Thank you.

17 THE COURT: Good evening.

18 (WHEREUPON, Court was adjourned for the day at
19 approximately 5:46 p.m.)

20 **JULY 29, 2014**

21 (WHEREUPON, Court convened with all parties present
22 and the following proceedings were had.)

23 THE COURT: All right. Are we ready to proceed,
24 ladies?

25 MS. JOHNSON: Your Honor, I just have a couple

1 of housekeeping things.

2 THE COURT: All right.

3 MS. JOHNSON: I failed to make a motion that for
4 the state to refer to the child as the victim, just it's
5 highly prejudicial. I'd just ask that she be called by
6 her name as opposed to the victim. I think that's a
7 standard motion in these cases.

8 THE COURT: What's the state's position on that?

9 MS. HINTON: Your Honor, I never understand
10 these motions. It's not rooted in the case law. And in
11 addition to that, I think it's just the defense putting us
12 in the potential position of a mistrial for referring to
13 her as a victim. I mean, it's a common term. I will try
14 not to overly abuse that term, but ...

15 THE COURT: Try to avoid the word. If it gets
16 abusive, we'll call your hand about being prejudicial.

17 Anything else, Ms. Johnson?

18 MS. JOHNSON: Yes, Your Honor. When this child
19 testifies, I know that I can't really get a preliminary
20 ruling, but when this child testified, if I do have to
21 cross examine her on prior inconsistent statements, the
22 video may have to come in. And I would just ask that the
23 parts of the child making the prior inconsistent
24 statements only come in, as opposed to the entire video.

25 THE COURT: Well, Ms. Johnson, I don't know how

1 we can do that, because if you're using a statement to
2 impeach someone, the opposing side would always have a
3 right, in my view, to show the full context of what was
4 said. I don't know how I can limit that.

5 MS. JOHNSON: Well, it's a double-edged sword,
6 Your Honor, because, you know, there's -- this video shows
7 this adorable little girl with a lollipop and she's
8 playfully interacting with this interviewer. And it would
9 be extremely unfair and prejudicial to my client because
10 it's certainly going to be appealing to the passions and
11 prejudices and life experiences of the jurors, which is
12 not right. They're supposed to decide the facts in
13 evidence.

14 THE COURT: I'll be glad -- you know, if that
15 comes up, I'll be glad to review it and we'll take
16 whatever time we need to go through it piece by piece as
17 to what's in. But as far as -- I don't know how I can
18 limit a statement to only what's helpful to one side on
19 impeachment and not let the other side, whoever it is, if
20 the state were making this motion, I don't know how I can
21 limit the statement of the witness in those restraints.
22 I'll be glad -- if that comes in, we'll go through it and
23 I'll make decisions.

24 MS. JOHNSON: And not to argue with Your Honor,
25 but just, you know, we would -- our position is that only

1 the relevant prior inconsistent statement, that's the only
2 relevant thing in the end.

3 THE COURT: But what if there's another part of
4 the video that has a consistent statement? You don't want
5 that in? I know you don't want it in.

6 MS. JOHNSON: Right.

7 THE COURT: But isn't the other side entitled to
8 have that in and then you can argue to the jury that she's
9 all over the board or whatever.

10 MS. JOHNSON: Right.

11 THE COURT: But I can't -- I'll be glad to
12 listen -- to watch it if we get to that step. But I
13 certainly -- I don't want you to feel that based on your
14 examination that you have the benefit of that motion,
15 because I'm likely not to grant that motion.

16 MS. JOHNSON: Okay. Thank you, Your Honor.

17 My final issue is just -- I just want to protect the
18 record -- that the competency motion for the child
19 yesterday was denied. I don't know if that was placed on
20 the record.

21 THE COURT: Right. I don't know if I said that
22 or not. But I did deny the motion to have a psychiatrist
23 to examine the witness for competency, deciding instead on
24 the alternative that I would make that determination based
25 upon what transpires when the witness is called. I did

1 make the proposal that we do that in chambers with all the
2 necessary parties there, but I believe at that point
3 everyone here at the bench felt that it was better not to
4 -- particularly from a defense strategy standpoint -- not
5 to have a rehearsal for the victim. I did not do that.
6 And I'll make the decision when the witness testifies
7 live. Okay?

8 MS. JOHNSON: And I apologize for going around.
9 But if I need to reference that there was a prior video --
10 not video, but statement, without playing the video,
11 obviously, but instead of saying, Minor, you were, you
12 know, interviewed on video. Can I say, Minor, you gave a
13 statement? And I don't think that would -- if I don't put
14 the video in to show the prior ---

15 THE COURT: What's your follow-up question after
16 that? You gave a statement? She says, yes, I gave a
17 statement. Then ---

18 MS. JOHNSON: I just have to live with it. But,
19 you know, I just want to refer to the video as a
20 statement. And, you know, I just want to make sure that
21 I'm safe, you know, ---

22 THE COURT: Well, if you do that, then the
23 instructions yesterday were that you would not allude to
24 the fact that the state did not offer that into evidence.
25 That was the ---

1 MS. JOHNSON: I understand that, Your Honor.

2 And I just -- but I would just characterize the video as, a
3 prior statement.

4 THE COURT: And that statement was as a three
5 year old?

6 MS. JOHNSON: Yes, Your Honor.

7 THE COURT: Whether she'll remember. Of course,
8 she may say, yes, I gave a statement and it's on
9 videotape, with a forensic interviewer. I don't know how
10 much her answer will be. You're cross examining a six
11 year old. You understand that?

12 MS. JOHNSON: Yes, sir. Completely.

13 THE COURT: Okay. And the statement you want to
14 impeach her with was given as a three year old.

15 MS. JOHNSON: As long as I refer to it as a, you
16 know, statement, I certainly don't want ---

17 THE COURT: If she says I did give a statement,
18 then what ---

19 MS. JOHNSON: I either live with it or, you
20 know, tactically if we decide we've got to play the video,
21 if, you know, ---

22 THE COURT: But all you want to ask her is, did
23 you give a prior statement?

24 MS. JOHNSON: Yes.

25 THE COURT: And you don't want to follow up on

1 that in anyway?

2 MS. JOHNSON: I don't know, Your Honor. I can't

3 ---

4 THE COURT: Well, okay. We'll just have to see
5 where we're going. I don't know how to give advisory
6 decisions about that until we actually hear from the
7 witness.

8 Any other matters?

9 MS. HINTON: Just briefly, Your Honor. As I
10 told you yesterday, Minor will be our first witness. I
11 would ask before she testifies that the courtroom be
12 cleared of all non-essential parties.

13 THE COURT: Any objection from the defense?

14 MS. JOHNSON: Judge, we will object. The public
15 has a right to be here.

16 THE COURT: Well, is there anybody here that's
17 essential, looking around? Anybody that you feel would
18 intimidate ---

19 MS. HINTON: Well, just the defendant's family,
20 Your Honor. I mean, we're dealing with a six year old. I
21 would just ask that they not be allowed to be present. I
22 mean, my witnesses have been sequestered. I realize
23 they're not witnesses. I think in fairness to a six year
24 old, they're not necessary. It's only for one witness.

25 MS. JOHNSON: And I don't want to play tit for

1 tat, but, you know, if she's going to say my family's got
2 to go, I think her family has got to go.

3 THE COURT: Well, there's a statute.

4 MS. JOHNSON: I understand that.

5 THE COURT: All right. I don't believe the
6 child will even be able to see them over there.

7 MS. HINTON: Okay. That's fine.

8 THE COURT: If you want to take some of your
9 folks out, if Mr. Taylor wants to leave, I don't know if
10 he's essential or not, but we'll proceed without that.

11 MS. HINTON: Thank you, Your Honor.

12 THE COURT: I don't expect other people to be
13 coming in.

14 Anything else?-----

15 MS. JOHNSON: No, Your Honor.

16 THE COURT: All right. Let's have our jury come
17 in if they're ready.

18 (WHEREUPON, the jury entered the open court at
19 approximately 9:41 a.m.)

20 THE COURT: Ladies and gentlemen, we're now
21 ready to proceed with the trial of the case. During the
22 matters we had yesterday, one of your jurors had to be
23 recused, so we're operating with thirteen now. But our
24 two alternates are still a part of the jury, every bit as
25 much a part of it as before.

1 In a moment the attorneys are going to make a opening
2 statement to you. They're going to give you an overview
3 of each of their views as to what is important about this
4 case as it develops. While what the attorneys have to say
5 to you is not evidence, you're going to hear the evidence
6 from the witness stand here, from any documents or other
7 tangible evidence that may be presented, I still urge you
8 to listen carefully as these attorneys address you. I'm
9 confident that each of them could give you some valuable
10 insights and perhaps help you as the case develops to be
11 alert to certain aspects of the case.

12 Before the attorneys address you in their opening,
13 I'm going to have the clerk administer an oath to you. I
14 hope you'll listen carefully as the oath is given. It's a
15 time-honored oath that's been in existence since well
16 before the foundation of our country. Jurors such as you,
17 even simultaneously throughout our land, may be taking a
18 similar oath, even as they did in England and days of old,
19 to be the fact finders in a case. And this oath gives you
20 all the information you need as far as your duties to be a
21 juror in this matter. After the oath is administered,
22 then the attorneys will present their opening statements
23 to you.

24 Mr. Welborn, you may swear the jury.

25 THE CLERK: If you would please stand. Again,

1 after the oath is administered, answer by saying I will.

2 Raise your right hand.

3 You shall well and truly try the issue joined in this
4 case of the State versus Gary Clifton Hamilton, and a
5 true verdict render, according to law and evidence, so
6 help you God.

7 (WHEREUPON, all jurors answered I will and were duly
8 sworn.)

9 THE CLERK: Thank you. You may be seated.

10 THE COURT: Solicitor, you may address the jury
11 in your opening.

12 MS. HINTON: Thank you, Your Honor. May it
13 please the court. Ms. Johnson.

14 **OPENING STATEMENT**

15 **BY MS. HINTON:**

16 Ladies and gentlemen of the jury, good morning.
17 You've been a most patient group. We appreciate that. We
18 hope that yesterday, the things we went through, will make
19 this run a little bit smoother.

20 Yesterday the Judge read to you the indictments in
21 this case. The indictments refer to **Minor**. Today you will
22 meet **Minor**. **Minor** is **Minor**. She's six years old.
23 When this event took place, she was three. And the
24 evidence and the testimony in this case are going to show
25 that in a parking lot in Central, three year old **Minor**

1 Minor was sexually assaulted by Gary Hamilton.

2 Now, you will hear a lot about the fact that Gary
3 Hamilton walked into this courtroom an innocent man. And
4 that is, in fact, one of the greatest rights as Americans.
5 We are innocent until proven guilty. But just because
6 Gary Hamilton walked into this courtroom an innocent man,
7 it doesn't mean that he leaves here one. That is your
8 decision. You, as jurors, have been selected to determine
9 whether or not the state has proven its case. His
10 innocence is often referred to as a cloak; a cloak of
11 innocence. But with each witness that testifies, with
12 each piece of evidence that comes in to be presented to
13 you is like pulling threads on that cloak until eventually
14 that cloak falls apart and Gary Hamilton is left exposed
15 for what he's done to Minor .

16 The state has the burden of proving this case. It's
17 a burden we gladly accept. It is beyond a reasonable
18 doubt. It is the same burden in every criminal courtroom
19 across this great nation. It has been the burden of proof
20 since this nation began. You must be firmly convinced of
21 Gary Hamilton's guilt.

22 There are very few things in this world that we know
23 with absolute certainty, and that's not what's required.
24 We do not have to prove beyond all doubt and any doubt;
25 it's beyond a reasonable doubt. And that's why you're

1 here, because you're reasonable people. That's why you've
2 been selected.

3 This is a tough case. I apologize for what you're
4 going to hear. Most people could go their entire lives
5 without hearing what you're going to hear in this
6 courtroom this week. These cases change people. I think
7 you will see that this case has changed Minor in
8 this case. It's changed her family.

9 I ask that you listen carefully. I know that you
10 will. I know that you'll be attentive. Because this case
11 is important. It's important to Gary Hamilton. It's
12 important to us. It's certainly important to Minor
13 Minor. And at the end of this case I'll be back in front
14 of you to discuss more fully the law and the evidence in
15 this case.

16 I thank you for your service. We could not do our
17 jobs without you. And I hope that you find that at the
18 end of this it's a been worthwhile experience. Thank you.

19 THE COURT: Ms. Johnson, you may address the
20 jury in your opening.

21 MS. JOHNSON: May it please the court. Ms.
22 Hinton.

23 **OPENING STATEMENT**

24 **BY MS. JOHNSON:**

25 There's only one molester in this case. It's the

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1 state of South Carolina. It's not my client, Gary
2 Hamilton. It's the state of South Carolina, by and
3 through its law enforcement agents in this case. Gary
4 Hamilton, as you will see, is a simple minded, mildly
5 retarded man. Hard working man who worked day labor jobs
6 or laboring jobs all of his life and is now disabled.
7 This case is about Gary Hamilton taking care of Minor when
8 her own mama wouldn't, couldn't, and didn't. Gary
9 Hamilton is not a molester.

10 Ladies and gentlemen, my name is Teal Johnson, and I
11 am proud to represent Gary Hamilton, an innocent man.

12 Now, you heard about the cloak of innocence. Gosh,
13 how can he be innocent? Wasn't he charged, arrested,
14 indicted, with these charges? That is all true. But that
15 doesn't matter. These are copies. You can tear them up
16 because they have absolutely no meaning. The only thing
17 that has any meaning in this case is your verdict.

18 Now, to go along with presumption of innocence is
19 burden of proof. This table right here shoulders that
20 burden. My client has absolutely nothing to prove to you
21 today. Nothing. In that vein, I don't know if he's going
22 to testify. It matters not. The burden is on the state.
23 Hold them to their burden. They won't be able to meet
24 their burden.

25 Now, this is a very hard trial. Ms. Hinton and I

1 both agree on that one fact. That might be the only thing
2 we agree on. It's a very hard trial for everybody. And
3 I'm asking you to consider the facts that are presented.
4 Look at this child. Look at Minor [REDACTED], a six year old
5 child coming into the courtroom for an event that happened
6 three years ago. Keep in mind the ability of a three year
7 old to accurately perceive and remember events. I'm
8 asking you to please do that. The state is going to try
9 to play to your heartstrings. That is a violation of your
10 oath to think about my child or a child that I know. Your
11 job is to assess the evidence. Don't buy what these
12 people are selling. They're going to try to bring in this
13 adorable, precious child. Don't buy it. Hold them to
14 their burden.

15 Now, I also ask that you question everything.
16 Question people's motives, question people's intentions,
17 question people's ability to accurately remember things,
18 accurately perceive things. We're going to talk about
19 perception is reality. I'm also going to ask that you
20 keep an open mind throughout this trial. Please don't
21 clam up. Give my client the benefit of the doubt. As Ms.
22 Hinton said, this is everybody's day in court. We've
23 waited over two years to get here.

24 I need to let you know that you will hear statements
25 from my client, his involvement with law enforcement. And

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1 I just ask that you keep in mind somebody's ability to
2 understand and voluntarily -- and were these statements
3 voluntary. Just ask that you keep that in mind throughout
4 this trial.

5 And I'm going to wind up. Again, please keep an open
6 mind. I can't stress that enough, given the charges here.
7 But also, you know, this is an important day, like I said,
8 but you get to be a part of the greatest justice system
9 the world has ever seen. I know that's been repeated.
10 Okay. But we have a system in place, our jury system,
11 where we can hold our government accountable to the
12 principals in our constitution. I'm asking you to hold
13 the government accountable.

14 On behalf of Mr. Hamilton, I appreciate your service.
15 I want you to remember that there's only one molester in
16 this case, and it's not Gary Hamilton. And at the end of
17 the trial, I'm going to go over all of the evidence and
18 I'm going to ask that you find my client not guilty.
19 Thank you.

20 THE COURT: The state may call its first
21 witness.

22 MS. HINTON: Thank you, Your Honor. The state
23 would call Minor [REDACTED].

24 Judge, may we turn the microphone up just a little
25 bit?

Minor [REDACTED] - Direct Examination by Ms. Hinton

1 THE COURT: Young lady, if you would come up
2 here and please have a seat.

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

6 THE WITNESS: Yes.

7 Minor [REDACTED],

8 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

9 **DIRECT EXAMINATION**

10 **BY MS. HINTON:**

11 Q. Minor [REDACTED], I need you to speak loud for me. Okay?

12 A. Okay.

13 Q. All right. Good job. Minor [REDACTED], what's your full name?

14 A. Minor [REDACTED]. I don't know.

15 Q. Okay. And how old are you?

16 A. I'm six.

17 Q. Do you go to school?

18 A. Yes. But we are on vacation.

19 Q. You're on vacation. Are you on summer vacation?

20 A. Yes.

21 Q. Do you know why we're here today?

22 A. Because Gary hurt me.

23 Q. Okay. Do you know that we're here to tell the truth
24 today?

25 A. Yes.

1 MS. JOHNSON: Your Honor, may I approach?

2 THE COURT: Yes, ma'am.

3 (WHEREUPON, a bench conference was held off the
4 record.)

5 Q. [REDACTED], do you know the difference between a truth and
6 a lie?

7 A. The truth is good and a lie is bad.

8 Q. What happens if you tell a lie?

9 A. You get in trouble.

10 Q. And you know that we're not here to tell lies today;
11 right?

12 A. Right.

13 Q. We're only here to tell the truth?

14 A. Yes.

15 Q. Okay. Now, if I told you that my outfit was purple,
16 would that be the truth or a lie?

17 A. Lie.

18 Q. And if I told you that you're a girl, would that be
19 a truth or a lie?

20 A. Truth.

21 Q. Okay. And if I told you that this was a dog, would
22 that be the truth or a lie?

23 A. Lie.

24 Q. Okay. What is this?

25 A. Teddy bear.

- 1 Q. Okay. What's his name?
- 2 A. Teddy.
- 3 Q. Teddy, okay.
- 4 MS. HINTON: Your Honor, did you have any
- 5 additional voir dire?
- 6 THE COURT: No.
- 7 MS. HINTON: Okay.
- 8 Q. [REDACTED], do you know Gary?
- 9 A. Yes.
- 10 Q. How do you know Gary?
- 11 A. I don't know.
- 12 Q. You don't know? Did you used to spend some time
- 13 with Gary?
- 14 A. Yes.
- 15 Q. Okay. And when you spent time with Gary would he
- 16 ever take you anywhere?
- 17 A. Sometimes.
- 18 Q. Okay. Where would he take you?
- 19 A. Probably to the store or -- I don't know.
- 20 Q. Okay. Did he ever take you to church?
- 21 A. Sometimes.
- 22 Q. Okay. Do you remember anything happening at the
- 23 church?
- 24 A. (No verbal response.)
- 25 Q. You've got to say yes or no.

- 1 A. Yes.
- 2 Q. And did that happen at the church one time or more
- 3 than one time?
- 4 A. One time.
- 5 Q. And when you went to church that time, who drove you
- 6 there?
- 7 A. Gary.
- 8 Q. And where were you sitting?
- 9 A. In the backseat.
- 10 Q. Was anybody else with you?
- 11 A. No.
- 12 Q. Do you remember what you were wearing that day?
- 13 A. A dress with tights and probably white shoes.
- 14 Q. Okay. Did you have on any underwear?
- 15 A. Yes.
- 16 Q. Was anybody else there when this happened with Gary
- 17 at the church?
- 18 A. No.
- 19 Q. What part of the church were you in when this
- 20 happened? Were you inside or outside?
- 21 A. Outside.
- 22 Q. And can you tell me what Gary did to you at the
- 23 church?
- 24 A. He put his finger in my butt.
- 25 Q. He put his finger in your butt?

- 1 A. Yes.
- 2 Q. Can you point to where your butt is?
- 3 A. (Indicating.)
- 4 Q. Are you pointing back here?
- 5 A. Yeah.
- 6 Q. Okay. And when he did that did you say anything to
- 7 him?
- 8 A. No.
- 9 Q. Did he say anything to you?
- 10 A. Yes.
- 11 Q. What did he say to you?
- 12 A. He said if you keep moving it's going to hurt worse.
- 13 Q. If you keep moving it's going to hurt worse?
- 14 A. Yeah. I think that's what he said.
- 15 Q. Did he say anything else?
- 16 A. No.
- 17 Q. Did Gary ever touch himself when you were at the
- 18 church?
- 19 A. Yeah.
- 20 Q. What did he do?
- 21 A. He pulled his pants down and he screamed.
- 22 Q. He screamed. What was he doing when he screamed?
- 23 A. Pulling his wiener.
- 24 Q. Pulling his wiener. And after he screamed did he do
- 25 anything else?

- 1 A. No.
- 2 Q. Okay. And after this happened, what did you do?
- 3 Did you stay at church or did you go home?
- 4 A. We went home after church.
- 5 Q. After church. So did you go to church after Gary
- 6 did this to you?
- 7 A. (No verbal response.)
- 8 Q. You've got to say yes or no?
- 9 A. Yes.
- 10 Q. And why did you -- why did Gary take you to church?
- 11 Why were you going to church?
- 12 A. To learn about God.
- 13 Q. To learn about God. And after Gary did this to you
- 14 did you stay with him for a little while?
- 15 A. Yeah.
- 16 Q. How did that feel?
- 17 A. Sad.
- 18 Q. Sad.
- 19 A. Because I missed my mom.
- 20 Q. Did Gary ever tell you not to tell anybody about
- 21 what happened?
- 22 A. No.
- 23 Q. Did you ever tell anybody what happened?
- 24 A. Mama.
- 25 Q. You told your mama? Where were you when you told

- 1 your mama?
- 2 A. At the house in the bathroom when we were getting
- 3 ready to take a bath.
- 4 Q. Okay. Were you at your house?
- 5 A. Yeah.
- 6 Q. And why did you tell your mom?
- 7 A. Because if I choose the truth, I know that it would
- 8 be more safer and she would protect me.
- 9 Q. Before this happened did you like Gary?
- 10 A. Yes.
- 11 Q. Did you like going to his house?
- 12 A. Yes.
- 13 Q. How do you feel now?
- 14 A. Mad.
- 15 Q. Mad? Hold on one second for me; okay?
- 16 A. Okay.
- 17 Q. [REDACTED], before Gary -- you said he put his finger in
- 18 your butt. Before he did that did he take off your tights
- 19 and your panties?
- 20 A. (No verbal response.)
- 21 Q. Is that a yes?
- 22 A. Yes.
- 23 Q. Did he pull them all the way off?
- 24 A. No.
- 25 Q. No? How did he do it?

1 A. Halfway off.

2 Q. Halfway off. Minor, that's all the questions I
3 have; okay? Ms. Johnson is going to ask you some. So you
4 answer those for her; okay?

5 A. Okay.

6 THE COURT: Ms. Johnson, you may cross examine
7 the witness.

8 MS. JOHNSON: Your Honor, may we approach?

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 **CROSS EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. Hi, Minor.

14 A. Hi.

15 Q. How are you doing?

16 A. Good.

17 Q. It's not fair that I know your name, but you don't
18 know my name. My name is Teal, like the color. You and I
19 both have really unique names; not everyday kind of names.

20 Minor, I want to ask you, have you talked to your mom
21 about this?

22 A. Yes.

23 Q. Okay. You've talked to her a lot; is that right?

24 A. Yes.

25 Q. Okay. And you've met with Ms. Brittany and Ms.

- 1 Brandi; is that right?
- 2 A. Yes.
- 3 Q. You've met with them a lot?
- 4 A. Yes.
- 5 Q. Okay. Have you talked with other people about this
- 6 case?
- 7 A. No.
- 8 Q. Okay. But you've met with Ms. Brandi and Ms.
- 9 Brittany with the solicitor's office a lot; is that right?
- 10 A. Yes.
- 11 Q. Okay. And I really like your dress, Minor. Did you
- 12 pick that out?
- 13 A. Yes.
- 14 Q. Okay. Did Ms. Brandi and Ms. Brittany, did they
- 15 help you pick it out?
- 16 A. No. I just picked it out at home.
- 17 Q. Did you bring in some dresses? Did you show some
- 18 dresses to them?
- 19 A. Yes. But it was a different dress that I wear.
- 20 Q. It was a different dress?
- 21 A. Yes.
- 22 Q. But they helped you pick out your outfit?
- 23 A. Yes.
- 24 Q. Okay. And they've prepared you for court; is that
- 25 right?

- 1 A. Yes.
- 2 Q. Okay. Minor [REDACTED], I want to ask you, when you were three
- 3 -- let me back up. Minor [REDACTED], when is your birthday?
- 4 A. [REDACTED].
- 5 Q. Okay. Tell me what you got for your birthday when
- 6 you were three years old? Do you remember?
- 7 A. No.
- 8 Q. Okay. Do you remember what you got for Christmas?
- 9 A. No.
- 10 Q. Okay. How about -- you're six; is that right?
- 11 A. Yes.
- 12 Q. Okay. So you're about to be seven?
- 13 A. Yes.
- 14 Q. What did you get for your birthday this past year
- 15 when you were six?
- 16 A. I got some fingernail polish and I got a tablet and
- 17 I got -- I can't remember what else I got.
- 18 Q. What kind of tablet did you get?
- 19 A. I got a -- I don't know. I forgot the name of it.
- 20 Q. Okay. But your birthday is in [REDACTED]?
- 21 A. Yes.
- 22 Q. When you were three, what was your favorite toy?
- 23 A. A cat that you push down and it rolled on the floor.
- 24 Q. How long did you have that toy?
- 25 A. Since I was one.

Minor [REDACTED] - Cross Examination by Ms. Johnson

- 1 Q. Do you still have it?
- 2 A. (No verbal response.)
- 3 Q. Okay. Now, you talked with other people about this
- 4 case; is that right?
- 5 A. No.
- 6 Q. Okay. You don't remember saying that you were
- 7 wearing pants?
- 8 A. No. I was wearing some tights.
- 9 Q. Okay. Okay. And this is the first time you said
- 10 that if you keep moving it's going to hurt. You've said
- 11 -- you've talked with other people before, but you've
- 12 never said that; is that right, Minor [REDACTED]?
- 13 A. I've never said that in my life.
- 14 Q. Okay. So today is the first time you're saying
- 15 that?
- 16 A. Yes.
- 17 Q. Now, let me ask you this, Minor [REDACTED]. You're a big girl.
- 18 What grade are you going into next year?
- 19 A. I'm going in the first grade.
- 20 Q. Where are you going to school?
- 21 A. [REDACTED] [REDACTED].
- 22 Q. Okay. But do you remember when you were three, did
- 23 you still have accidents in your panties?
- 24 A. Yes.
- 25 Q. Okay. But you're completely potty trained now; is

1 that right?

2 A. Yes.

3 Q. Okay. And -- I apologize, Minor. And let me back
4 up. You never told anybody about Gary putting his -- or
5 pulling his pants down. Today is the first time; is that
6 right?

7 A. Yes.

8 Q. Okay. Now, you have a little sister?

9 A. Yes.

10 Q. I have a little sister also. And do you -- does she
11 live with you?

12 A. Yes.

13 Q. Okay. What's her name?

14 A. Little Sister.

15 Q. Now, you love your family; is that right?

16 A. Yes.

17 Q. And there were times when you were away from your
18 family, from your mom; is that right?

19 A. Yes.

20 Q. Okay. And you really love your mom?

21 A. Yes.

22 Q. And you love your dad?

23 A. Yes.

24 Q. Okay. Did you ever witness any fights that your
25 mama and daddy had?

Minor - Redirect Examination by Ms. Hinton

1 MS. HINTON: Objection, Judge. I don't know how
2 this is relevant.

3 THE COURT: Is it relevant?

4 MS. JOHNSON: I think it will be, Your Honor. I
5 can approach.

6 THE COURT: No. I'll allow you to ask the
7 question.

8 Q. Minor, I'm sorry, but did you ever witness your mama
9 and daddy fighting?

10 A. Sometimes, sometimes not.

11 Q. Okay. But you were sad that your mama and daddy
12 were sometimes away from you?

13 A. Yes.

14 Q. Okay. Hold on, Minor. I'll be right back; okay?

15 A. Okay.

16 Q. Minor, you've talked with other people about this
17 case; is that right?

18 A. No.

19 Q. You haven't? Okay. Well, it was nice meeting you,
20 Minor; okay?

21 A. Okay.

22 Q. And that's all I have for you.

23 THE COURT: Any redirect?

24 MS. HINTON: Just very briefly, Your Honor.

25 **REDIRECT EXAMINATION**

1 BY MS. HINTON:

2 Q. [REDACTED], Miss Teal asked you if you had ever told
3 anybody about Gary pulling his pants down. Do you
4 remember her asking you that?

5 A. Yes.

6 Q. And you told her no; do you remember that?

7 A. No.

8 Q. Did you -- but did you tell your mom about Gary
9 pulling his pants down?

10 A. Yes.

11 Q. And, [REDACTED], when you're in here, are you telling the
12 truth about what Gary did to you?

13 A. Yes.

14 Q. Has anybody told you what to say about Gary?

15 A. No.

16 MS. HINTON: That's all I have, Your Honor.

17 THE COURT: All right. Thank you.

18 Young lady, you may step down and take your bear;
19 okay?

20 You may call your next witness.

21 MS. HINTON: Your Honor, I apologize. At this
22 time I have a matter to take up outside the jury's
23 presence.

24 THE COURT: All right. We have a legal matter
25 we need to take care of now. Ladies and gentlemen, let me

1 ask you to go back to your jury room. Don't discuss the
2 case. We'll call you back in just a few moments.

3 (WHEREUPON, the jury exited the open court at
4 approximately 10:13 a.m.)

5 THE COURT: All right. Solicitor.

6 MS. HINTON: Thank you, Your Honor. Your Honor,
7 I believe through Ms. Johnson's questioning of the victim
8 that she is attempting to imply that there has been some
9 fabrication or improper influence. What I've handed up to
10 Your Honor is a case which is State v. Jeffcoat, a Court
11 of Appeals case, 350 S.C. 392, from 2002.

12 In that case the defense attorney, much like Ms.
13 Johnson, was asking whether or not her mother or the
14 solicitor's office had improperly coached her or practiced
15 or talked to her about the event. I wrote down what Ms.
16 Johnson said. The first thing she asked is if she had
17 talked to her mom? Yes. And you talked to her a lot?
18 You've met with Brandi and Brittany with the solicitor's
19 office. You've met a lot. Repeated that statement.
20 You've met with Brandi and Brittany from the solicitor's
21 office. You've met a lot. They've prepared you for
22 court. You've talked with other people about the case.
23 That was mentioned twice.

24 Your Honor, in Jeffcoat, they reference 801(d)(1)(b),
25 which says that it is not hearsay if it is consistent with

1 the declarant's testimony and is offered to rebut an
2 express or implied charge against a declarant of recent
3 fabrication or improper influence or motive. And the
4 facts of the Jeffcoat case are that a step granddaughter
5 was alleging that her step grandfather had assaulted her.
6 He was charged with CSC first and lewd act. And she was
7 testifying about the details of the abuse. The state then
8 went into the entire statements that she had given to her
9 mother and the doctor. The court found that proper under
10 the rules, saying that here the trial court properly
11 admitted the statement made by the victim to the mother
12 that Jeffcoat put his wiener on his tootie. Since this
13 statement constituted the victim's initial disclosure of
14 Jeffcoat's abuse, it obviously made prior to any contact
15 with the judicial system, and thus could not have been the
16 result of either the mother or the solicitor's alleged
17 coaching of her court testimony.

18 So, Your Honor, at this time, and the reason I'm
19 bringing this up now is the mother will be the next to
20 testify, I'm asking that the state under State v. Jeffcoat
21 and 801(d)(1)(b) be allowed to bring in the full
22 disclosure to both her mother and to Dr. Mary Fran
23 Crosswell who will testify later.

24 THE COURT: All right. Ms. Johnson, be glad to
25 hear from the defense.

1 MS. JOHNSON: Judge, I mean, I think the first
2 issue is with the mother. We will object to the doctor's
3 testimony on the lower grounds. But, you know, our
4 reading of Jeffcoat, the Jeffcoat court noted allegations
5 of improper influence were not enough to establish
6 admissibility of statements. As a prerequisite to doing
7 admissibility under 801(d)(1)(b), the party offering a
8 prior consistent statement must demonstrate the statement
9 was made before the alleged fabrication or before the
10 alleged improper influence or motive arose. We would
11 object to this. And there's so much hearsay in this case,
12 it just would be improper. And I think the probative
13 value -- the prejudicial effect outweighs the probative
14 value under 403.

15 And Judge, I would also add to my objection, this
16 child, you know, couldn't even remember what happened two
17 minutes ago, so I think the state needs to show when this
18 improper influence happened. And they can't do that.

19 THE COURT: Well, I gather, as I understand the
20 state's argument, the improper influence happened during
21 the preparation for trial. And the statement was given to
22 the mother, I'm assuming, three years ago. I don't know
23 that.

24 MS. JOHNSON: You know, this is a sticky wicket,
25 but also, you know, this interview that I'm not supposed

1 to be talking about, you know, there was -- my
2 recollection, and again, this is forty-one minutes, but
3 there was no mention of what I just -- you know, the key
4 points we got out on cross examination of the child.

5 THE COURT: But the issue -- I think we're
6 talking about two different things now. I think the
7 state's issue is that your cross examination is alleging
8 recent fabrications, such as if it were another witness
9 that you're making this statement now different from your
10 prior statement because the state's offering you a
11 sweetheart deal on your charge or whatever it might be.
12 Your cross examination was to the effect that you're
13 fabricating this now because of the state's actions.

14 MS. JOHNSON: No. And, you know, that's not the
15 route I was taking. The jury needs to be aware of the
16 environment that she's in. And ---

17 THE COURT: But the questions were, they groomed
18 you. I mean, isn't that what you wanted the jury to hear?

19 MS. JOHNSON: Yes and no. But, you know, I want
20 the jury to know that this is, this is a six year old
21 child -- a three year old child. This child has doubled
22 her life.

23 THE COURT: But ---

24 MS. JOHNSON: I don't think -- my questions are
25 going toward this child's credibility, Your Honor.

1 That's -- you know, we would certainly object.

2 THE COURT: But the fact that she made a prior
3 consistent statement under the rules ...

4 MS. JOHNSON: And Judge, my reading of Jeffcoat
5 is the court noted allegations of improper influence were
6 not enough to establish the admissibility. I'm trying to
7 show the route this kid has been -- has gone down in three
8 years.

9 THE COURT: All right. Let's take a short
10 break. Let me study the case.

11 MS. HINTON: Thank you, Your Honor.

12 MS. JOHNSON: And Judge, just for the record, I
13 do want to preserve the record that, you know, part of the
14 direct examination of this child, Ms. Hinton was acting as
15 a shield against my client.

16 THE COURT: All right. You approached the
17 bench. I offered several alternatives to let your client
18 move closer to where he could see. Ms. Hinton then moved.
19 I offered to let him sit wherever he wanted to so he'd
20 have a good view. I thought that afterwards, the
21 situation was not blocking because I asked her to move
22 over and she moved in her examination. I don't know, I
23 didn't hear anything else, but he certainly was given the
24 opportunity to move so he could see the witness if he
25 desired to.

1 MS. JOHNSON: And Judge, I don't want to argue
2 with you, but just my position is that I was in a
3 difficult position because the child was there. You know,
4 it's a very tense situation. But my client is basically
5 immobile. He couldn't move. And I think this was a
6 deliberate attempt ---

7 THE COURT: Well, ---

8 MS. JOHNSON: Just for the record, Your Honor.

9 THE COURT: Okay. Your objection is noted, but,
10 you know, he ---

11 MS. JOHNSON: Thank you, Your Honor.

12 THE COURT: --- testified yesterday. We can --
13 and I think it was clear that I gave you plenty of
14 opportunity. We could send the jury out for him to have
15 that. The record, I mean, should reflect that Ms. Hinton
16 did move once I asked her to, and if that was not enough
17 movement, you certainly -- you have a right to keep
18 bringing that up. And I'll certainly try to accommodate
19 because I want him to be able to see the witnesses,
20 obviously. That's very important.

21 MS. JOHNSON: Thank you, Your Honor. And I
22 apologize.

23 THE COURT: All right. Let's take about a ten
24 minute break.

25 (WHEREUPON, the court stood at recess for a short

1 break.)

2 THE COURT: Can I see the attorneys here just
3 for a minute.

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: All right. We're back on the
7 record. I've reviewed the case, and I find perhaps a
8 subtle distinction between what was asked in the Jeffcoat
9 case by the defense and what was asked here. I'll
10 distinguish that case. Real close to opening the door,
11 but I'll deny your motion, Madam Solicitor, to go beyond
12 the rule on time and place on the other two witnesses, at
13 this time. Again, whether another examination, cross
14 examination, opens the door, I'll certainly let you renew
15 your motion if you feel called upon to do so.

16 MS. HINTON: Thank you, Your Honor.

17 THE COURT: All right. Let's have our jury come
18 in if they're ready.

19 (WHEREUPON, the jury entered the open court at
20 approximately 10:36 a.m.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen for your patience. We're now ready to proceed.
23 Solicitor, you may call your next witness.

24 MS. HINTON: Thank you, Your Honor. The state
25 would call Christine Wilson.

1 THE CLERK: If you would place your left hand on
2 the bible and raise your right.

3 Do you solemnly swear or affirm the testimony you're
4 about to give in this case to be the truth, the whole
5 truth and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: If you would have a seat and state
8 your name for the record, please.

9 THE WITNESS: My name is Christine Nicole
10 Wilson.

11 CHRISTINE NICOLE WILSON,

12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MS. HINTON:

15 Q. Christine, I'm going to stand back here so I can
16 make all of our jurors can hear you. Okay?

17 A. Okay.

18 Q. Christine, where do you live?

19 A. I live in Belton, [REDACTED].

20 Q. Do you have children?

21 A. I do. I have two. I have Minor [REDACTED] and Little Sister [REDACTED].

22 Q. Is that the Minor [REDACTED] we just saw in here?

23 A. It is.

24 Q. How old is Minor [REDACTED]?

25 A. She's six years old.

1 Q. How old is Little Sister ?

2 A. She's four.

3 Q. And do you know Gary Hamilton?

4 A. I do.

5 Q. How do you know Gary?

6 A. I was really close friends with his daughter Julie
7 Ann Hamilton. I met him through her. He helped us out.
8 My mom had kicked us out and I didn't have anywhere to go.
9 He let the girls stay there. Said that he was taking them
10 to church and stuff like that.

11 MS. JOHNSON: Objection, Your Honor. Hearsay.

12 MS. HINTON: That is what he said.

13 THE COURT: I overrule your objection on that.

14 A. He said that he was taking them to church and stuff
15 like that. I felt comfortable. They had been there
16 several times and stayed with Julie and him. You know, he
17 was a grandfather figure to my children.

18 Q. Okay.

19 A. Sometimes they called him granddad.

20 Q. Do they have any other grandfathers in their lives?

21 A. My dad passed away not long before all this came
22 about. So, no, not really.

23 Q. And did Minor ever make a disclosure of sexual abuse
24 to you?

25 A. She did. She came home ---

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1 MS. JOHNSON: Objection, Your Honor. Judge, I

2 ---

3 THE COURT: What's your objection?

4 MS. JOHNSON: She's going to talk about what she
5 said.

6 THE COURT: All right. Let me talk to the
7 lawyers here just for a minute.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 Q. Christine, when she made this disclosure of sexual
11 abuse to you, where were you?

12 A. We were at the new house that we had gotten into.

13 While Mr. Hamilton and Julie and his wife were keeping the
14 kids, we had gotten into a new place and we were there.

15 She waited probably about a month after she came back ---

16 Q. Okay. Hold on one second. You say about a month
17 after she came back. So when did this conversation take
18 place?

19 A. This conversation took place end of August, first of
20 September.

21 Q. Okay. So had Minor been there sometime around -- in
22 August of 2011?

23 A. Yes.

24 Q. Okay. What room in your house did this conversation
25 take place?

1 A. We were going to get the kids in the bathtub and
2 everything and [Minor] just looked really depressed. And I
3 said, [Minor], you know, you can talk to me about anything.
4 I'm always here for you.

5 Q. Okay. And at that time did she tell you where it
6 happened?

7 A. She told me that it was where nobody else was. That
8 he had taken her to church and there was nobody else
9 there.

10 Q. Okay. And did she tell you when it had happened?

11 A. She told me that it was the last time that she was
12 at his home.

13 MS. JOHNSON: Judge, all this is hearsay. I'm
14 going to object to all of it.

15 THE COURT: All right. Let me talk to the
16 lawyers.

17 (WHEREUPON, a bench conference was held off the
18 record.)

19 Q. All right. So Christine, after she makes this
20 disclosure of sexual abuse to you, did you call the
21 police?

22 A. I waited a minute. She told me again. I didn't
23 want to believe it. I didn't. I trusted him, and I
24 didn't want to believe that he had harmed her. I waited.
25 She told me a second time within an hour and I called the

1 police. I called Pickens County Sheriff's Office. They
2 came out. They took a statement. [Minor] told that
3 officer, which I don't recall his name, she told him what
4 had happened. Then the next day we went to Easley Baptist
5 and she seen a doctor there where Rape Crisis was also in
6 there. There were nurses in there. And she told them
7 what had happened.

8 Q. Did you eventually take her anywhere else to get a
9 medical exam?

10 A. She went to Julie Valentine Center. Her and [Little Sister]
11 both had ---

12 Q. A medical exam?

13 A. --- physicals. Yes.

14 Q. All right. And tell me what [Minor] was like before
15 August of 2011?

16 A. She was so happy. I remember taking her to the
17 beach that summer before and watching her run and play and
18 smile and be happy and she didn't have a care in the
19 world. And then after that happened, it was like
20 literally watching the innocence of my child be stripped
21 away. And the constant fear and worry of somebody coming
22 to attack her or get her.

23 Q. She still struggle today?

24 A. She still struggles today. She has night terrors.
25 She wets the bed. She's in counseling. She has seen a

1 psychiatrist. She has seen counselors. It's not been a
2 very easy thing for her to go through. It's not been a
3 very easy thing for me to go through. [Minor] discloses a
4 lot more to me than what she does anybody else because we
5 have a close bond.

6 Q. All right. Christine, that's all that I have for
7 you. Answer any questions Ms. Johnson has. Okay?

8 A. Okay.

9 **CROSS EXAMINATION**

10 **BY MS. JOHNSON:**

11 Q. Ms. Wilson, you have such a close bond with her that
12 you took her on a drive-by shooting when she was little?

13 A. I was not aware of what was going on that night. I
14 was not aware -- her father, as you know, is not a very
15 good man. I was not aware that there was a gun in the car
16 that night. I was not aware of anything. I was falsely
17 charged that day.

18 Q. But you pled and was convicted of an offense,
19 discharging a firearm within a dwelling?

20 A. Yes.

21 Q. And you were on probation at the time this happened;
22 is that right?

23 A. No, I was not. I was on probation -- yeah, I was on
24 probation at the time that this happened with Mr.
25 Hamilton.

1 Q. Okay. But you took Minor, before this ever

2 happened, on an essentially drive-by shooting?

3 A. No. I was not aware that that was what was going on
4 that night. And I feel like that's irrelevant for this
5 case.

6 Q. But you were in the car with him?

7 A. Going to the hospital. And yes, her father pulled
8 out a gun and he discharged that firearm. I did not.

9 Q. And this was before these allegations happened; is
10 that right?

11 A. Minor was maybe six months old when all that
12 happened.

13 Q. Okay. So you and Minor's daddy have a lot of
14 problems or had a lot of problems?

15 A. Had.

16 Q. Okay. And those problems turned to shouting and
17 violence?

18 MS. HINTON: Judge, again, I'm going to object.
19 I don't know the relevance of this line of questioning.

20 A. Yes.

21 THE COURT: I'll overrule your objection.

22 Q. While your children were in the house?

23 A. I think when you have children with someone and you
24 spend multiple years with them, you want things to work.
25 And when people have alcohol addictions and it causes them

1 to do things like get violent, which her father did, you
2 know, I can't help that. I can't help what he decided to
3 do. But I can tell you now that I have taken my children
4 and me and my children both are in a better place and a
5 better state of mind than what we were.

6 Q. But [Minor] was in that situation?

7 A. Yes. [Minor] was in that situation. So was I.

8 Q. And he hit you and pulled a knife in front of you
9 while [Minor] was in ---

10 A. He did. And I left him as soon as he did that in
11 front of her.

12 Q. But that happened two, three times?

13 A. He pulled a knife once on me and that was shortly
14 after this incident came about with Mr. Hamilton and the
15 police started getting called and statements started
16 getting made and he got stressed and he decided to get
17 drunk, and yes, he did pull a knife on me in front of my
18 children. At that time, I called the police and had him
19 arrested. And within a month, I was moved out of that
20 home and had another home.

21 Q. Again, [Minor] was in the house?

22 A. Yes. [Minor] was in the house.

23 Q. Okay. So you exposed your child to all this
24 violence?

25 A. I have no control over what anybody else does.

1 Q. Ma'am, please answer my question. You exposed your
2 child to this violence?

3 A. Yes. But I have no control over ---

4 Q. I understand. And you have a -- or you had a
5 problem with drugs; is that right?

6 A. I'm not going to lie. Yes, when I was younger, I
7 did.

8 Q. Okay. And you've told people associated with this
9 case that you had problems with drugs?

10 A. In the past I did, yes.

11 Q. Okay. And [Minor] 's daddy was an alcoholic?

12 A. Yes. That he's also down the road for meth charges
13 and everything else. Separated from us. He'll never have
14 contact with them again.

15 Q. Okay. But meth charges that are associated with
16 [Minor] being in the house?

17 A. No.

18 Q. Okay.

19 A. Someone else's child. Angela Bergeron, to be exact.

20 Q. Okay. But he's down the road, and when you say down
21 the road, what does that mean?

22 A. He's incarcerated in prison.

23 Q. For how long?

24 A. I think he gets out when [Minor] turns like fourteen
25 or something like that.

1 Q. [Minor] loved her dad; is that right?

2 A. Yeah. She did love her dad. But she seen how he
3 was and she seen how me and him was. And now if you ask
4 her, she doesn't want to go around him.

5 Q. But still her dad?

6 A. Yeah, but still her dad.

7 Q. Okay. And you know, during this time you told some
8 people in this case that you weren't living with the dad,
9 but you were?

10 A. No.

11 Q. Okay. And something about a judge's order that they
12 weren't allowed around -- excuse me -- the children
13 weren't allowed around David?

14 A. No. They've not been allowed around him since he
15 caught these meth charges.

16 Q. Okay.

17 A. So, and he has not been around them. You know, we
18 would meet at the park -- after I had moved out and left
19 him, we would meet at the park in a public place or
20 something like that, and I would allow him to see them.

21 This was before he caught the meth charges.

22 Q. Okay. But now -- I apologize.

23 A. But now he's out of the picture.

24 Q. Okay. He ---

25 A. And that was his choice.

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- 1 Q. He's a pretty big -- in the meth game pretty bad?
- 2 A. I guess. I ---
- 3 MS. HINTON: Judge, again, I'll renew ---
- 4 A. --- had already left him.
- 5 THE COURT: I sustain. I sustain the objection.
- 6 Q. Okay.
- 7 A. I had already left him at that point.
- 8 Q. Okay. And ---
- 9 A. I decided to take a different route. I went back to
- 10 school, you know.
- 11 Q. Okay.
- 12 A. Tried to improve myself.
- 13 Q. But you would agree with me that it's a hard life,
- 14 unsteady life?
- 15 A. It's been hard and ---
- 16 Q. Unstable?
- 17 A. --- unsteady for everybody. Yes.
- 18 Q. Okay. And were there times when you were using pot
- 19 while Minor was around?
- 20 A. No.
- 21 Q. Or when you had Minor?
- 22 A. Maybe in a different room, like when she was really
- 23 young. But ...
- 24 Q. Okay. How about helping David sell pills?
- 25 A. David did what David wanted to do. David worked at

1 the Waffle House and he did what he wanted to do. I
2 stayed at home. I took care of my children the best that
3 I could and did the best that I could to make sure that
4 they were happy and had everything that they needed. I
5 tried to leave him on several accounts and he would come
6 after me.

7 Q. But you were also homeless. I don't like to use
8 that term, but you were also homeless during this time; is
9 that right?

10 A. The week that Gary had got the kids and that this
11 happened, allegedly, yes, my mother had kicked me out and
12 at that time he stepped up to me and said, it's not a
13 problem for your children to stay here. Because I had a
14 trailer lined up to get into. It needed some work done on
15 it. The landlord said it would be a week before we could
16 get in. So, yes, we were homeless at that time. It was
17 kind of a split decision. My mother is bipolar. She
18 flipped out and kicked us out. And Mr. Hamilton stepped
19 up and said, your kids can stay here. I will take them to
20 church. I will keep them, watch them, dadada.

21 Q. Okay. But you were living in a car; is that right?

22 A. No. I was not living in a car.

23 Q. Okay. But you were still homeless? And I don't
24 want to make light of that. I mean, I know that's serious
25 when you're got two children. But again, there were times

1 when you were living with David, it was just a very hectic
2 situation. Would you agree with me, ---

3 A. Yes.

4 Q. --- Ms. Wilson? Okay. Now, when you were pregnant
5 with your second child, [Minor] stayed with the Hamiltons
6 for a lengthy period; is that right?

7 A. The last month of my pregnancy, I had developed
8 toxemia, which made my blood pressure go really high. The
9 doctors put me on bed rest. Julie stepped up and said,
10 I'll keep [Minor], because David was working at the Waffle
11 House. And so, yes, they kept [Minor] then. I obviously
12 couldn't get up, you know, a lot to cook, clean. You're
13 on bed rest by doctors. You don't want to harm you or
14 your baby that is inside of you, so ...

15 Q. I understand. But you didn't stay with [Minor]; is
16 that right? You dropped her off?

17 A. Actually they came and got her.

18 Q. Okay.

19 A. Actually Mr. Hamilton had just got released from
20 jail that day for battery on his wife, I believe, and he
21 -- they came and picked up [Minor] and took them -- you
22 know, took [Minor] and kept her until I had the baby. And
23 then they kept [Minor] for about a week after I had the
24 baby.

25 Q. Okay. Well, I mean, if it's true, you're letting

1 your child stay in that circumstance ---

2 A. Brenda assured me that it was a big
3 misunderstanding. And, you know, it was pretty much the
4 same thing with her, I guess.

5 Q. Okay. But again, you didn't stay with these
6 children? Or [Minor]?

7 A. I did spend a few nights over at their house with
8 Julie and [Minor] was there and [Little Sister] was there. That
9 week I did stay a couple of nights. And I did go by there
10 to check on them every day. And I called every day.

11 Q. Okay. You know, where in your statement have you
12 said you went over there everyday and called, in your
13 previous statements?

14 A. Nobody ever asked. I didn't think that that was
15 relevant, so ...

16 Q. Okay.

17 A. Just going along with your questions.

18 Q. If you're going over there every day to see your own
19 kids, it doesn't make sense why you're not taking care of
20 them. But, at one point -- you know, [Minor] really loved
21 Julie; is that right?

22 A. Yeah.

23 Q. Okay. And she begged to go there?

24 A. Yeah.

25 Q. Okay. But it was just -- the whole situation was

1 irregular and infrequent?

2 A. Julie would get them from time to time. You know,
3 about two or three times a month she would come and get
4 [Minor] and [Little Sister] and take them and they would go do
5 things, the same as me and Julie would go do things. We
6 would go to the lake with her boyfriend or husband or
7 whatever and, you know, camp out. We did things together.
8 We were friends, you know. Mr. Hamilton and Brenda and
9 Julie, you know, they befriended us and made us feel
10 welcome and at home and like everything was okay.

11 Q. Okay. Well, that's not the question I asked. But
12 let's move on to, you talked -- or excuse me -- you were
13 responsible for taking [Minor] to counseling after, you
14 know, these allegations. But she was terminated from
15 treatment because you couldn't make appointments for her
16 or couldn't meet the appointments?

17 A. Yes. We lived in Easley.

18 Q. Okay.

19 A. She was going to Behavioral Health right across the
20 street seeing Ms. Laura Franklin.

21 Q. But she was terminated ---

22 A. She was terminated because ---

23 Q. --- because it was not a priority for you?

24 A. Because I was working ---

25 MS. HINTON: Judge, I'm going to ask ---

1 THE COURT: Wait a minute.

2 MS. HINTON: I'm just going to ask that she be
3 allowed to answer the questions.

4 A. I was working and it kind of comes up to, do you
5 want to work and hold a roof over your children's head and
6 provide for them, or do you want to call in sick that day
7 and say, hey, I can't come in because my child has
8 counseling? Do you understand? As a single mother, and
9 I'm the only one coming in, because you can pull up the
10 records for the child support; there is no child support
11 paid.

12 Q. You've answered my question. I appreciate that.
13 But, you know, you -- I understand that you have a hard
14 life. But, you know, you've got family here with you
15 today, so that's all I'm going to say about that. Was
16 Minor ever exposed to age-inappropriate movies?

17 A. No.

18 Q. Okay. Were you conscious, aware of any type of -- I
19 \ guess, anything that was abusive in nature? I mean, was
20 that something that was on your mind just as a parent?

21 A. Abusive in nature as in?

22 Q. Just anything?

23 A. With Gary?

24 Q. No. Just in general?

25 A. I don't understand.

1 Q. I mean, were you conscious of the fact, you know,
2 that -- I'll withdraw the question. Were you conscious of
3 any action to be considered abusive? I mean, was that
4 just something that was -- you were looking out for as a
5 parent, is what I'm trying to ask you?

6 A. With?

7 Q. With all your children, just, you know, in everyday
8 life?

9 A. I don't understand what you're asking me.

10 Q. Okay. I apologize.

11 A. Are you asking me sexual abuse? Are you asking me
12 the abuse with their father? Are you -- I mean, I don't
13 understand where you're going?

14 Q. Sexual abuse, I mean, was that something that was on
15 your radar?

16 A. No, it wasn't, because I trusted him.

17 Q. Okay. Well, and I'm just -- I'm talking about
18 generally?

19 A. I think that's on every mother's radar.

20 Q. Okay.

21 A. At the same time, though, when you trust someone,
22 it's a bit different.

23 Q. Okay. Now, you've bragged about getting Gary in
24 trouble before?

25 A. I wouldn't say I bragged. But I think that everyone

1 deserves what they get.

2 Q. But you've talked about this at work about Gary
3 getting in trouble?

4 A. Well, at work, yes, because I had to take time off
5 for bond hearings. I had to take time off for different
6 things. You know, I wouldn't say I bragged about it. But
7 because it's not really something to brag about. It's
8 caused a lot of pain, a lot of heartache in my family.

9 Q. That's not focusing on **Minor** though.

10 MS. JOHNSON: Beg the court's indulgence.

11 Q. Ms. Wilson, and I don't want to offend you, but were
12 you sexually abused?

13 A. Yes, I was sexually abused.

14 Q. And I'm sorry for that. But just to clear up some
15 of your statements, you actually waited the next day to
16 report the incident with **Minor**?

17 A. No. That same night that she told me, I called
18 Pickens County. The next day we went to Easley Baptist
19 and had a doctor come in the room and she talked to him.

20 Q. Okay. And just, you know, talking about what you
21 said earlier, you were a part of the drive-by shooting;
22 you were yelling out obscenities?

23 A. No, ma'am.

24 Q. Okay. Well, you pled to it?

25 A. As advised by my lawyer, yes, I pled to the charge.

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1 Q. You've got a conviction on your record?

2 A. Yes.

3 Q. And you wouldn't have pled to it if you weren't
4 guilty?

5 MS. HINTON: Judge, I'm going to ask that Ms.
6 Johnson stick to questions and not statements.

7 THE COURT: I sustain that objection. If you
8 have a question ask a question, but you're not sworn,
9 okay, to testify.

10 All right. Any redirect?

11 MS. HINTON: Just very briefly, Your Honor. I'm
12 sorry.

13 **REDIRECT EXAMINATION**

14 **BY MS. HINTON:**

15 Q. Christine, getting back to why we're here. If you
16 would have known what Gary was going to do to **Minor**, would
17 you have sent her over there?

18 A. No, I would not have.

19 Q. Thank you.

20 THE COURT: Thank you, ma'am. You may step
21 down.

22 MS. JOHNSON: Judge, if I may on redirect -- or
23 recross.

24 **RECROSS EXAMINATION**

25 **BY MS. JOHNSON:**

1 Q. You don't know what happened; do you?

2 A. I believe everything that my child tells me.

3 Q. You don't know what happened; do you?

4 MS. HINTON: Judge, ---

5 THE COURT: Again, make it a question rather
6 than saying, you don't know what happened, ma'am. You can
7 ask questions all you want.

8 MS. JOHNSON: Judge, may I approach?

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, a bench conference was held off the
11 record.)

12 THE COURT: You may call your next witness,
13 Solicitor.

14 MS. LANDSVERK: The state would like to call
15 Mary Jane Bryant to the stand.

16 THE CLERK: If you would place your left hand on
17 the bible and raise your right.

18 Do you solemnly swear or affirm the testimony you're
19 about to give in this case to be the truth, the whole
20 truth and nothing but the truth, so help you God?

21 THE WITNESS: Yes, sir.

22 THE CLERK: If you would have a seat and state
23 your name for the record, please.

24 THE WITNESS: Mary Jane Bryant.

25 **MARY JANE BRYANT,**

1 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. LANDSVERK:**

4 Q. Good morning, Ms. Bryant. How are you?

5 A. I'm good. You?

6 Q. Good.

7 A. Thank you.

8 Q. Do you know Minor [REDACTED] ?

9 A. I do.

10 Q. Okay. How do you know her?

11 A. Her mom and I are friends.

12 Q. Okay. How long have you been friends with her?

13 A. January of 2010 is when I met her.

14 Q. Do you spend a lot of time with Minor [REDACTED] and her mom?

15 A. I do.

16 Q. How often would you say you get together?

17 A. Two to three times a week.

18 Q. Pretty often?

19 A. Uh-huh (affirmative).

20 Q. And has Minor [REDACTED] ever disclosed sexual abuse to you?

21 A. Yes.

22 Q. Did she tell you -- when she disclosed the sexual
23 abuse, did she tell you where ---

24 MS. JOHNSON: Judge, I'm going to ---

25 Q. --- it happened?

1 MS. JOHNSON: --- object to this also.

2 THE COURT: All right. What's your objection,

3 Ms. Johnson?

4 (WHEREUPON, a bench conference was held off the
5 record.)

6 THE COURT: Objection is overruled.

7 Q. Ms. Bryant, when [Minor] disclosed the sexual abuse to
8 you, did she tell you where the sexual abuse happened?

9 A. Yes.

10 Q. Okay. Where did it happen?

11 A. At church in the parking lot.

12 Q. Okay. Did she tell you when it happened?

13 A. She just told me that she was going to Vacation
14 Bible School.

15 Q. Okay. And where were you when she disclosed the
16 sexual abuse to you?

17 A. At my house.

18 Q. Was her mom with her at the time?

19 A. Yes.

20 Q. And did [Minor]'s mom encourage her to tell you at
21 all?

22 A. No.

23 Q. Was, you know, was her mom involved in the
24 conversation at all?

25 A. After [Minor] -- Christine was in my house. And [Minor]

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1 was sitting outside with me. And after Minor had started
2 telling me, then Christine walked out.

3 Q. What was Minor's reaction like when she told you?

4 A. Sad.

5 Q. And what was your reaction when you heard about it?

6 A. Hurt, sad, mad.

7 Q. Okay. Just one second. And just kind of taking you
8 back when she disclosed to you. When did this
9 conversation take place?

10 A. It was cooler weather. I'll say around October
11 2011, because it was around my son's birthday.

12 Q. All right. Thank you. Please answer any questions
13 from Ms. Johnson.

14 **CROSS EXAMINATION**

15 **BY MS. JOHNSON:**

16 Q. Ms. Bryant, you never called the police about this?

17 A. No, ma'am.

18 Q. Okay. This is the first time you've made an
19 official statement about this; is that right?

20 A. When I came up and spoke with the -- with Brandi.

21 Q. Okay. You've never -- this is the first time you've
22 made -- you've said this; is that right?

23 A. I don't understand.

24 Q. I apologize. You never called the police?

25 A. No.

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1 Q. Okay.

2 A. No.

3 MS. JOHNSON: Nothing further, Your Honor.

4 MS. LANDSVERK: Your Honor, just one question on
5 redirect.

6 THE COURT: All right.

7 **REDIRECT EXAMINATION**

8 **BY MS. LANDSVERK:**

9 Q. Ms. Bryant, did you know at the time that this had
10 already been reported?

11 A. Yes.

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

14 You may call your next witness, Solicitor.

15 MS. HINTON: Thank you, Your Honor. State would
16 call Investigator Michele Hendrix.

17 THE CLERK: Do you solemnly swear or affirm the
18 testimony you're about to give in this case to be the
19 truth, the whole truth and nothing but the truth, so help
20 you God?

21 THE WITNESS: I do.

22 THE CLERK: If you would have a seat and state
23 your name for the record, please.

24 THE WITNESS: Michele Hendrix.

25 **MICHELE HENDRIX,**

1 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MS. HINTON:**

4 Q. Detective Hendrix, if you'll make sure you talk into
5 that microphone so we can all hear you. Where are you
6 employed?

7 A. I'm employed at the Anderson County Sheriff's
8 Office.

9 Q. How long have you been there?

10 A. I've been there for eighteen years.

11 Q. Okay. How long have you been in investigations?

12 A. I've been in investigations since 2006.

13 Q. Did you, as part of your duties as an investigator
14 with Anderson County, did you become involved in this case
15 with Gary Hamilton?

16 A. I did.

17 Q. And how did you become involved in the case?

18 A. The case was actually transferred to us from Pickens
19 County.

20 Q. Okay. Is that because the defendant lived in
21 Anderson County at the time?

22 A. The defendant lived in Anderson at the time, and
23 they were not sure if the events actually occurred in our
24 jurisdiction.

25 Q. Okay. When did you receive this case from Pickens

1 County?

2 A. I received the case on November the 11th, 2011.

3 Q. And when was the initial report made to Pickens
4 County; do you know?

5 A. I am not sure about that.

6 Q. Okay. Was it prior to November the 11th?

7 A. It was prior to November the 11th.

8 Q. Okay. And in your investigation of this case, did
9 you go meet with Gary Hamilton?

10 A. I did.

11 Q. And when did you meet with him?

12 A. I met with Mr. Hamilton on April the 5th, 2012.

13 Q. And where were you when you met with him?

14 A. At his residence.

15 Q. Okay. And who was with you?

16 A. It was myself and my partner, Investigator Collins.

17 Q. And when you met with him at his home, was there
18 anybody else present at the home?

19 A. His wife was there.

20 Q. What's her name?

21 A. Brenda.

22 Q. When you met with him, at that point were you there
23 to arrest him?

24 A. No.

25 Q. Okay. What were you there to do?

1 A. Actually it was more of a fact-finding. It was the
2 first time I had made contact with him, so I just kind of
3 wanted to talk to him and let him know that I had the case
4 and what the charges were.

5 Q. Okay. And so did you provide him with any Miranda
6 rights at that point?

7 A. Not at that time.

8 Q. And why not?

9 A. He was not under arrest at the time, and it was more
10 of a fact-finding information to gather information, than
11 anything.

12 Q. Okay. Did Mr. Hamilton appear willing to speak with
13 you?

14 A. Yes. He was actually the one who gave me the date
15 and time to meet with him at his home.

16 Q. Okay. And when you met with him, did he appear to
17 be under the influence of any drugs or alcohol?

18 A. No.

19 Q. Did he appear to have any physical or mental
20 infirmities that would prohibit him understanding what was
21 going on?

22 A. No.

23 Q. Now, you understand that he has -- he went through
24 special education?

25 A. I found out later that he went through special

1 education.

2 Q. Did that at all cross your mind when you initially
3 met with him?

4 A. No, it did not.

5 Q. Okay. Now, when you meet with him, do you go
6 dressed as you are today?

7 A. Yes.

8 Q. Okay. And do you have your service weapon?

9 A. Yes.

10 Q. And your badge?

11 A. Yes.

12 Q. Do you always carry that with you?

13 A. Yes.

14 Q. Now, when you met with him, did he make any
15 statements to you?

16 A. He gave me some background on how he knew the victim
17 and how he knew the victim's mother, and they would help
18 her out and things like that. And then when I advised him
19 of what the allegations were, he then denied the
20 allegations.

21 Q. And when he denies the allegations, can you be
22 specific about what he said to you?

23 A. He told me at the time that he did not touch the
24 victim at all.

25 Q. Okay. Did he tell you whether or not he had ever

1 been alone with the victim?

2 A. He said they did go to church. He would take them
3 to church, but his wife would always go with him when they
4 went to church. So he was never alone with her.

5 Q. And when he was talking about church, did he tell
6 you specifically what church he was talking about?

7 A. At that point I don't think he did. I think that
8 was later when I was actually speaking with Ms. Hamilton
9 on a different date.

10 Q. Were you able to ascertain what church it was?

11 A. On a different date I was.

12 Q. Okay. And what was that church?

13 A. Let me see if I actually documented it in here. I
14 know that they told me it was in Central. I don't know if
15 I actually documented the name of the church.

16 Q. Okay.

17 A. But they told me that it would be in Central.

18 Q. Okay. Did he provide you a written statement that
19 day?

20 A. No, he did not.

21 Q. And why not?

22 A. At the time because it was fact-finding, I just
23 wanted verbally what he had to say. And also, at the
24 time, he told me he was having problems with his diabetes
25 and he was having a problem with his fingers. They were

1 actually swollen and some of them were starting to crack
2 open. So we did not take a statement at that time because
3 of his physical limitations.

4 Q. Okay. So he never told you that mentally he was not
5 able to give you a statement?

6 A. Right.

7 Q. Did you also speak with his wife that day?

8 A. Yes.

9 Q. And did you, at some point, speak with his daughter,
10 Julie Ann?

11 A. I did.

12 Q. I guess was there any need to mirandized Brenda or
13 Julie Ann?

14 A. No.

15 Q. And why was that?

16 A. Again, it was just fact-finding. Neither one of
17 them was under arrest. They were not in custody. I just
18 needed information from them.

19 Q. Did you arrest Mr. Hamilton after you spoke to him
20 at that point?

21 A. I did not.

22 Q. At that point did Investigator Collins kind of take
23 this case over?

24 A. At that point, I had called and spoke with Mr.
25 Hamilton about coming in for a second interview. And then

1 I had a family emergency and was not able to be there, so

2 Investigator Collins actually did the second interview.

3 Q. So did that pretty much end your involvement in this
4 case?

5 A. Yes.

6 Q. Did you at some point transfer this case to Chief
7 Khristy Justice with the Central Police Department?

8 A. I did.

9 Q. All right. Detective Hendrix, that's all I have at
10 this time. Please answer any questions Ms. Johnson may
11 have.

12 **CROSS EXAMINATION**

13 **BY MS. JOHNSON:**

14 Q. Good morning, Detective Hendrix. It's true that you
15 received the file on November 11th, 2011; is that right?

16 A. That was the date I was assigned the case.

17 Q. Okay. You didn't talk to my client until roughly
18 six months -- or excuse me -- five months later, in April?

19 A. April.

20 Q. Okay. So that's, again, roughly five months;
21 correct?

22 A. Yes, ma'am.

23 Q. Okay. And he agreed to talk to you? He was happy
24 to talk to you; is that right?

25 A. Yes.

1 Q. Okay. He invited you in his house; correct?

2 A. Yes, he did invite us in.

3 Q. Okay. And he also came to the police department or
4 Anderson County Sheriff's Office later on at your request;
5 correct?

6 A. For the second interview, he came voluntarily to the
7 sheriff's office.

8 Q. Okay. Now, you also, like you said, talked to Ms.
9 Hamilton, Brenda Hamilton?

10 A. I did.

11 Q. Okay. And she told you that Gary took the children
12 ---

13 MS. HINTON: Objection, Your Honor. This is
14 hearsay.

15 MS. JOHNSON: It was brought out on direct, Your
16 Honor.

17 THE COURT: What she said?

18 MS. JOHNSON: Yes, sir.

19 THE COURT: What his wife said?

20 MS. JOHNSON: I'm just clarifying it.

21 THE COURT: All right. I'll allow the question.

22 Q. And she told you, and it's in your report, that Gary
23 took the children to church and she went with them?

24 A. Mr. Hamilton told me that. That was what was
25 brought out in direct was Mr. Hamilton -- I actually spoke

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1 to Ms. Hamilton afterwards and she just confirmed what Mr.
2 Hamilton said.

3 Q. Okay. So she agreed that she also went to church?

4 A. Yes.

5 Q. Okay. Now, you said you didn't take a statement
6 because of Mr. Hamilton's physical limitations; is that
7 right?

8 A. Yes.

9 Q. And he still had those limitations whenever he came
10 for the second interview?

11 A. I was not ---

12 Q. To your knowledge?

13 A. I was not at the second interview. I am not sure.

14 Q. Okay. Thank you, Detective Hendrix.

15 THE COURT: Any redirect?

16 MS. HINTON: No, Your Honor. May she be
17 excused?

18 THE COURT: Any objection?

19 MS. JOHNSON: No, Your Honor.

20 THE COURT: All right. Without objection the
21 witness may be excused. You may step down.

22 Madam Forelady and ladies and gentlemen of the jury,
23 this might be a good time for us to take a break. You've
24 had some breaks; we haven't. So I'll let you take a short
25 break and we'll call you back in just a few moments.

1 Don't discuss the case while you're out and about.

2 (WHEREUPON, the jury exited the open court at
3 approximately 11:17 a.m.)

4 THE COURT: All right. Let's take about a
5 fifteen minute break; be ready to start back.

6 (WHEREUPON, the court stood at recess for a short
7 break.)

8 THE COURT: Everybody ready to proceed?

9 MS. HINTON: Yes, Your Honor.

10 MS. JOHNSON: Yes, Your Honor.

11 THE COURT: Have them come in if they're ready,
12 Mr. Evans.

13 (WHEREUPON, the jury entered the open court at
14 approximately 11:35 a.m.)

15 THE COURT: Ms. Hinton, you may call your next
16 witness.

17 MS. HINTON: Thank you, Your Honor. The state
18 would call Michael Collins.

19 THE CLERK: Do you solemnly swear or affirm the
20 testimony you're about to give in this case to be the
21 truth, the whole truth and nothing but the truth, so help
22 you God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you, sir. If you would have a
25 seat and state your name for the record, please.

1 MS. JOHNSON: Judge, just so the record is
2 clear, I just want to preserve my objection.

3 THE COURT: Your objections are noted. Thank
4 you.

5 THE WITNESS: My name is James Michael Collins.

6 JAMES MICHAEL COLLINS,

7 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MS. HINTON:

10 Q. You go by Michael; correct?

11 A. That is correct.

12 Q. Investigator Collins, where are you currently
13 employed?

14 A. I'm currently employed with the South Carolina Law
15 Enforcement Division.

16 Q. What do you do over there?

17 A. I'm an agent with the -- in criminal investigation
18 division.

19 Q. Prior to that where did you work?

20 A. I worked at the Anderson County Sheriff's Office.

21 Q. Is that how you became involved in this case?

22 A. Yes, ma'am, it was.

23 Q. How long had you worked at Anderson County?

24 A. I had worked at Anderson County for six years, I
25 believe. Since 2006.

1 Q. And back in 2011, what capacity were you employed
2 there?

3 A. I was a criminal investigator with the criminal
4 investigation division.

5 Q. Is that a detective?

6 A. Yes.

7 Q. Detective Michele Hendrix testified earlier that she
8 went with you to the defendant's house back in April of
9 2012. Do you recall that?

10 A. I do.

11 Q. And we won't go through everything, but when you
12 went there did you go dressed as you're kind of dressed
13 today?

14 A. Yes, ma'am, minus the jacket.

15 Q. Okay. And do you carry your service weapon with
16 you?

17 A. Yes, ma'am.

18 Q. And do you carry your badge?

19 A. Yes, ma'am.

20 Q. And when you met with him was anyone else present
21 with Mr. Hamilton?

22 A. I believe his wife was there.

23 Q. Do you recall her name?

24 A. I don't, right off the top of my head.

25 Q. Okay. And did you provide Mr. Hamilton with any

- 1 Miranda rights?
- 2 A. No, ma'am, we did not.
- 3 Q. And why is that?
- 4 A. He was not in custody at the time. He was not under
- 5 arrest.
- 6 Q. Did y'all arrest him that day after you spoke with
- 7 him?
- 8 A. No, ma'am, we did not.
- 9 Q. When you spoke with him did he appear to understand
- 10 what was going on?
- 11 A. Yes, ma'am, he did.
- 12 Q. Did he give you any reason to believe that he was
- 13 not capable of understanding you?
- 14 A. No, ma'am, he did not.
- 15 Q. Did he speak freely with you?
- 16 A. Yes, ma'am, he did.
- 17 Q. After that meeting at his house, did he ever come
- 18 meet with you at the sheriff's office?
- 19 A. Yes, ma'am.
- 20 Q. Do you recall when that was?
- 21 A. That was April the 19th of 2012.
- 22 Q. And what was the purpose of him returning for that?
- 23 A. It was a follow-up interview.
- 24 Q. When he came in for that follow-up interview, did
- 25 you mirandized him at that time?

- 1 A. Yes, ma'am, I did.
- 2 Q. Did anyone come with him to the sheriff's office?
- 3 A. His wife and daughter.
- 4 Q. I'm going to show you what's been marked as State's
- 5 Exhibit Number 1. I'm going to ask you if you recognize
- 6 that document.
- 7 A. Yes, ma'am, I do.
- 8 Q. And what is that?
- 9 A. This is the advisory of rights for the Anderson
- 10 County Sheriff's Office.
- 11 Q. And in the body of that paper are there a list of
- 12 rights?
- 13 A. Yes, ma'am.
- 14 Q. And when someone comes in to meet with you, do you
- 15 explain what those rights are?
- 16 A. Yes, ma'am, I do.
- 17 Q. Do you read them to them?
- 18 A. I read them, yes, ma'am.
- 19 Q. And then what do you have them to do to acknowledge
- 20 that they understand their rights?
- 21 A. Either initial or I check off on it after I ask them
- 22 if they understand it.
- 23 Q. Okay. Do they sign it?
- 24 A. Yes, ma'am.
- 25 Q. Do you have anybody witness it?

1 A. Yes, ma'am, I do.

2 Q. Specifically in this case did you do all those
3 things with Gary Hamilton?

4 A. Yes, ma'am, I did.

5 Q. Okay. And who witnessed that?

6 A. His daughter, Julie Ann Hamilton.

7 Q. And can you please read for the jury the body of it
8 and the rights that you read to him?

9 A. It says: Before you ask any questions, you must
10 first understand your rights. You have the right to
11 remain silent. Anything you say may be used against you
12 in court. You have the right to speak with a lawyer for
13 advice before you are asked him questions and have him
14 with you during questioning. If you cannot afford a
15 lawyer one will be appointed for you before any question
16 without -- I'm sorry. If you cannot afford a lawyer one
17 will be appointed for you before any questions, if you
18 wish. If you decide to answer questions now without a
19 lawyer present, you will still have the right to stop
20 answering questions at any time. You also have the right
21 to stop answering questions at any time until you speak
22 with a lawyer.

23 Q. Okay. Did Mr. Hamilton sign those rights?

24 A. Yes, ma'am, he did.

25 Q. And in signing them is he waiving those rights?

1 A. Not at that particular section, he's not waiving
2 them.

3 Q. Okay. Did he agree to speak with you?

4 A. Yes, ma'am.

5 Q. Okay. Did he agree to speak with you without a
6 lawyer?

7 A. Yes, ma'am, he did.

8 Q. Did he appear to be under the influence of any drugs
9 or alcohol that day?

10 A. No, ma'am, he did not.

11 Q. Did he appear to have any physical or mental
12 infirmities that would ---

13 MS. JOHNSON: Judge, I'm going to object to all
14 this leading.

15 THE COURT: I overrule your objection as the
16 question's asked.

17 MS. HINTON: Thank you, Your Honor.

18 Q. Did he appear to have any physical or mental
19 infirmities that would impair his ability to understand
20 what was going on?

21 A. No, ma'am, he did not.

22 Q. Did you speak with Mr. Hamilton at that point?

23 A. I did.

24 Q. Okay. And did he give you a statement as to -- an
25 oral statement as to what happened with Minor ?

1 A. Yes, ma'am, he did.

2 Q. What was the first thing that he told you?

3 A. His initial statement was that he did touch Minor
4 but that his finger barely went inside of her vagina.

5 Q. At that point what do you do?

6 A. I continue to interview him. And we -- he went into
7 some other explanations of how it might have happened.

8 Q. Okay. Let's go through each of those explanations.
9 What was the first explanation that he gave you as to how
10 it might have happened?

11 A. The first explanation was that he stated it might
12 have been at church. He stated that he was going around
13 to get Minor out of the backseat and went to pick her up
14 by her waist and that his finger might have accidentally
15 touched her vagina at that point. At that point I
16 challenged his inconsistencies with the initial statement,
17 verbal statement, that he gave me and told him that I
18 didn't quite understand how he picked her up by the waist
19 and that he was -- that she had on a dress, he picked her
20 up by the waist, how his hand accidentally went under her
21 dress, moved her panties out of the way and his finger
22 went inside of her at that point. I challenged those
23 inconsistencies. He came up with a second story. At that
24 point he said that he was picking Minor up by the waist.
25 She almost fell. When he went to go catch her, that's

1 when his finger might have accidentally touched her
2 vagina. Again, I challenged his inconsistencies as far as
3 him picking her up. At the time he had very -- he had
4 injuries to his hands, he was very immobile, and I told
5 him I didn't really see him picking her up by the waist;
6 that seemed odd to me.

7 Q. Why did that seem odd to you?

8 A. Again, because of his hands, the injuries to his
9 hands, and to pick a child up out of a car seat by the
10 waist. The way I've seen it done, the majority of the
11 time is you pick a child up by the armpits, set them down
12 on the ground. Minor was able to walk -- as far as I
13 understand, she was able to walk at that point, so it
14 seemed strange that he would be picking her up by the
15 waist and helping her out of the car, especially by the
16 waist and trying to set her down on the ground. Again, I
17 challenged his inconsistencies, that his fingers were --
18 you know, had injuries to his hands. He was immobile. He
19 was using a cane himself. And then he, you know, he
20 really didn't have a legitimate explanation for that
21 story. I continued to challenge him. He came up with a
22 third story, which was that Minor was sitting in the
23 backseat. She had used the bathroom on herself. And that
24 his finger might have touched her while -- touched her
25 vagina while he was cleaning her. Initially he said that

1 he didn't have anything on his hand. And then he
2 corrected himself and said that he used a wipe and that
3 his finger might have accidentally touched her vagina at
4 that point. Again, I confronted him with the other
5 stories that he presented to me to begin with, the
6 inconsistencies in those stories. And then the fact that,
7 you know, he's changed the story, you know, two to three
8 times at this point already. And which was very
9 inconsistent with his initial verbal statement of that his
10 finger barely went inside of her vagina. We went back and
11 forth on that for a little while. I continued to
12 challenge him. He continued to try to come up with an
13 explanation. At that point, he got a little heated and
14 yelled, I did it. And then at that point I asked him to
15 explain to me what that meant and how it happened. And
16 then he provided me with a statement.

17 Q. When you say provided a statement, do you mean a
18 written statement?

19 A. A written statement, yes, ma'am.

20 Q. Before we get there. You said you're challenging
21 him. Are you screaming at Mr. Hamilton?

22 A. No, ma'am.

23 Q. Are you threatening him?

24 A. No, ma'am.

25 Q. Are you banging on the desk demanding that he tell

- 1 you the truth?
- 2 A. No, ma'am, I was not.
- 3 Q. Okay. Did you have your service weapon on you that
- 4 day?
- 5 A. I did.
- 6 Q. Okay. Did you have your badge on you?
- 7 A. I did.
- 8 Q. Is that the same as when you went to his house?
- 9 A. It was.
- 10 Q. Okay. Did you threat him or intimidate him in
- 11 anyway?
- 12 A. No, ma'am, I did not.
- 13 Q. Now, this statement was not orally or visually
- 14 recorded; correct?
- 15 A. No, ma'am. At the time at the Anderson County
- 16 Sheriff's Office, it was not a practice to video record or
- 17 audio record any interviews.
- 18 Q. How long have you been taking written statements?
- 19 A. Since I started policing in 2006.
- 20 Q. Is that a standard way to take someone's statement?
- 21 A. Yes, ma'am, it is.
- 22 Q. All right. I'm going to show you State's Exhibit
- 23 Number 2. See if you recognize that?
- 24 A. Yes, ma'am, I do.
- 25 Q. And what is that?

1 A. This is the written statement that I typed for Mr.

2 Hamilton ---

3 Q. Okay.

4 A. --- because of his issues with his hands.

5 Q. All right. Before we get into that. At any time
6 during this process did you remind him of his rights?

7 A. Yes, ma'am, I did.

8 Q. Okay. Did he still continue to speak with you?

9 A. He still continued to wish to speak with me.

10 Q. Okay. Now, do you know that Mr. Hamilton is special
11 education?

12 A. I did not until we went through the advisory.

13 Q. Okay. And who informed you of that?

14 A. He did at that point.

15 Q. Okay. Did you feel that that in anyway made him
16 unable to give you a statement?

17 A. No, ma'am.

18 Q. Did that appear to affect his ability to understand?

19 A. No, ma'am, it did not.

20 Q. Okay. You said you wrote that statement for him,
21 and I think I interrupted you. Why did you do that?

22 A. Again, because of his lack of education, his special
23 ed, his injuries to his hands; he wasn't able to hold a
24 pencil. And so I typed it, and I had it witnessed by my
25 sergeant.

1 Q. Okay. After you typed it for him did you read it
2 back to him?

3 A. Yes, ma'am, I did.

4 Q. Does he acknowledge anywhere that that is a
5 statement of -- his own statement?

6 A. Yes, ma'am. He initialed and signed.

7 Q. Could you please read to the jury the statement that
8 Mr. Hamilton gave you?

9 A. Yes, ma'am.

10 MS. JOHNSON: Judge, just so I'm clear, I object
11 to ---

12 THE COURT: Your objection is noted.

13 A. Statement of Gary Hamilton, [REDACTED],
14 Liberty, South Carolina 29654. DOB [REDACTED] of '57. Social
15 Security number ---

16 Q. We'll skip the social security number.

17 A. Education, special education, completed the eleventh
18 grade. And it was taken on 4/19/2012. The body reads:

19 This statement was written for me by Investigator Collins

20 of the Anderson County Sheriff's Office, and was given

21 wilfully and voluntarily. [REDACTED] and her sister came to

22 stay at my house at [REDACTED] in Liberty,

23 South Carolina for about a week because their mama did not

24 have anywhere else for them to stay. One Sunday night I

25 took [REDACTED] to church with me at Crossroads Church of God

1 in Central, South Carolina. It was just me and Minor
2 after I dropped my son Gregory off at his church. We went
3 -- we got there early and there was no one else there yet.
4 While we were waiting I went around to the back of -- I
5 went around to the backseat and put my hand between
6 Minor's legs and rubbed her vagina underneath her panties.
7 I just rubbed it and did not stick my finger inside of
8 her. I rubbed on her vagina for a few minutes. I was
9 standing outside the car with the backdoor open and Minor
10 was still sitting in the backseat. I stopped on my own.
11 There was no one else at the church. I did not say
12 anything to Minor and she did not say anything to me. I
13 remember that Minor was wearing a dress and panties. I do
14 not remember what color they were. After I stopped, I
15 went and sat on the steps of the church and Minor came and
16 sat with me. We waited for another thirty to forty
17 minutes before somebody else got there. We went to the
18 church service, went and picked up my son and then went
19 home. Nothing else happened between me and -- nothing
20 else happened with me and Minor. This was the only time I
21 ever touched her. And he initialed it and signed it.
22 Q. Okay. Now, in that statement he says that he rubbed
23 on her vagina, but he did not penetrate her; correct?
24 A. Correct.
25 Q. Okay. But how many times did he tell you orally

1 before that that he did, in fact, insert his finger in her
2 vagina?

3 A. At least once.

4 MS. HINTON: Your Honor, at this time the state
5 would move State's 1 and 2 into evidence.

6 THE COURT: Any objection?

7 MS. JOHNSON: As previously stated.

8 THE COURT: All right. Subject to the previous
9 objection, they're admitted into evidence.

10 MS. HINTON: Thank you, Your Honor.

11 (WHEREUPON, State Exhibit Numbers 1 and 2 were
12 admitted into evidence.)

13 MS. HINTON: Investigator Collins, that's all I
14 have at this time. Please answer any questions Ms.
15 Johnson may have.

16 THE WITNESS: Yes, ma'am.

17 **CROSS EXAMINATION**

18 **BY MS. JOHNSON:**

19 Q. Investigator Collins, you said in a previous
20 statement under oath -- excuse me. You never said that
21 Anderson County's policy wasn't to videotape these
22 interviews? You didn't say that in a previous proceeding?

23 A. You didn't ask me.

24 Q. Okay. Y'all don't have one of these?

25 A. Yes, ma'am. We have those.

- 1 Q. Okay. But you just didn't have that on?
- 2 A. No. It wasn't a practice to record interviews at
- 3 that time.
- 4 Q. Do you have the policies and procedures with you
- 5 today?
- 6 A. No, ma'am, I do not.
- 7 Q. Wouldn't it be -- to preserve the accuracy and
- 8 integrity of this statement, wouldn't that be a good
- 9 practice, in your opinion, to have something recorded?
- 10 A. It was recorded on a written statement.
- 11 Q. In person this man told you he can't read or write;
- 12 is that right?
- 13 A. Yes, ma'am.
- 14 Q. Okay. And your hand, not his, typed the statement;
- 15 yes or no?
- 16 A. Yes.
- 17 Q. Okay. And after -- you call it challenging; right?
- 18 I mean, what did this challenging entail?
- 19 A. Me confronting him with his inconsistencies and his
- 20 stories.
- 21 Q. Were you getting heated?
- 22 A. No, ma'am, I was not.
- 23 Q. So you're just like this, man, you're lying?
- 24 A. No, ma'am.
- 25 Q. Okay. But we don't have any record today other than

- 1 what you are saying happened?
- 2 A. And Mr. Hamilton's statement.
- 3 Q. When -- what kind of phone do you have?
- 4 A. Currently or back then?
- 5 Q. Back then?
- 6 A. Back then I had a flip phone, Verison flip phone.
- 7 Q. Okay. No computers with cameras?
- 8 A. All laptops didn't have cameras back then.
- 9 Q. That's 2011, sir, or 2012. So let's start from the
- 10 top. You talked to Mr. Hamilton outside with his family
- 11 present; is that right?
- 12 A. Yes, ma'am, that's correct.
- 13 Q. You give him these rights that are supposedly
- 14 witnessed by his daughter?
- 15 A. It was witnessed by his daughter, yes, ma'am.
- 16 Q. Okay. You don't bring the daughter back in the room
- 17 with you; is that right?
- 18 A. No, ma'am.
- 19 Q. Okay. And it's just you and Mr. Hamilton; correct?
- 20 A. Until I brought my sergeant in.
- 21 Q. Okay. But that was after you've already produced
- 22 the statement?
- 23 A. Incorrect.
- 24 Q. Okay. But he wasn't in -- this sergeant wasn't in
- 25 the room while this statement was materializing; is that

1 right?

2 A. He wasn't in, he wasn't in the room during the
3 interview ---

4 Q. Okay.

5 A. --- prior to this statement being typed out.

6 Q. Okay. That's my question. He wasn't, as you call
7 it, challenging -- I call it intimidation -- he wasn't in
8 there; correct?

9 A. He wasn't in on the interview, no, ma'am.

10 Q. Okay. He tells you that he's got a special
11 education. And if somebody says special education, what
12 does that connote to you? What does that mean to you,
13 sir?

14 A. That they require some type of special education.

15 Q. Well, like what? Does it mean they have normal
16 intelligence? Does it mean they did well in school? That
17 they made all A's in school, Valedictorian?

18 A. To tell you the truth, I don't know what kind of
19 grades he made or anything of that nature.

20 Q. Okay. But if somebody says special education, that
21 doesn't alert you or make you more aware of his ability or
22 inability to give a statement?

23 A. Yes, it does.

24 Q. Okay. Lack of education. He told you he didn't
25 have any education. Special education, can't read or

- 1 write. And you're in a room with a man that is morbidly
2 obese; is that correct?
- 3 A. I don't make that determination. I don't know his
4 medical issues.
- 5 Q. He's a large man; right?
- 6 A. Yes, ma'am.
- 7 Q. Based on what you're able to see. He had mobility
8 problems; is that right?
- 9 A. Yes, ma'am.
- 10 Q. And how tall are you, again, sir?
- 11 A. I am six foot six.
- 12 Q. Okay. Fit and athletic?
- 13 A. Yes, ma'am.
- 14 Q. Okay. Got your sidearm on you? Your duty weapon?
- 15 A. Yes, ma'am.
- 16 Q. Okay. And you are in a room alone with essentially
17 a helpless man. Is -- correct? I mean, he clearly has
18 problems walking. You were able to observe that?
- 19 A. I observed that he walked with a cane.
- 20 Q. Okay. And just issues ambulating, just moving in
21 general?
- 22 A. I suppose so, yes, ma'am.
- 23 Q. Okay. He advised you of all of his medical
24 problems?
- 25 A. No, he did not.

1 Q. But you were aware of some of them just based on
2 his mobility issues and his hands, is what you said?

3 A. I observed that he had injuries to his hands. I
4 didn't know what was the cause of that injury. I observed
5 that he walked with a cane. I didn't know the reason for
6 him walking with a cane.

7 Q. Okay. How long were you in this room with Mr.
8 Hamilton?

9 A. I really don't recall how long the interview was.

10 Q. But it wasn't a short interview?

11 A. My one-on-one interview with him?

12 Q. Just total time Mr. Hamilton was at your -- was at
13 Anderson County Sheriff's Office that day?

14 A. I'm not quite sure how to answer that without
15 speaking on something that I'm not supposed to.

16 Q. Okay. How long did you deal with Mr. Hamilton
17 personally?

18 A. Maybe thirty minutes.

19 Q. But it could have been longer?

20 A. I don't recall. If I had to say, it would have
21 probably been about thirty minutes.

22 Q. And you had no way of knowing whether Mr. Hamilton
23 understood his rights or if he understood the statements?
24 Is that true, Detective?

25 A. No, that is not true. When I read his rights to

1 him, he stated that he understood them. He initialed and
2 signed the waiver of rights saying that he understood
3 them.

4 Q. You have no way of knowing whether or not he was
5 trying to please you to try to get out of there?

6 A. I don't know. I don't understand your question.

7 Q. Whether he felt scared? You weren't inside of his
8 head?

9 A. No, I was not.

10 Q. Okay. But, again, you had no way of knowing whether
11 he understood other than what he said to you?

12 A. Other than what he said to me and what he showed me
13 on the papers, no, ma'am, I had no way of understanding.
14 I couldn't read his mind.

15 Q. Okay. And when you are dealing with somebody that
16 tells you, you know, they had mental problems or
17 intellectual deficits, do you have to take precautions
18 with them? Or are you supposed to take precautions with
19 them?

20 A. Am I supposed to?

21 Q. Right?

22 A. Not that I recall, no.

23 Q. So like if a juvenile came in, you're not going to
24 -- let me back up. When you're talking with a juvenile,
25 are you, I guess, more aware of problems with accuracy?

- 1 A. What age are we talking about?
- 2 Q. Any age?
- 3 A. Generally speaking, no.
- 4 Q. Okay. And you know there's such a thing as false
- 5 confessions?
- 6 A. I've heard of them.
- 7 Q. Okay. People make them. Agree or disagree?
- 8 A. From what I understand they have been made before.
- 9 Q. Okay. And do you know why people make false
- 10 confessions?
- 11 A. No, ma'am, I do not.
- 12 Q. Okay. This is not -- you're not trained on this as
- 13 a SLED investigator now or as an Anderson County detective
- 14 then?
- 15 A. As far as what?
- 16 Q. Making -- people making false confessions?
- 17 Intelligence and ---
- 18 A. I haven't had any training on it, no, ma'am.
- 19 Q. Okay. And life experience? That doesn't factor in
- 20 to ---
- 21 A. Whose life experience?
- 22 Q. Anybody you're talking to?
- 23 A. I'm not even sure how to answer that.
- 24 Q. Okay. And he talks about ...
- 25 MS. JOHNSON: Judge, may I approach?

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 Q. Detective Collins, I'm going to ask that you come
5 down and take your jacket off. I see that you've got an
6 iPhone now.

7 A. Ma'am?

8 Q. I see that you've got an iPhone now?

9 A. Yes.

10 Q. Okay.

11 A. Company issued.

12 Q. Okay. And you have a sidearm on you?

13 A. I don't have my sidearm today because of my new
14 suit. I didn't want it to tear into the lining.

15 Q. I understand. But you're a fit man?

16 A. Thank you.

17 Q. Okay. You're a tall man?

18 A. Yes, ma'am.

19 Q. Okay. And you were in there with Mr. Hamilton by
20 himself in that room?

21 A. As I am with several other suspects.

22 Q. Well, we're not talking about several other
23 suspects. We're talking about Mr. Hamilton; okay?

24 A. Yes, ma'am.

25 MS. JOHNSON: That's all I have, Your Honor.

1 THE COURT: All right. You can return to your
2 seat. Well, are there any redirect?

3 MS. HINTON: Briefly, Your Honor.

4 THE COURT: Okay.

5 **REDIRECT EXAMINATION**

6 **BY MS. HINTON:**

7 Q. Investigator Collins, how many statements have you
8 taken from people?

9 A. Too many to count.

10 Q. Okay.

11 A. Lots.

12 Q. Lots. All right. Do you recall when you were
13 taking Mr. Hamilton's statement, were you sitting or
14 standing?

15 A. Sitting.

16 Q. And where is the protocol in the Anderson County
17 Sheriff's Office that requires that you bring in someone
18 smaller in stature than the defendant?

19 A. I don't think it's in there.

20 Q. Okay. Does the statement, the written statement,
21 State's Exhibit Number 2 that we've entered into evidence,
22 are these the words that Gary Hamilton gave you as he gave
23 them to you?

24 A. Yes, ma'am.

25 Q. Okay. So you did not rearrange them, change them,

1 or anything of that nature?

2 A. No, ma'am. Matter of fact, I went back through it
3 and made sure that there was nothing that he wanted to
4 add, delete, omit, take out, change, reword of anything of
5 that nature.

6 Q. Thank you.

7 MS. HINTON: That's all I have, Judge.

8 THE COURT: All right. Thank you, sir.

9 MS. JOHNSON: Judge, may I?

10 THE COURT: Briefly.

11 **RECROSS EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. This statement was after a series of challenges, as
14 you called them; correct?

15 A. After the many stories that he gave me, yes, ma'am.

16 Q. Challenges? Yes? That's your word.

17 A. Yes, ma'am.

18 Q. Okay. Thank you.

19 THE COURT: All right. Don't forget your
20 jacket, sir.

21 THE WITNESS: Thank you.

22 THE COURT: Any objection to this witness being
23 excused?

24 MS. JOHNSON: No, Your Honor.

25 THE COURT: All right. The witness may be

1 excused.

2 You may call your next witness, Solicitor.

3 MS. HINTON: Thank you, Your Honor. The state
4 would call Julie Ann Hamilton.

5 THE CLERK: Place your left hand on the bible
6 and raise your right.

7 Do you solemnly swear or affirm the testimony you're
8 about to give in this case to be the truth, the whole
9 truth and nothing but the truth, so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you, ma'am. If you would have
12 a seat and state your name for the record, please.

13 THE WITNESS: My name is Julie Ann Hamilton.

14 **JULIE ANN HAMILTON,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **DIRECT EXAMINATION**

17 **BY MS. HINTON:**

18 Q. All right. Julie, you've got to speak up just a
19 little bit. Okay?

20 A. My name is Julie Ann Hamilton.

21 Q. All right. Julie, do you know Gary Hamilton?

22 A. Yes, I do.

23 Q. How do you know him?

24 A. He is my father.

25 Q. Okay. Do you know **Minor** **_____**?

- 1 A. Yes, I do.
- 2 Q. How do you know Minor ?
- 3 A. I used to keep her on weekends.
- 4 Q. Did you know her mother Christine?
- 5 A. Yes, I do.
- 6 Q. Okay. Are y'all friends?
- 7 A. We were.
- 8 Q. Currently friends?
- 9 A. I've not spoken to her since all this has went down.
- 10 Q. Okay. Was that by your choice?
- 11 A. By hers. And I respect her wishes. And I
- 12 understand why.
- 13 Q. Okay. I want to talk a little bit about your dad.
- 14 Did your dad raise you?
- 15 A. I was taken away from him and my mom when I was six.
- 16 They got me back when I was eight and he's been around
- 17 ever since.
- 18 Q. Did your dad work?
- 19 A. Not since they had got me back because he had got
- 20 hurt at Duke Power.
- 21 Q. And do you know how he got hurt or ---
- 22 A. No. All I know is he was working on a dam and he
- 23 twisted his back, or something with his back.
- 24 Q. And I guess did he go on disability after that?
- 25 A. Yes.

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1 Q. All right. And the disability, to your knowledge,
2 was that based off of the back injury?

3 A. Yes.

4 Q. Now, mentally your dad has special education. Are
5 you aware of that?

6 A. Yes. But he can read and write, and he knows right
7 from wrong, because he raised me to know right from wrong.

8 Q. Okay. How many siblings do you have?

9 A. I have three brothers. Well, I had three brothers.
10 My oldest brother got killed in a car wreck back in 2001.

11 Q. I'm sorry to hear that. Do any of your siblings
12 have special needs?

13 A. My youngest brother, but he does not belong to my
14 father.

15 Q. Did he raise him?

16 A. Yes. He helped my mother.

17 Q. Okay. Was that difficult, having a special needs
18 brother?

19 A. No.

20 Q. So I think you stated that Minor would sometimes
21 come and stay with you?

22 A. Yes.

23 Q. Would she also stay with your father and mother?
24 Were y'all all living in the same house?

25 A. We all lived in the same house.

1 Q. Okay. Now, did you meet with investigators on April
2 the 5th of 2012 at your home? Do you recall?

3 A. I was in a different room.

4 Q. Okay. But did you meet with them?

5 A. No. I talked to her over the phone. But she did
6 come out to my house. But I was in a different room. I
7 never spoke to her at my house.

8 Q. Okay. So over the phone did she talk to you about
9 why we're here?

10 A. Yes.

11 Q. And at that point did you talk to her about your dad
12 going to church with your mom?

13 A. Yes. But to begin with, my mom went to church with
14 them, it was one or two times, and then my mother got an
15 infection and had to go to the wound center in Easley.

16 Q. Okay.

17 A. And they told her that she was supposed to stay off
18 of her feet. So till this day she still has pressure
19 wounds on her foot.

20 Q. Okay. So once that injury occurred, did she go to
21 church with your father?

22 A. No.

23 Q. Do you recall when she stopped going to church with
24 your father?

25 A. No, ma'am.

1 Q. Okay. Would anyone else go to church with your
2 father?

3 A. He would take my brother, but my brother went to a
4 different church. He went to Central and my brother went
5 to Norris First Baptist.

6 Q. And when we're talking about your brother, are we
7 talking about the one with special needs?

8 A. Yes.

9 Q. Okay. And what was the arrangement there with
10 taking your brother to church?

11 A. We had it set up to where Austin, which was the van
12 driver, would pick my brother up. But my father would
13 drop my brother off at church.

14 Q. Did you know that -- when you say at church are we
15 talking about at Norris?

16 A. At Norris.

17 Q. Were you aware that your father was doing that?

18 A. No.

19 Q. Did you go to Anderson County Sheriff's Office with
20 your father?

21 A. I took my father up there, yes, ma'am, because I
22 drive.

23 Q. Okay. Does your father drive?

24 A. He can.

25 Q. Okay. I'm going to show you State's Exhibit Number

- 1 1. Do you see your signature anywhere on that page?
- 2 A. Yes.
- 3 Q. Okay. And were you present when the officer
- 4 explained that paper to your dad?
- 5 A. Yes, ma'am. And he waived his rights.
- 6 Q. Okay. Did you have any concerns at that point about
- 7 your dad understanding what was going on?
- 8 A. No.
- 9 Q. Okay. Is your dad able to understand, to the best
- 10 of your knowledge?
- 11 A. Oh, yeah.
- 12 Q. Now, you did not go back there with your father?
- 13 A. No. Me and my mother, we sat out in the waiting
- 14 room.
- 15 Q. Okay. Did y'all leave with him when he left?
- 16 A. Yes, we did.
- 17 Q. All right. When you got in the car did y'all have a
- 18 conversation about what happened?
- 19 A. I was driving down the road -- in my opinion if
- 20 somebody was not guilty of doing anything, why look at
- 21 your daughter and mother -- or wife, and go, please don't
- 22 hate me, please don't hate me, and hand a letter stating
- 23 you did it. Why would you apologize for something you
- 24 didn't do?
- 25 Q. Now, when you say a letter, -- I'm going to show you

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1 State's 2 -- is that what you're referring to? I know
2 it's been a while.

3 A. Yes.

4 Q. When your father -- I'm sorry. Did you say that he
5 handed that to you?

6 A. Yes.

7 Q. Okay. When he handed it to you, did you read it?

8 A. Well, my mother -- I had to pull over and read it,
9 but yes, I did read it.

10 Q. Okay. After you read it, what was your reaction?

11 A. I didn't want to talk to my father. It was done to
12 me when I was younger, and how could somebody take a
13 little girl's innocence like that.

14 Q. After that did you have any sort of relationship
15 with your father?

16 A. I hardly spoke to my father. I moved in with my
17 husband's mother -- well, stepmother, up the road from my
18 mom. And my mom would come up the road. Because I have a
19 two year old daughter, and I didn't want him around her.

20 Q. So you no longer live with him; correct?

21 A. No.

22 Q. Okay.

23 MS. HINTON: One moment, Your Honor. I
24 apologize.

25 Q. Other than him telling you, please don't hate me,

1 please don't hate me, did he say anything else to you

2 before he showed that to you?

3 A. No.

4 Q. Okay. What was your reaction when he said, please

5 don't hate me? Did you understand why he was saying that?

6 A. Before he handed us the letter, no. Because it was

7 in my head that he kept saying he didn't do it. So why

8 apologize for something you didn't do.

9 Q. Okay. Ms. Hamilton, thank you. That's all I have.

10 Please answer any questions Ms. Johnson may have.

11 **CROSS EXAMINATION**

12 **BY MS. JOHNSON:**

13 Q. Ms. Hamilton, you don't know what took place in that

14 interview room?

15 A. No.

16 Q. Okay. You got to witness this Miranda waiver, but

17 you weren't in that interview room?

18 A. That's that; right?

19 Q. Right?

20 A. Yeah.

21 Q. Okay. Let's talk about the books in your house.

22 What was Mr. Hamilton reading?

23 A. He can't read.

24 Q. Okay. He can't read? And he's definitely got some

25 mobility issues?

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- 1 A. Yes.
- 2 Q. Okay. Your dad -- I don't want to be offense with
3 you. But your dad protected you when you were abused?
- 4 A. He took me out of the home.
- 5 Q. Okay. So he cared for you? Okay. He was upset?
- 6 A. We went and stayed with my Uncle Eddie.
- 7 Q. He protected you, though?
- 8 A. It was my choice to leave.
- 9 Q. Okay. But he was upset and affected by it also?
- 10 A. They didn't know that I had been molested when we
11 first left my mother's.
- 12 Q. Okay. But he found out and he was very upset?
- 13 A. Yeah. He threatened to kill the man. And then he
14 turns around and does something like this.
- 15 Q. You don't know that. You can't say whether or not
16 anything happened? Correct?
- 17 A. I guess so.
- 18 Q. You never witnessed anything?
- 19 A. No. But ---
- 20 Q. You never witnessed anything, Ms. Hamilton; is that
21 right?
- 22 A. Yes.
- 23 Q. Okay. Thank you, Ms. Hamilton.
- 24 MS. HINTON: Just one brief follow-up, Your
25 Honor.

1 THE COURT: Briefly.

2 **REDIRECT EXAMINATION**

3 **BY MS. HINTON:**

4 Q. Ms. Hamilton, you said that your dad understood what
5 happened to you?

6 A. Yeah.

7 Q. Okay. Did he understand what happened to you was
8 wrong?

9 A. Yeah.

10 Q. And I believe you said that he threatened to kill
11 the guy?

12 A. He threatened to kill the man because the cop that
13 was at my Uncle Eddie's house when they got back from the
14 hospital from taking to having me examined, had to stop
15 him from going and killing Leroy.

16 Q. Okay. So he fully understood that it was wrong?

17 A. Yeah. He knew it was wrong.

18 MS. HINTON: Your Honor, that's all I have.

19 THE COURT: Thank you, ma'am, you may step down.

20 MS. HINTON: Your Honor, may she be excused?

21 MS. JOHNSON: No objection.

22 THE COURT: Without objection, the witness may
23 be excused.

24 MS. HINTON: Your Honor, if I may just,
25 scheduling-wise, I think our next witness may take a

1 little while, so I don't know if Your Honor wants to
2 proceed.

3 THE COURT: Maybe we can just take an early
4 lunch today.

5 Ladies and gentlemen, I'm going to let us break for
6 lunch now rather than going beyond one o'clock. Let's be
7 back at one thirty. That'll give you a little more than
8 an hour. We'll be ready to start back then. It's twelve
9 fifteen now.

10 Let me remind you, again, ladies and gentlemen, not
11 to be discussing the case. You shouldn't be talking one
12 with another. While you're out and about eating, you
13 shouldn't let anyone discuss the case with you. You may
14 go to a restaurant and may overhear some courthouse
15 personnel or someone else discussing the case. You take
16 the initiative to move to another booth or another table.
17 I want to remind you, we're in a process now, and that
18 process is that you're going to make the decision on this
19 case based on what takes place in this courtroom, the
20 evidence that's given and the exhibits that are offered
21 and that alone. So let's maintain that purity of the
22 process that we're now in. That's the commitment that
23 you've made to these parties to do that.

24 I can't imagine that someone would come up to you or
25 want to contact you and ask you questions or give you

1 information about the case. If that were to happen,
2 please let the person know you're a juror. Excuse
3 yourself as quickly as you can. If they persist, if
4 possible, get the name of that individual and report it
5 back here. I assure you I'll take care of that. I just
6 want you to be aware of the importance of the proceedings
7 we're now in for both sides and the admonition I've given
8 throughout that you don't be discussing it one with
9 another or discussing it with anyone. When the case is
10 concluded, you're certainly going to have a chance to
11 discuss your experience with this trial. But while it's
12 in progress, you need to keep your thoughts to yourself,
13 keep your discussions to yourself, and don't let anyone
14 else have any influence on this very important decision
15 you'll be making.

16 We'll be back at one thirty and ready to start then.
17 Y'all have a good lunch.

18 Everyone else, please remain seated.

19 (WHEREUPON, the jury exited the open court at
20 approximately 12:18 p.m.)

21 THE COURT: All right. We'll be at ease till
22 one thirty.

23 MS. HINTON: Your Honor, I would ask now that
24 Mr. Hamilton is no longer on bond, that he not be allowed
25 ---

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1 THE COURT: Right. Well, I think the guard is
2 -- he's off his bond now.

3 MS. JOHNSON: Your Honor, can I address that for
4 ---

5 THE COURT: Yes, ma'am, be glad to hear from
6 you.

7 MS. JOHNSON: Okay. As Your Honor is completely
8 aware, he's got some serious medical issues. I realize
9 these are serious charges. But the man is on electronic
10 monitoring. He has been on electronic monitoring. And I
11 confirmed with Greg Cumby that he would stay on his bond.
12 So we've got a bond and GPS monitoring. I realize again
13 these are serious charges. However, due to his medical
14 issues, and, you know, I don't want to throw the jail
15 under the bus, but we've had, you know, some issues with
16 people not getting their correct medicine. I just think
17 it would be in an abundance of caution to let this man
18 remain on GPS monitoring. I don't have documentation of
19 this, Your Honor, but I have been told by Greg Cumby that
20 the man's got MRSA. Obviously he's got diabetes, obesity.
21 I just would ask the court to consider all the factors
22 and, you know, he's got GPS. He's not going anywhere.
23 Per Greg Cumby, he was not a problem. I'm happy to
24 provide Greg Cumby's number to the court.

25 THE COURT: Well, the law says that once the

1 trial begins and the jury is sworn that there is no longer
2 a bond. I'll certainly be glad, Ms. Johnson, to address
3 that this afternoon if Mr. Cumby wants to come up or
4 submit an affidavit that he's staying on his bond. But
5 right now, under the law, he's no longer on the bond. The
6 bond is over once the trial begins. I'm sure that the
7 sheriff's department, Officer Maw, will make sure that he
8 gets his proper medication during the lunch break and have
9 the right things to eat. But I'll be certainly glad to
10 address that this evening if Mr. Cumby wants to be here
11 and we have assurances that he's -- not that I don't trust
12 you, but I just need to make sure that the bondsman knows
13 that -- the ramifications if Mr. Hamilton is not here.
14 For lunch time I'll revoke his bond, but be glad to
15 revisit it this afternoon.

16 MS. JOHNSON: Thank you, Your Honor. Appreciate
17 it.

18 THE COURT: All right. We'll be at ease till
19 one thirty.

20 (WHEREUPON, the court stood at recess for a lunch
21 break.)

22 THE COURT: Everyone ready to proceed?

23 MS. HINTON: Yes, Your Honor.

24 MS. JOHNSON: Yes, sir, Your Honor.

25 THE COURT: You can have the jury come in if

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1 they're ready.

2 (WHEREUPON, the jury entered the open court at

3 approximately 1:40 p.m.)

4 THE COURT: Solicitor, you may call your next
5 witness.

6 MS. HINTON: Thank you, Your Honor. State calls
7 Khristy Justice.

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you're about to give in this case to be the
10 truth, the whole truth and nothing but the truth, so help
11 you God?

12 THE WITNESS: I do.

13 THE CLERK: Thank you. If you would have a seat
14 and state your name for the record, please.

15 THE WITNESS: Khristy Justice.

16 **KHRISTY JUSTICE,**

17 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

18 **DIRECT EXAMINATION**

19 **BY MS. HINTON:**

20 Q. Where are you employed?

21 A. Central Police Department.

22 Q. And currently in what capacity?

23 A. Chief of Police.

24 Q. Back in 2011, did you work at Central, as well?

25 A. I did.

- 1 Q. And in what capacity?
- 2 A. As an investigator.
- 3 Q. So is that a detective?
- 4 A. It is.
- 5 Q. How long have you been with Central?
- 6 A. Since 2003.
- 7 Q. Is that your ---
- 8 A. Eleven years.
- 9 Q. Is that as long as you've been in law enforcement?
- 10 A. No, ma'am.
- 11 Q. Where were you before then?
- 12 A. Liberty.
- 13 Q. And how long were you there?
- 14 A. Year and a half.
- 15 Q. Is that when you started with law enforcement?
- 16 A. Yes, ma'am.
- 17 Q. So roughly twelve and a half years?
- 18 A. Yes, ma'am.
- 19 Q. And did you receive this case involving Gary
- 20 Hamilton?
- 21 A. I did.
- 22 Q. Who did you receive it from?
- 23 A. Anderson County.
- 24 Q. All right. And what was the basis of you getting
- 25 the case?

- 1 A. It was determined that an incident could have
2 occurred in the city of Central. And the whole case was
3 forwarded to me, to my jurisdiction.
- 4 Q. All right. And in your investigation, at the time
5 how old was Minor [REDACTED] ?
- 6 A. Three.
- 7 Q. And how old was Gary Hamilton?
- 8 A. Fifty-four, I'm pretty positive.
- 9 Q. And did you determine a location where this
10 occurred?
- 11 A. Yes, ma'am. 203 College Street, Central, South
12 Carolina.
- 13 Q. Is that designated as anything in particular?
- 14 A. Some people call it Crossroads Church of God or just
15 Central Church of God.
- 16 Q. Now, did you ever meet with Gary Hamilton?
- 17 A. I did.
- 18 Q. Where did you meet with him?
- 19 A. Central Police Department.
- 20 Q. Do you know if anybody came with him?
- 21 A. His wife. She stayed in the car.
- 22 Q. Do you know who drove that day?
- 23 A. He did.
- 24 Q. And in speaking with him did you have anybody else
25 with you?

1 A. I did. Officer Durham with the Central Police
2 Department at the time.

3 Q. Is that Freddie Durham?

4 A. That is.

5 Q. And when you spoke with him, are you armed at that
6 time?

7 A. I'm not armed when I go into an interview.

8 Q. What about your officers, are they armed?

9 A. It depends if they're in full uniform or
10 investigator mode. It just really depends. But I was not
11 armed. I never am in a face-to-face interview in our
12 police department.

13 Q. And why is that?

14 A. I just feel like it's a little intimidating, and I
15 want to give everybody a fair advantage.

16 Q. All right. And do you recall whether or not Freddie
17 Durham was armed?

18 A. I don't believe that he was.

19 Q. Now, in speaking -- before you spoke to the
20 defendant, did you provide him with any rights?

21 A. I did.

22 Q. Was Freddie Durham present for that?

23 A. He was.

24 Q. I'm going to show you what's been marked as State's

25 3.

1 MS. JOHNSON: Judge, just to renew my objection.

2 THE COURT: Your objection is noted.

3 Q. Do you recognize that document?

4 A. Yes, ma'am.

5 Q. And what is that?

6 A. This is our waiver of rights, our Miranda rights.

7 Q. And when someone comes in to give a statement, do
8 you perform those rights?

9 A. Yes, ma'am.

10 Q. And what do you do to have them acknowledge that
11 they understand those rights?

12 A. I get them to initial by each one that I read to
13 them.

14 Q. Anything else?

15 A. I have them -- I usually read the waiver at the
16 bottom to them, and then they'll sign it if they want to
17 continue talking to me.

18 Q. Is that what happened in this case with Mr.
19 Hamilton?

20 A. Yes, ma'am.

21 Q. Can you read to the jury the rights that you read to
22 him that day?

23 A. Before we ask any questions, you must understand
24 your rights. You have the right to remain silent.

25 Anything you say can be used against you in court. You

1 have the right to talk to a lawyer for advice before we
2 ask any questions and have him with you during
3 questioning. If you have no money to pay a lawyer's fee,
4 the court can appointment one to represent you without
5 cost, if you wish. If you decide to answer questions now
6 without a lawyer present, you'll still have the right to
7 stop answering at any time. You also have the right to
8 stop answering at any time until you've talked to a
9 lawyer.

10 Q. And is there another section at the bottom?

11 A. It's the waiver. I have read this statement of my
12 rights and I understand what my rights are. I'm willing
13 to make a statement and answer questions. I do not want a
14 lawyer at this time. I understand and know what I am
15 doing. No promises or threats have been made to me and no
16 pressure or coercion of any kind has been made -- has been
17 used against me. He initialed by each one that I read and
18 he signed his name at the bottom. I signed along with
19 Officer Durham.

20 Q. Okay. Did Mr. Hamilton appear to be under the
21 influence of any drugs or alcohol at the time?

22 A. No, ma'am. Like I said, he drove.

23 Q. Did he appear to have any physical or mental
24 infirmities that would prevent him from understanding what
25 you were saying to him?

- 1 A. No, ma'am.
- 2 Q. And you understand that he has a special education?
- 3 A. I do.
- 4 Q. All right. Knowing all that, did you have any sort
- 5 of competency issues?
- 6 A. No, ma'am.
- 7 Q. How many statements have you taken from people?
- 8 A. Hundreds and hundreds and hundreds.
- 9 Q. Okay. Are you trained to know when someone is able
- 10 to give a statement and when they're not?
- 11 A. Yes, ma'am.
- 12 Q. Did you follow that training with Mr. Hamilton?
- 13 A. Yes, ma'am.
- 14 Q. After you read those rights to Mr. Hamilton and he
- 15 signed that waiver, did he proceed to talk to you?
- 16 A. He did.
- 17 Q. Did he willingly talk to you?
- 18 A. He did.
- 19 Q. Did you threaten him at all?
- 20 A. No.
- 21 Q. And can you tell me what kind of oral statements he
- 22 gave to you?
- 23 A. I can. Can I refer to some of my notes?
- 24 Q. If you need to refresh your memory.
- 25 MS. JOHNSON: Judge, just to preserve my

1 objection.

2 THE COURT: Your objection is noted.

3 A. I asked him did he know why he was there and he
4 said, yeah, the stuff that happened at the church. I
5 asked him what happened at the church, and he said that he
6 got the victim out of the booster seat and his hands
7 accidentally touched her vagina. He stated that his hand
8 went to her panties and his finger went into her vagina
9 for about two minutes.

10 Q. He said it went into her vagina?

11 A. Went into her vagina for about two minutes. And
12 then just a minute later he said, well, it didn't go in
13 it. I just rubbed on it for about two minutes. And I
14 asked him what he meant by that. And he held his hand up,
15 and at the time his hands were busted open, pus coming out
16 of them. We weren't even able to print them. And he just
17 took his hand and demonstrated that he rubbed on her
18 vagina like this for about two minutes.

19 Q. Is that exactly what he did?

20 A. That's exactly what he did.

21 Q. Okay. All right. Continue.

22 A. He kept saying that he was sorry; it was an
23 accident. I asked him did he know the difference between
24 I'm sorry and it was an accident. And he said he did.
25 Well, I'm sorry. I'm sorry. He stated he was a Godly man

1 and that God had forgiven him and he knows that it was
2 wrong.

3 MS. JOHNSON: Judge.

4 THE COURT: Yes.

5 MS. JOHNSON: May we approach?

6 THE COURT: Yes, ma'am.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 THE COURT: Ladies and gentlemen, we've got a
10 legal matter we need to take care of right now if you will
11 go back to your jury room. Let me remind you, again, each
12 time not to discuss the case. We'll call you back just as
13 soon as we can.

14 (WHEREUPON, the jury exited the open court at
15 approximately 1:47 p.m.)

16 THE COURT: All right. Ms. Johnson.

17 MS. JOHNSON: May it please the court. At this
18 time I respectfully move for a mistrial. This officer is
19 operating off of the notes that I believe were ruled by
20 this court to be inadmissible yesterday. My understanding
21 is that Your Honor ruled that Officer Durham could not
22 reference those notes, nor anybody else. Officer Durham
23 could testify to his, you know, being in the room and not
24 being in a coercive type environment, but that those notes
25 were not to be admitted nor were they to be, I guess,

1 referenced. And so at this time we would respectfully
2 move for a mistrial.

3 THE COURT: All right. Solicitor.

4 MS. HINTON: Thank you, Your Honor, if I may be
5 heard briefly. Your Honor, she's referring to the entire
6 case file, which I think she's entitled to do. She's -- I
7 was not able to develop the testimony for her to establish
8 that she's only testifying to things that she remembers.
9 The reason that that was crossed over in the Freddie
10 Durham/Khristy Justice Jackson v. Denno yesterday is
11 because we had two separate witnesses. However, these are
12 things that she remembers. There are things in Freddie
13 Durham's notes that she does not remember. She would not
14 be testifying to that. These are recollections that she
15 has.

16 Now, if Ms. Johnson wants to cross her on the fact
17 that some of this may or may not be in her report, I think
18 that's fair game. But I don't think that this is a
19 mistrial situation. And further, my understanding was
20 that Freddie Durham was not allowed to testify, but that
21 Khristy Justice could cover the things that she remembered
22 in their interview.

23 THE COURT: Yes, ma'am.

24 MS. JOHNSON: And Judge, my recollection --
25 again, you're the judge of the law -- is those notes were

1 not to be referenced. She's up there referencing those
2 notes. I see them out. Those were not supposed to be
3 referred to in any way is what I remember Your Honor
4 ruling. And we would respectfully ask for a mistrial.

5 THE COURT: Well, as I remember, I don't think
6 that we ever really got there about -- certainly the notes
7 weren't going to be admissible into evidence. That was
8 never an issue. But as I recall, the ruling was that
9 since the notes had not been shared prior to the -- or
10 there was a dispute of whether the notes had been shared
11 -- each side felt they had been during our Jackson versus
12 Denno hearing -- I was not going to allow the author of
13 the notes to testify as to anything he had in his notes as
14 far as what recollections he had about what was said. He
15 would be barred from testifying to anything that the
16 defendant said during the course of the interview because
17 of some dispute as to whether or not the defense had those
18 notes. I don't even know that we went to whether or not
19 the notes were part of the file or not part of the file.

20 I believe the witness is allowed to testify as to
21 what she recollects and what she heard herself. If she is
22 testifying to something that she did not hear herself and
23 is relying upon what another witness in the room heard,
24 then certainly I believe that's against the ruling I had.

25 MS. JOHNSON: Judge, I don't want to argue with

1 Your Honor. I just want to clarify or state our position.
2 We believe that this is nothing more than backdoor attempt
3 by the state. There's nothing in Detective Justice's
4 report about not being a Godly man and that's what threw
5 me off yesterday. She's up there, you know, looking at
6 those notes. I didn't have those notes before trial
7 yesterday. That is the basis for my mistrial.

8 THE COURT: Okay. Again, we took time for you
9 to review the notes.

10 Let me just ask. Chief Justice, sometimes you need
11 your notes. A lot of times you don't need your notes. I
12 want to know, are the things you've testified to so far
13 what you recollect or what someone else recollects?

14 THE WITNESS: Yes, sir. We were there the exact
15 time. We went in together and came out together.

16 THE COURT: But again, I'm asking you ---

17 THE WITNESS: Yes, sir.

18 THE COURT: --- do you recollect that yourself?

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you need notes to go by, the
21 incident report or anything?

22 THE WITNESS: There's certain things that I
23 don't want to forget to say, but I don't need them for
24 everything.

25 MS. HINTON: Judge, I mean, we're fine taking

1 the notes away. I can -- if you'll give me a little
2 leeway with her.

3 THE COURT: But then, I mean if she needs them
4 to recollect -- refresh her memory, I -- she testified
5 yesterday. I don't know how much recollection she needs.
6 And then, of course, I know the defense might want to
7 cross-examine her on what was not in the incident report
8 is typically the case.

9 But the witness has indicated that she has testified,
10 has testified, and I'll admonish her now, that she will
11 only testify to what she recollects. And certainly you
12 can cross-examine her on that, what was in her incident
13 report if there was one that she wrote herself. I don't
14 know if there was or not. I'll allow her to testify.

15 Your objection is noted, Ms. Johnson.

16 MS. JOHNSON: Judge, I'm in a pickle because
17 she's testifying to stuff that I thought was inadmissible.

18 THE COURT: Well, anything is -- well, because
19 it was not in the incident report?

20 MS. JOHNSON: Because of Your Honor's ruling
21 yesterday, and that was my understanding was ---

22 THE COURT: Okay.

23 MS. JOHNSON: --- there was ---

24 THE COURT: I follow where you're coming from
25 now, that ---

1 MS. JOHNSON: She's not able to -- or she
2 shouldn't be able, because of Your Honor's ruling, she
3 shouldn't be able to have looked at those notes and to
4 reference anything from the notes. And, you know, I find
5 it curious that this stuff about Godliness is not in her
6 report. She's looking at this man's notes that are
7 inadmissible, and therefore, I can't properly cross-
8 examine her without -- you know, or I feel like I can't
9 without opening Pandora's Box.

10 THE COURT: How is that now?

11 MS. JOHNSON: I don't want to get into that. I
12 think, I think Your Honor's ruling yesterday was -- you
13 know, I want to abide by that. I don't want to get into
14 the stuff about the Godliness.

15 THE COURT: Well, did I rule yesterday that she
16 could not in anyway testify to what she heard?

17 MS. JOHNSON: Judge, again, you're the judge of
18 the law. You know, ---

19 THE COURT: But I just don't remember. Did I
20 say that?

21 MS. JOHNSON: I remember, and I thought, I
22 thought that the notes and any reference to the notes was
23 inadmissible.

24 THE COURT: Well, she has not referenced the
25 notes, so to speak. She said ---

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1 MS. JOHNSON: Directly she hasn't, Your Honor,
2 but indirectly she has.

3 THE COURT: Well, I'll allow you to cross-
4 -examine her, but I'll deny your motion for a mistrial.
5 Obviously, ---

6 MS. JOHNSON: Thank you, Your Honor.

7 THE COURT: --- under the rules that's a drastic
8 measure. And I'll be glad to give any curative
9 instruction that you feel I need to to the jury based upon
10 that.

11 MS. JOHNSON: I think to preserve the record, I
12 do need a curative instruction. But I just would, you
13 know, ask that she not be allowed -- even if it is her
14 memory, because I think there's some -- it's just cloudy
15 there, Your Honor.

16 THE COURT: Well, what portions of her memory
17 should she not be testifying to then?

18 MS. JOHNSON: Judge, again, it goes down to --
19 comes down to credibility. I'm just -- I think if she had
20 remembered that, it would be in her report.

21 THE COURT: Okay. Well, and you're going to
22 have full leeway to cross-examine her on that and why she
23 didn't put things that she's testifying to in her report.

24 MS. JOHNSON: But it's somebody else's notes,
25 and that just -- again, that adds a layer to say, look,

1 this is not really her independent knowledge. But she's
2 got these notes up here that are not hers that were
3 inadmissible.

4 THE COURT: But they're part of the file; right?

5 MS. JOHNSON: That may be the case, Your Honor.

6 I ---

7 THE COURT: I don't know if they were part of
8 the file or not. Are there anymore matters in Mr.
9 Durham's notes that this witness intends to testify to,
10 Solicitor?

11 MS. HINTON: Frankly, Your Honor, I'm not sure
12 what she remembers. I would have to ask her. But I think
13 that's pretty much the extent of it, that he was a Godly
14 man and knew what he did was wrong. I think that's the
15 extent of -- and I believe, and I don't want to say this
16 and go out on a limb and be wrong, but I do believe
17 yesterday during the Jackson v. Denno she referenced the
18 fact that he said that he was a Godly man. I think that
19 came out yesterday.

20 But we're happy to move on, Your Honor, to the next
21 part; although I think she's within her bounds to testify
22 to it.

23 THE COURT: All right. Your motion is denied.
24 Is there a proposed curative instruction you wish me to
25 give, Ms. Johnson, to the jury as far as ...

1 MS. JOHNSON: Anything the defendant allegedly
2 said about Godly or ungodly is to be ignored.

3 MS. HINTON: And judge, we would object to that.

4 MS. JOHNSON: And just for the record, Your
5 Honor. I'm in a position where I don't want a curative
6 instructions, but I think to preserve the record, I have
7 to ask for one.

8 THE COURT: All right. If I give a curative
9 instruction to the jury is to disregard any comment made
10 by the witness as to the defendant saying he was a Godly
11 man?

12 MS. JOHNSON: Yes, Your Honor.

13 THE COURT: All right. I'll give that
14 instruction.

15 MS. JOHNSON: Thank you, Your Honor.

16 THE COURT: Then we'll move on through the rest
17 of your examination of the witness, Solicitor.

18 If the jury is ready, you can have them come in,
19 please.

20 (WHEREUPON, the jury entered the open court at
21 approximately 2:01 p.m.)

22 THE COURT: Madam Forelady and ladies and
23 gentlemen of the jury, sometimes in the course of
24 questions and answers, statements are made that are to be
25 stricken from the record, and this witness recently, in

1 response to a question, made reference to the defendant
2 saying that he was a Godly man. That should be -- I've
3 stricken that from the record. That should be disregarded
4 by you in your consideration of the evidence later in the
5 case. That reference will be stricken from the record.

6 Solicitor, you may proceed with the trial -- with the
7 examination of the witness.

8 MS. HINTON: Thank you, Your Honor.

9 Q. All right. Chief Justice, let's go back.. After Mr.
10 Hamilton tells you that he put his finger in Minor's
11 vagina for two minutes, what happened next?

12 A. I asked him how it happened and there was a couple
13 of different scenarios, that he was getting her out of the
14 booster seat or the car seat, and she was falling, and
15 when he went to grab her, his finger accidentally went
16 into her vagina. I asked him -- I explained to him that
17 it was physically impossible to get a child, you know, who
18 was falling and accidentally go into her vagina. It was
19 impossible. You had to move her panties over. And he
20 said -- he finally said, okay, fine, I did it. You know,
21 I did. And then, you know, the whole rubbing, he
22 demonstrated the rubbing. I asked him if he masturbated
23 during any of this and he -- and I apologize -- but he
24 stated, no, my dick don't even work anymore. And then we
25 got into a little further discussion about, you know, why

1 he would do it if it didn't work anymore. And he said
2 that he had to pee -- he had to sit down to pee. There's
3 a few more details in the -- a few more things that he
4 said during the course of the interview. And then we
5 compiled everything. I did a written statement for him.

6 Q. Okay. And when you do a written statement, do you
7 have a form that they fill that out on?

8 A. Yes, ma'am.

9 Q. Okay. And I'm going to show you what's marked as
10 State's Exhibit 4.

11 MS. JOHNSON: Judge, I'd like to preserve my
12 objection.

13 THE COURT: Your objection is noted.

14 Q. Before we get into the meat of the statement, what
15 does that form say?

16 A. It's a voluntary statement, not under arrest.

17 Q. Okay. And to be clear, was Mr. Hamilton under
18 arrest at the time?

19 A. No. No.

20 Q. Okay. Now, what else does it say in the body of
21 that statement?

22 A. I, Gary Hamilton, am not under arrest for, nor am I
23 being detained for, any criminal offenses concerning the
24 events I'm about to make known to Detective Justice,
25 without being accused of or questioned about any criminal

- 1 offenses regarding the facts I'm about to state. I
2 volunteer the following information of my own free will
3 and whatever purpose it may serve.
- 4 Q. Okay. And who wrote that statement for Mr.
5 Hamilton?
- 6 A. I did.
- 7 Q. And why did you do that?
- 8 A. Because he stated he couldn't read or write.
- 9 Q. Okay. And when you write a statement for someone,
10 what's the procedure that you follow?
- 11 A. The first sentence is, I'm writing this at his
12 request, and then I have a witness there, as well.
- 13 Q. All right. Do you write it all out and then say, is
14 this right?
- 15 A. No. No, no, no.
- 16 Q. How do you do it?
- 17 A. It's kind of goofy because I have to go so slow
18 because I'm going to do it the way that they're saying it
19 to me, even if it sounds crazy; that's the way that I'm
20 going to write it, verbatim. So I write it as they're
21 speaking and then I reread it at the end.
- 22 Q. Is that what you did for Mr. Hamilton?
- 23 A. It was.
- 24 Q. Would you please read to the jury the statement Mr.
25 Hamilton gave you?

1 A. I, Detective Justice, am writing this statement for
2 Gary Hamilton at his request. Sometime before August
3 2011, I was taking [Minor] to church with me at night. We
4 were in the car. I got out and walked around the car to
5 get her out. I got her out of her booster seat. She sat
6 in the backseat. She had on a little dress and panties.
7 I pulled her panties over to the side and started rubbing
8 her vagina. She didn't say anything as far as I remember.
9 She didn't cry. I didn't stick my finger in it. I just
10 rubbed on it for about two minutes. And then I stopped
11 and walked over to the steps of the church. When I was
12 touching her, she was facing toward the backseat and I was
13 standing in the door of the car when I was doing it.
14 [Minor] then came over there and sat down beside me. Then
15 people started coming to church. I've never touched
16 another child other than [Minor]. I've never touched
17 [Little Sister], and she has never been to church with me.
18 Neither [Minor] or [Little Sister] ever went to Bible School with
19 me. I don't know why I did this to [Minor], but it wasn't
20 for sexual reasons. My dick don't even get hard. I don't
21 know why. The car was my 1997 Chevy Lumina. It's black.
22 We were right in front of the fellowship hall when it
23 happened. End of statement.
24 Q. Again, are those Mr. Hamilton's words?
25 A. It is.

- 1 Q. Now, what was his demeanor when he was giving you
2 that statement? How was he acting?
- 3 A. He was calm.
- 4 Q. Did he seem intimidated by you at all?
- 5 A. No.
- 6 Q. Or by the situation?
- 7 A. No.
- 8 Q. He references the fellowship hall, I believe, in
9 that statement?
- 10 A. Yes, ma'am.
- 11 Q. Had you previously taken some photographs of the
12 church?
- 13 A. I did.
- 14 Q. I'm going to show you State's Exhibit Number 8.
- 15 MS. JOHNSON: No objection.
- 16 Q. Do you recognize State's 8?
- 17 A. Yes, ma'am.
- 18 Q. And what is that?
- 19 A. This is the Central Church of God at 203 College
20 Street in Central.
- 21 Q. Okay. And who took those photos?
- 22 A. I did.
- 23 Q. And did you show those photos to Mr. Hamilton?
- 24 A. I did.
- 25 Q. All right. And what was the purpose of you showing

1 him these photos?

2 A. To show me where the incident occurred in the church

3 ...

4 Q. Okay. There should be a laser pointer up there.

5 I'm going to zoom in real quick on State's 8. This first

6 picture right here, what does that denote?

7 A. That's the side of the church.

8 Q. And this picture right here, what is that?

9 A. That's the fellowship hall, but it's -- the first

10 picture that you just showed, it's a continuance, almost

11 like a panorama.

12 Q. Okay. And picture number 3?

13 A. It's facing back or up toward the front of the

14 church.

15 Q. Picture number 4?

16 A. On opposite side of the parking lot, primacy fence

17 all the way down it.

18 Q. And picture number 5?

19 A. That's the front of the church.

20 Q. And on picture number 2, there's some markings up

21 there. Can you highlight those with a laser pointer?

22 A. This is where Mr. Hamilton initialed that he was

23 parked and where the incident occurred right near the -- I

24 think there's a vehicle or van or something back there.

25 Q. Okay. I'm going to show you 5, 6 and 7, State's 5,

1 6 and 7, and let me know if you recognize what those are?

2 A. Yes, ma'am.

3 Q. And what is that?

4 A. These are the same photos that I took, just blown
5 up.

6 Q. Okay. Are these the same or are these different?
7 This is the front of the church? But are these pictures
8 of the church?

9 A. That is the church.

10 THE COURT: Any objections to the photographs?

11 MS. JOHNSON: No, Your Honor.

12 THE COURT: All right. Without objection,

13 Exhibits 5 through 8 are admitted into evidence.

14 (WHEREUPON, State Exhibit Numbers 5 through 8 were
15 admitted into evidence.)

16 Q. And just to reiterate, what is that?

17 A. That's Central Church of God or Crossroads Church of
18 God.

19 Q. And that's State's 5. State's 6? What view is
20 that?

21 A. That's part of the church.

22 Q. And as a continuation of 6, State's 7?

23 A. That's the fellowship hall on the backside of the
24 church.

25 Q. And to be clear, is the front of the church up here?

1 A. It is.

2 Q. And is that College Street up there?

3 A. That is.

4 Q. And when he initialed that area, what was he
5 initialing? What was he -- what was the purpose of that,
6 to show where ---

7 A. To show where the incident took place in the parking
8 lot.

9 Q. Did he hesitate at all in showing you where it
10 happened?

11 A. No, not at all.

12 Q. And in giving these statements -- you said you take
13 hundreds of statement -- did you threaten or force Mr.
14 Hamilton in anyway to give a statement to you?

15 A. Not at all.

16 MS. HINTON: Your Honor, at this time I would
17 also move State's 3 and 4 into evidence.

18 THE COURT: Over the objection, Exhibits 3 and 4
19 are admitted into evidence.

20 (WHEREUPON, State Exhibit Numbers 3 and 4 were
21 admitted into evidence.)

22 MS. HINTON: Chief Justice, that's all that I
23 have. Please answer any questions that Ms. Johnson may
24 have.

25 THE WITNESS: Yes, ma'am.

1

CROSS EXAMINATION2 **BY MS. JOHNSON:**

3 Q. Detective, you just said you asked him to explain
4 why he did this and he said he peed using the seat down?
5 Yes?

6 A. I asked him -- he said, quote, unquote, his dick
7 doesn't work and he had to pee with the seat down. I had
8 ask him ---

9 Q. That doesn't sound like an answer to a question or a
10 -- that sounds like a comprehension problem. And ...

11 MS. JOHNSON: May I approach the witness, Your
12 Honor?

13 THE COURT: You may.

14 Q. You say in your report that you had to explain to
15 him about the different -- you asked him if he knew the
16 difference between an accident and I'm sorry; is that
17 right?

18 A. Yes, in the context he was using it. I needed to
19 know for my knowledge did he know the difference between
20 I'm sorry and an accident.

21 Q. Well, in your hundreds of statements that you've
22 taken, how many of those have you had to explain to, I'm
23 sorry and accident?

24 A. A lot. I mean, not hundreds, but I've had my share
25 of having to explain or make them -- make me understand

1 what their -- why they keep repeating the same thing.

2 Q. It sounds like there's a comprehension problem,

3 Detective Justice.

4 MS. HINTON: Your Honor, I'm going to renew my
5 objection ---

6 THE COURT: I sustain the objection. Ask the
7 question of her.

8 Q. If you'll look at your report. Do you have your
9 report, Detective Justice?

10 A. I do.

11 Q. You note there was a time lapse from the time
12 Christine filed the interview until the child was
13 interviewed; is that right?

14 A. Say that one more time.

15 Q. There was a time lapse between the time Christine,
16 the mother, filed the report until the time Minor was
17 interviewed?

18 A. I don't believe I put that anywhere.

19 Q. Okay.

20 A. If I did, I mean, I'll find it. But I don't believe
21 that I put that anywhere. I said, there's a time lapse
22 between the time that she filed it with Anderson till the
23 time I got it.

24 Q. Okay. Well, and you had access to Anderson's
25 report; is that right?

- 1 A. I did. They faxed it over.
- 2 Q. When you made your case, you had their report?
- 3 A. I did.
- 4 Q. Okay. So there was nothing else that needed to be
- 5 done?
- 6 A. When I received the case?
- 7 Q. Yes?
- 8 A. Well, seeing as how it happened in my jurisdiction,
- 9 I would have interviewed him myself. I wouldn't take
- 10 anybody else's hundred percent word over it. I need to
- 11 hear it with my own ears.
- 12 Q. Okay. And what other investigation did you do since
- 13 this happened in your jurisdiction besides talking with my
- 14 client?
- 15 A. What other investigation ---
- 16 Q. Uh-huh (affirmative).
- 17 A. --- after he was charged? Is that what you're
- 18 asking?
- 19 Q. By the time you got the case what other
- 20 investigation did you do?
- 21 A. I called him in and he gave a written statement, as
- 22 well as a verbal statement.
- 23 Q. Okay. You never went to this church; is that right?
- 24 A. I went there and took pictures prior to him getting
- 25 there.

1 Q. Okay. I should have made myself clear. You never
2 made -- you never went to this church and talked to people
3 at the church?

4 A. Well, he even stated to me that it was before
5 anybody ever got there.

6 Q. You never confirmed that he was ever there?

7 A. Well, that came out of your client's mouth that he
8 was there.

9 Q. You never did any independent investigation, is what
10 I'm asking you?

11 A. The only investigation I did was with Mr. Hamilton.

12 Q. Exactly. You never go to the church; right?

13 A. Correct.

14 Q. When it's open?

15 A. Correct.

16 Q. You never talk to any of the parishioners; correct?

17 A. Correct.

18 Q. You never talked to the minister?

19 A. Correct.

20 Q. You never subpoena any log book or membership book;
21 correct?

22 A. There was no need to.

23 Q. That's your opinion.

24 A. In my opinion.

25 Q. Right. That's your opinion? Let's get this

- 1 straight; these pictures. This child never pointed out
2 this church; correct?
- 3 A. The address and the church was in Anderson County's
4 report.
- 5 Q. That's not what I'm asking you, Detective. This
6 child never pointed out ---
- 7 A. No, she didn't point it out.
- 8 Q. --- this church? Okay. Thank you. You never
9 talked to Gary's son; correct?
- 10 A. No. I didn't talk to his son.
- 11 Q. Okay. Now, how many fellowship halls are between
12 Pickens -- or excuse me -- between Liberty and Central, of
13 churches?
- 14 A. How am I supposed to answer that?
- 15 Q. I'm just asking?
- 16 A. I don't know. I really don't know. We have a lot
17 of churches.
- 18 Q. My client came to Central at your request?
- 19 A. He did.
- 20 Q. Voluntarily?
- 21 A. He did.
- 22 Q. Walked in the front door?
- 23 A. He sure did.
- 24 Q. And these rights, were they witnessed by anybody
25 else that was not affiliated with the Central Police

1 Department?

2 A. No.

3 Q. Okay. So how many officers were in the room with

4 him?

5 A. Just me and Officer Durham.

6 Q. Okay. And how big is the room?

7 A. We'll pull the girl card. I'm not that good --

8 probably ten by ten. I mean, it's not huge, but it's not

9 too tiny either. That sounds about accurate, eight by

10 ten, ten by ten.

11 Q. Okay. And how long was Gary -- or excuse me -- my

12 client in the room with you?

13 A. For the interview portion, probably thirty, forty-

14 five minutes.

15 Q. Okay. And he stated to you that he was special ed

16 and couldn't read and write?

17 A. Correct.

18 Q. And you don't pull out any recording device to

19 preserve the integrity of this so-called statement?

20 A. No, ma'am. That's why I had somebody witness it.

21 Q. Okay. But with all the technology we have today,

22 you did not record this entire proceeding?

23 A. I didn't. Our room isn't set up that way.

24 Q. You, in other cases, have taken people to other

25 departments ---

- 1 A. Yes, ma'am.
- 2 Q. --- to get their statement on video?
- 3 A. Yes, ma'am.
- 4 Q. And you didn't do it in this case; is that right?
- 5 A. He has a severe mobility issue.
- 6 Q. That's not what I asked.
- 7 A. I did not.
- 8 Q. Okay.
- 9 A. I did not.
- 10 Q. Okay. And let's talk about this. You are not a
- 11 psychologist; ---
- 12 A. No, ma'am.
- 13 Q. --- correct? You have no way of knowing whether
- 14 this man understood what you were going over with him?
- 15 A. I can tell you I believe he did. I mean, he came on
- 16 his own free will.
- 17 Q. Again, that's not the answer yes or no. You had no
- 18 way of knowing; correct?
- 19 A. I had no way of knowing.
- 20 Q. And you ...
- 21 MS. JOHNSON: Beg the court's indulgence.
- 22 Q. You didn't take any precautions with a man that told
- 23 you he was special ed; is that correct?
- 24 A. Just because -- I didn't.
- 25 Q. Okay. Thank you, ma'am.

1 THE COURT: Any redirect?

2 MS. HINTON: Just briefly, Your Honor.

3 **REDIRECT EXAMINATION**

4 **BY MS. HINTON:**

5 Q. Detective Justice, if I can refer you to page 3 of
6 the incident report?

7 A. Yes, ma'am.

8 Q. Down near the bottom, and I think Ms. Johnson asked
9 you this, you asked him if he knew the difference between
10 an accident and I'm sorry; is that correct?

11 A. Yes, ma'am.

12 Q. Do you see where I'm referencing?

13 A. Yes, ma'am.

14 Q. Okay. And then after that statement in your report,
15 you follow it up with, so then I explained to him what it
16 meant to be an accident and what it meant to say I'm
17 sorry?

18 A. Correct.

19 Q. Is that what you say or what ---

20 A. It is.

21 Q. What's the next line that you write?

22 A. He then started saying, oh, well, I'm sorry then.

23 Q. Okay. So in your report, you did not actually
24 explain to him the difference between an accident and I'm
25 sorry; is that correct?

1 A. Correct.

2 Q. You just asked him if he knew the difference; is
3 that correct?

4 A. Correct.

5 Q. And Ms. Johnson asked you if you spoke to Gary's
6 son. Do you recall her asking you that?

7 A. Yes, ma'am.

8 Q. I'm assuming she's referring to his son that went to
9 church with him prior to taking Minor ?

10 A. Yes, ma'am.

11 Q. Are you aware that he has special needs?

12 A. I wasn't.

13 Q. Okay. Are you aware of the fact that he has a
14 mental capacity of a twelve year old?

15 A. I wasn't.

16 MS. HINTON: That's all I have at this time.

17 THE COURT: All right. Thank you, ma'am. You
18 may step down.

19 The state may call its next witness.

20 MS. HINTON: Thank you, Your Honor. The state
21 would call Freddie Durham.

22 THE CLERK: Place your left hand on the bible,
23 raise your right.

24 Do you solemnly swear or affirm the testimony you're
25 about to give in this case to be the truth, the whole

1 truth and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you, sir. If you would have a
4 seat and state your name for the record.

5 THE WITNESS: Fredrick Durham.

6 **FREDRICK DURHAM,**

7 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 **BY MS. HINTON:**

10 Q. Mr. Durham, where are you currently employed?

11 A. Venture Express.

12 Q. And what is that?

13 A. It's a trucking company.

14 Q. And did you used to be involved in law enforcement?

15 A. I did.

16 Q. How long ago?

17 A. Up until June of last month.

18 Q. Of 2014?

19 A. Yes.

20 Q. And why did you leave law enforcement?

21 A. Money. Make more money.

22 Q. So you weren't fired or anything?

23 A. No.

24 Q. How long had you been in law enforcement prior to
25 your departure?

- 1 A. Roughly ten years.
- 2 Q. How long had you been with Central?
- 3 A. Roughly two and a half years.
- 4 Q. Were you part of Central during the investigation of
- 5 Gary Hamilton?
- 6 A. Yes, I was.
- 7 Q. Did you sit in on an interview with him and Chief
- 8 Justice?
- 9 A. Yes, I did.
- 10 Q. And why did you sit in on that interview?
- 11 A. At the request of Chief Justice.
- 12 Q. Did you hear Chief Justice explain to him his
- 13 Miranda warnings?
- 14 A. I did.
- 15 Q. Okay. I'm going to show you State's 3, which is his
- 16 waiver of rights. Is your signature on that at all?
- 17 A. Yes, it is.
- 18 Q. Okay. And what does your signature mean on that
- 19 piece of paper?
- 20 A. It means I was a witness. I was present during the
- 21 reading of the rights.
- 22 Q. And when she was going over that, did Mr. Hamilton
- 23 appear to have any sort of issues that would limit his
- 24 ability to understand what was going on?
- 25 A. No, he did not.

1 Q. Okay. How many interviews at that point had you sat
2 in on or conducted?

3 A. A lot.

4 Q. Okay. Are you trained to know if someone is having
5 difficulty understanding?

6 A. Yes, we are.

7 Q. I'm also going to show you State's Exhibit Number 4,
8 which is a written statements. Is your signature on that?

9 A. It is.

10 Q. Okay. And what does your signature mean on this
11 written statement?

12 A. It means I was a witness and I was present during
13 the statement being written.

14 Q. Okay. At any time did Mr. Hamilton appear not to
15 understand what was going on?

16 A. Not at that time, no, he did not.

17 Q. Okay. Did he -- was he threatened at all?

18 A. No. He wasn't threatened.

19 Q. Was he forced?

20 A. He was not forced.

21 Q. Did Chief Justice use any words other than his own
22 in that statement?

23 A. No, she did not.

24 Q. Were you present when she read that statement back
25 to him?

1 A. Yes, I was.

2 Q. Did he have any objection to what was in that
3 statement?

4 A. No, he did not.

5 Q. All right. Officer Durham, if you'll answer any
6 questions that Ms. Johnson may have.

7 A. Okay.

8

CROSS EXAMINATION

9 **BY MS. JOHNSON:**

10 Q. Officer Durham, you said you're trained to get
11 statements correctly?

12 A. Yes.

13 Q. But you're also trained to get convictions; is that
14 right?

15 A. That's -- sometimes, yes. But that's not my job.
16 That's the solicitor's job.

17 Q. Okay. And you were completely aware that this man
18 was in special ed; correct? A special ed student at one
19 point?

20 A. I knew he had some learning disabilities, yes.

21 Q. Okay. So you weren't in a position to know whether
22 or not he really understood those rights or that
23 statement?

24 A. When we asked him, he acknowledged he did.

25 Q. He may have acknowledged that, but that's not my

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1 question. You're not in any position to know whether or
2 not he understands?

3 A. No. I'm not a special ed teacher.

4 Q. Okay. Well, and you're not a psychologist either;
5 are you?

6 A. No.

7 Q. Okay. Thank you.

8 THE COURT: Thank you, sir. You may step down.

9 MS. HINTON: May he be excused, Your Honor?

10 THE COURT: Without objection, the witness may
11 be excused?

12 MS. JOHNSON: Yes, Your Honor.

13 THE COURT: All right. Thank you, sir.

14 You may call your next witness, Solicitor?

15 MS. HINTON: Thank you, Your Honor. The state
16 would call Brenda Hamilton. Your Honor, she's in a
17 wheelchair, so I believe we're going to use the lift, if
18 that's okay.

19 THE COURT: That'll be fine or either she can
20 just stay on the bottom; either way Whatever you want to
21 do.

22 THE CLERK: Let me get you to place your left
23 hand on the bible and raise your right.

24 Do you solemnly swear or affirm the testimony you're
25 about to give in this case to be the truth, the whole

1 truth and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you, ma'am. If you would have
4 a seat and state your name for the record, please.

5 THE WITNESS: Brenda Sargent Hester Hamilton.

6 **BRENDA HAMILTON,**

7 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 **BY MS. HINTON:**

10 Q. All right. Ms. Hamilton, I'm going to move this
11 just a little bit closer; okay? Make sure you talk right
12 into that mike?

13 A. Yes, ma'am.

14 Q. All right. Ms. Hamilton, how do you know Gary
15 Hamilton?

16 A. He is my husband.

17 Q. How long have y'all been married?

18 A. We've been married twenty-five years.

19 Q. Do y'all still live together?

20 A. No, ma'am.

21 Q. Do y'all have any children?

22 A. Yes. We have one daughter together.

23 Q. All right. Do y'all have any other children that
24 you raised together?

25 A. I have three boys that he helped raise. They was

- 1 small when we got married.
- 2 Q. Okay. And are they all grown now?
- 3 A. Yes, ma'am.
- 4 Q. And you said he helped you raise them?
- 5 A. Yes, ma'am.
- 6 Q. Does Mr. Hamilton drive?
- 7 A. Yes, ma'am.
- 8 Q. Did he work at all during your marriage?
- 9 A. No, ma'am. He was disabled when we got married.
- 10 Q. Okay. Prior to that do you know if he worked at
- 11 all?
- 12 A. Yes.
- 13 Q. Where did he work, to your knowledge?
- 14 A. He worked for Duke Power on a -- building a dam.
- 15 Q. Okay. Was that the last job he had before he was
- 16 disabled?
- 17 A. That's where he fell.
- 18 Q. Okay. So when you say that he's disabled, is it
- 19 physical or mental?
- 20 A. That's where he become disabled when he fell.
- 21 Q. So it's his back?
- 22 A. Yes, ma'am.
- 23 Q. Okay. And prior to that, do you know if he had
- 24 another job prior to Duke?
- 25 A. Not that I know of.

1 Q. Now, Mr. Hamilton, does he ever -- did he ever drive
2 you around?

3 A. Yes.

4 Q. Did you ever go to church with Mr. Hamilton?

5 A. I went with him to church about three to four times.

6 Q. Why did you stop going to church with him?

7 A. Because I have real bad pressure wounds, is what
8 they call them, on the bottom of my feet. I've lost both
9 of my little pinkies or my little toes. And I kept the
10 infection, that staph infection all the time, so I would
11 have to take the medicine in my arm. And I didn't like to
12 go out in public.

13 Q. Okay. Do you recall when all that happened? Do you
14 know what year it was or any time period?

15 A. I started having this trouble, it's been about
16 almost ten years.

17 Q. Now, did you know Minor?

18 A. Yes.

19 Q. Okay. Did Minor ever come stay with y'all?

20 A. Yes. My daughter kept her, babysitting.

21 Q. Is your daughter Julie?

22 A. Yes, ma'am.

23 Q. And when y'all or Julie would keep her, would Mr.
24 Hamilton ever take her to church?

25 A. Yes, ma'am.

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- 1 Q. Would he ever take her to church alone?
- 2 A. Yes, ma'am.
- 3 Q. Now, did sometimes your son go with her to church?
- 4 A. They would take my son and my -- we had it arranged
- 5 that my son went to Norris First Baptist.
- 6 Q. Okay.
- 7 A. And a couple of Sundays his bus driver would pick
- 8 him up down there.
- 9 Q. When you say down there, where is down there?
- 10 A. To the Church of God of -- to the Church of God.
- 11 Q. Is that where Gary went?
- 12 A. Yes, ma'am.
- 13 Q. Okay. And where would the bus take him from there?
- 14 A. Greg, he would go to First Baptist from there
- 15 sometimes. Sometimes Gary would drop him off on his way
- 16 through.
- 17 Q. Okay. Now, did you go with Gary and your daughter
- 18 Julie over to Anderson County Sheriff's Office?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Were you around Gary that day?
- 21 A. Yes, ma'am.
- 22 Q. Were you there when they told Gary what his rights
- 23 were?
- 24 A. Yes, ma'am.
- 25 Q. Did he appear to understand what was going on?

1 A. Yes, ma'am.

2 Q. Is your husband capable of knowing right from wrong?

3 A. Yes, ma'am.

4 MS. JOHNSON: Judge, I'm going to object to
5 that.

6 THE COURT: Overruled.

7 Q. When you -- did you stay at Anderson County while he
8 went in the back?

9 A. Yes, ma'am.

10 Q. Okay. Now, you did not go back there with him?

11 A. No, ma'am. They would not allow us to go back into
12 the room where he was at.

13 Q. Okay. When he came out, did y'all leave at that
14 point?

15 A. Yes, ma'am.

16 Q. Okay. And did you ride home with him?

17 A. Yes, ma'am.

18 Q. And did he say anything to you about what happened
19 back there on your ride home?

20 A. No, ma'am.

21 Q. Okay. Did he make any comments about what he had
22 said?

23 A. We got on just about the outskirts of Anderson from
24 the place where we went, and he commence, please don't
25 hate me.

- 1 Q. Okay. Did you understand why he was saying that?
- 2 A. No, ma'am. I did not understand why he was saying
- 3 that.
- 4 Q. Okay. Did you come to understand why he said that?
- 5 A. Yes. When he handed us a piece of paper, I cannot
- 6 read that well, so I told my daughter, I says, I don't
- 7 know what this is. And she glimpsed at it. And she told
- 8 me what it says. I says, well, pull over and read it.
- 9 You cannot read it and drive.
- 10 Q. Okay. And after she read that to you, how did you
- 11 feel?
- 12 A. I felt bad. I felt like somebody had just stabbed
- 13 me in the back.
- 14 Q. After that did you remain with your husband?
- 15 A. We stayed together till we was called to come -- the
- 16 officer from Central came out and left a card on our front
- 17 door.
- 18 Q. Did you ever go over to the Central Police
- 19 Department?
- 20 A. Yes, ma'am. I went with him the day -- he drove
- 21 his self that day to the police department.
- 22 Q. Okay. Did an officer ever come out and talk to you?
- 23 Don't tell me what she said, but did anybody ever come and
- 24 speak to you?
- 25 A. Yeah. She just come outside.

1 Q. Okay. And did you make any comments to her?

2 A. No, ma'am.

3 Q. Okay. How did you feel when Gary was arrested for
4 this crime?

5 A. I felt bad.

6 Q. Bad for who?

7 A. For Minor.

8 Q. Okay. Now, I don't mean to get too personal with
9 you, but you and your husband have at least one child
10 together; correct?

11 A. Yes, ma'am.

12 Q. And is that the only child that's both yours?

13 A. Yes, ma'am.

14 Q. And back around 2011, were you and your husband
15 having sex anymore?

16 A. No, ma'am.

17 Q. And why is that?

18 A. Back in 1999, I had a heart attack.

19 Q. And is that why you do not have sex with your
20 husband?

21 A. Yes. That's the reason I did not have sex with my
22 husband, is the doctor told me that my lungs was so weak
23 that ---

24 MS. JOHNSON: I'm going to object to this.

25 A. --- he was ---

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1 MS. JOHNSON: I don't see how this ---

2 THE COURT: Wait just a minute, ma'am. Yes.

3 MS. JOHNSON: I don't see how this is relevant
4 to anything.

5 THE COURT: Okay. I overrule your objection.

6 All right. Ma'am, excuse me. You may answer the
7 question.

8 Q. Continue. That your lungs were so weak ...

9 A. That my lungs was so weak and he said my husband was
10 heavy and that could cause me maybe to have another heart
11 attack that I would not pull through.

12 Q. Okay. And y'all were married for how long?

13 A. Twenty-five -- we've been married twenty-five years.

14 Q. Still married?

15 A. Yes. We're still married. We were together twenty-
16 six years, but we was not married the first year.

17 Q. Okay. To your knowledge has there ever been a
18 diagnosis that Mr. Hamilton could not have an erection?

19 A. No, ma'am.

20 Q. Okay.

21 A. I've never been told that by him or any doctor.

22 Q. Now, after the Central incident, did you remain in
23 contact with your husband?

24 A. I went to the jailhouse twice to see him, and that
25 was it.

1 Q. Okay. And does he still have items at your
2 residence?

3 A. Yes, he did. I had his wallet and his hat and
4 stuff; his brother came and got.

5 Q. So he no longer lives with you?

6 A. No.

7 Q. But y'all are not divorced?

8 A. No, ma'am.

9 Q. Why are y'all not divorced?

10 A. I haven't had money to fill out for a divorce. And
11 I don't reckon he has either, so ...

12 Q. Ms. Hamilton, that's all I have. Please answer any
13 questions Ms. Johnson may have.

14 **CROSS EXAMINATION**

15 **BY MS. JOHNSON:**

16 Q. Good afternoon, Ms. Hamilton. How are you doing?

17 A. Just fine.

18 Q. Okay. You say the cops wouldn't allow you and Julie
19 to go back in the room with them; is that right?

20 A. Yes, ma'am.

21 Q. Okay. And that when you had to pull over on the
22 side of the road, Julie was the one that read the
23 statement?

24 A. Yes, ma'am.

25 Q. And that was because Gary couldn't read well; is

- 1 that right?
- 2 A. He handed her the statement.
- 3 Q. Okay.
- 4 A. And I can't read that good, so ...
- 5 Q. Okay. Now, I don't want to be offensive to you, but
- 6 you said you have some health ailments. Are you on any
- 7 kind of pain pills?
- 8 A. No, ma'am, I'm not on no pain pills.
- 9 Q. But you're on a lot of medicine; is that right?
- 10 A. Yes. I'm on a lot of medicine.
- 11 Q. Okay. Now, I know I'm meandering all over the
- 12 place. You weren't in that room with Gary?
- 13 A. No, I was not.
- 14 Q. You don't know what happened; is that right?
- 15 A. No, ma'am, I don't.
- 16 Q. Okay. And you said the last time you saw him was at
- 17 the jailhouse?
- 18 A. Yes.
- 19 Q. But you also came up here for a hearing in his
- 20 support?
- 21 A. No. I just came up here for the hearing. I told
- 22 you I was not going to stand behind him.
- 23 Q. Okay. But you were here ---
- 24 A. Yes, I was here because ---
- 25 Q. --- in his -- I apologize. You were here ...

1 A. Yes. I was here because I got a note or got a card
2 that he was coming to jail.

3 Q. With his people, you were with them?

4 A. It just said that he was coming to jail -- I mean,
5 coming to the courthouse.

6 Q. Okay. Gary never hurt [Minor] in front of you?

7 A. (No verbal response.)

8 Q. Gary never hurt [Minor] in front of you; is that
9 right?

10 A. No.

11 Q. Okay. Thank you, Ms. Hamilton.

12 THE COURT: Any redirect?

13 MS. HINTON: No, Your Honor.

14 THE COURT: All right. Thank you, ma'am.

15 MS. HINTON: Your Honor, may she be excused?

16 THE COURT: Any objection to this witness being
17 excused?

18 MS. JOHNSON: No, Your Honor.

19 THE COURT: Without objection the witness may be
20 excused.

21 Could I see the attorneys here just for a moment
22 about scheduling.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 THE COURT: Madam Forelady and ladies and

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1 gentlemen of the jury, before the next witness is called,
2 this might be a good strategic time for us to take a
3 break, so I'm going to ask you if you would to return to
4 your jury room. We'll call you back in just a few
5 moments. Don't discuss the case with anyone while you're
6 back there.

7 Everyone else, please remain seated.

8 (WHEREUPON, the jury exited the open court at
9 approximately 2:43 p.m.)

10 THE COURT: All right. We'll take a short break
11 and be ready to proceed with the next witness.

12 MS. HINTON: Thank you, Your Honor.

13 MS. JOHNSON: Thank you, Judge.

14 (WHEREUPON, the court stood at recess for a short
15 break.)

16 THE COURT: All right. Anything we need to take
17 care of before our jury comes out?

18 MS. JOHNSON: Your Honor, I think Ms. Hinton's
19 next witness is Shauna Galloway-Williams. And do want to
20 make a motion on ---

21 THE COURT: All right. Be glad to hear from you
22 now, if you want to. This is concerning the purpose of
23 her testimony. Let me get that set forth first.

24 MS. LANDSVERK: Your Honor, the purpose of her
25 testimony is just to explain to the jury about child abuse

1 in general. She's not going to be commenting on the
2 child's veracity. We're not going to actually ask her
3 anything about the child. She never met with the child.
4 She did not view the forensic video. However, we believe
5 that there are, you know, multiple issues that are not
6 common knowledge to the jury as it relates to child sexual
7 abuse.

8 THE COURT: So her testimony would be as an
9 expert in child sex abuse?

10 MS. LANDSVERK: Yes, Your Honor. It's actually
11 -- to be exact, it's child sexual abuse dynamics.

12 THE COURT: All right. Ms. Johnson.

13 MS. JOHNSON: May it please the court.

14 THE COURT: Yes, ma'am.

15 MS. JOHNSON: Your Honor, we would respectfully
16 request the court exclude this witness from testifying.
17 First of all, her testimony would only bolster any
18 testimony that the state has already presented. Also, I
19 think Madam Solicitor just said she would be testifying to
20 child abuse in general.

21 Also, the -- per I think it's the *Watson v. Ford*
22 *Company*, you know, we maintain that her testimony would
23 not aid the trier of fact at all; that it would only
24 confuse the trier of fact. I'm also looking at *State v.*
25 *Douglas*, 380 S.C. 499, the trial court must find that the

1 subject matter is beyond the ordinary knowledge of the
2 jury, thus requiring an expert to explain the matter to
3 the jury.

4 Everybody is involved with children in this society,
5 or most people are, and she just -- her testimony would
6 only bolster prejudice. I mean, it's not probative.
7 There's no way this woman can come in here as, you know, a
8 general expert and assist the trier of fact in this
9 particular case. She has nothing to add. And her
10 testimony would only confuse the trier of fact. It's just
11 -- it's improper for a host of reasons.

12 THE COURT: What specifically will she be
13 testifying to that will be relevant and probative in this
14 case?

15 MS. LANDSVERK: Your Honor, she'll be testifying
16 to issues such as delayed disclosure, how children usually
17 communicate, potential inconsistencies with the victim.
18 As I mentioned before, she did not meet with the child.
19 And I notice the defense actually brought up State v.
20 Douglas, it's 380 S.C. 499, 2009, and that specifically
21 discusses forensic interviewers in which the interviewer
22 cannot testify to their own personal observations. And in
23 this case she didn't see the forensic interview. She
24 wasn't involved in that process. And the state would like
25 to point the court's attention to State v. Weaverling;

1 it's 523 S.C. 2d 787, 1999. And in this case, the court
2 held that when facts of the case raise questions of
3 credibility or accuracy that might not be explained by
4 experiences common to jurors, like reactions of child
5 victims of sexual abuse, expert testimony on general
6 behavior characteristics of such victims should be
7 admitted.

8 Your Honor, we feel like in this case there are a lot
9 of issues that need to be discussed as far as how she
10 communicates, how she discloses certain thing, like I say,
11 without specifically discussing **Minor**, but discussing
12 children in general who have been abused.

13 THE COURT: I will overrule your objection, Ms.
14 Johnson, provided the testimony stays within the
15 parameters of the -- what the state has set forth as to
16 just actions about delayed reporting and inconsistencies
17 and so forth. I believe the Waverley case would allow
18 this. Waverley was quoted in an unpublished case --
19 unpublished opinion the last couple of months on the same
20 type issues as precedence from the Court of Appeals on an
21 unpublished case. I believe it would be probative for the
22 jury and helpful to them, again, subject to her
23 qualifications and your right to examine her as to her
24 qualifications.

25 MS. JOHNSON: Judge, I would just ask for an in-

1 camera hearing.

2 THE COURT: In-camera hearing?

3 MS. JOHNSON: With Ms. Galloway-Williams.

4 THE COURT: As far as her qualifications?

5 MS. JOHNSON: Just, I guess, what her testimony

6 would be. I probably should have done that earlier. I

7 apologize.

8 THE COURT: All right. If you'll call Ms.

9 Galloway-Williams, we'll do a brief in-camera hearing as
10 to the salient points of her testimony.

11 Is she here?

12 MS. LANDSVERK: Yes, Your Honor. The state
13 would call Shauna Galloway-Williams.

14 THE COURT: Do you have issues with her
15 qualifications now that you wish to ask about in the in-
16 camera, certainly you can ask them now or you can ask them
17 in front of the jury.

18 MS. JOHNSON: No. I don't have any issue about
19 her qualifications; just what her testimony would be, Your
20 Honor.

21 THE COURT: Okay. All right.

22 If you would come up and be sworn in, Ms. Galloway-
23 Williams.

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you're about to give in this case to be the

1 truth, the whole truth and nothing but the truth, so help
2 you God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: Thank you. If you would have a seat
5 and state your name for the record, please.

6 THE WITNESS: Shauna Galloway-Williams.

7 MS. LANDSVERK: Your Honor, real quickly, I
8 wanted to ask you, do you mind if we skip through the
9 qualifications and just go through the questions for the
10 purposes of the in-camera hearing?

11 THE COURT: Any objection to that, Ms. Johnson?

12 MS. JOHNSON: No, Your Honor.

13 THE COURT: All right.

14 **SHAUNA GALLOWAY-WILLIAMS,**

15 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

16 **IN-CAMERA TESTIMONY**

17 **DIRECT EXAMINATION**

18 **BY MS. LANDSVERK:**

19 Q. Okay. Good afternoon Ms. Galloway-Williams. Are
20 you being paid to be here?

21 A. No, I'm not.

22 Q. And are you here because of a subpoena?

23 A. Yes, I am.

24 Q. And do you know anything about the defendant Gary
25 Hamilton?

1 A. No, I do not.

2 Q. Have you ever met the victim Minor [REDACTED] ?

3 A. I haven't.

4 Q. And did you observe any forensic interview in which
5 [REDACTED] was involved in?

6 A. I have not.

7 Q. Okay. Next we're going to talk about the issue of
8 grooming. Can you explain what the issue -- or what
9 family grooming means?

10 A. Grooming is what we refer to as preparing a victim
11 or sort of introducing a victim to behavior. For example,
12 if an offender is close with a child, they may provide
13 them with additional favors, give them extra attention,
14 give them gifts. Sometimes grooming involves introducing
15 children to touch and progressively introducing them to
16 different kinds of touch. So for example, it might be,
17 you know, a brush against the leg; see how a child reacts
18 to that. Later it's a brush against the leg and going
19 further up the clothing; those kind of things, to really
20 sort of test the waters with a child and see if they can
21 get the child to trust them more.

22 Q. Okay. Is grooming common in children before the
23 abuse occurs?

24 A. You know, most of the time children are abused by
25 someone they know, they love and they trust. And so that

1 goes hand-in-hand with the grooming behavior. You know, a
2 perpetrator or someone who is engaging a child or is going
3 to abuse a child and also knows that child may be grooming
4 them and developing, cultivating that relationship,
5 developing that trust with them.

6 Q. And can a child's disclosure be affected if the
7 perpetrator is a family member or someone they know, love
8 and trust, as you mentioned?

9 A. Yeah. One of the main reasons why children often
10 don't tell or delay their disclosure is because the person
11 that has abused them is someone that they know, they love
12 and they trust, that their family knows, loves and trusts
13 or that the community, or all three of those things. And
14 that often makes it harder for a child to disclose. They
15 may have a very loving, caring relationship with this
16 person. Their family may also have a caring relationship
17 with this person. And yet, the one thing, the abuse, is
18 the thing that they don't like that shouldn't be going on.
19 And that also creates a lot of fear for children and might
20 inhibit them from being able to tell.

21 Q. How common is it for children to delay reporting in
22 these types of cases?

23 A. In most of the cases that we see at the Julie
24 Valentine Center and most of the research and training
25 that we go through, we find that most children don't tell

1 right away; whether that be a delay of a few days, a few
2 weeks, a few years. We also know that many adult
3 survivors of childhood sexual abuse live into their adult
4 lives without ever telling someone that this has happened.

5 Q. Okay. Is there such a thing as a typical delayed
6 disclosure time frame or is it just in general it differs
7 with each person?

8 A. Yeah, it can just -- there's not a typical delayed
9 time frame.

10 Q. Okay. You touched on this a little bit before. But
11 what are some of the factors that commonly play a role in
12 a child's delayed reporting?

13 A. One of the main reasons is because the child has a
14 relationship with this person. This is someone they know,
15 they love and they trust. A lot of times, children are
16 fearful. They're afraid of what's going to happen to them
17 or what's going to happen to the person that is doing this
18 to them. They may also fear how it's going to impact
19 their family. You know, oftentimes the person that's
20 abusing them is a part of the family, someone who may be
21 providing resources to them. Children are often
22 embarrassed or ashamed to tell about it. It's something
23 that is uncomfortable for them. And with really young
24 children, a lot of times they don't have the words to
25 describe what's happened. A lot of times children don't

1 have sexual knowledge, don't have the vocabulary, to be
2 able to just describe exactly what has happened.

3 Q. And as far as that's concerned, how do children
4 usually communicate these things to their parents or to
5 their loved ones?

6 A. Well, you know, sometimes children make a conscious
7 effort to disclose and to tell someone what's happened.
8 Sometimes disclosures are accidental. That means that the
9 child has displayed a behavior that's concerning and
10 someone asks a question about it. Or the child may say
11 something that is concerning and someone then asks a
12 question about it. And then there are other times when,
13 again, it's really more of a child maybe testing the
14 waters. They may tell a little bit about something that's
15 happened to see how someone is going to respond before
16 they tell more.

17 Q. Do children usually have difficulty with time
18 references?

19 A. Yes. Time, you know, is a really abstract concept.
20 And very young children have a hard time telling someone
21 what day of the week it is, what time something happens.
22 Often when we're talking to younger children, we will try
23 to associate time with other things in their life, you
24 know, like holidays or seasons, birthdays, school, those
25 kind of things, because they often don't -- you know, they

1 can't identify that something happened on a particular
2 day, a particular month and a particular year.

3 Q. Okay. And do you mind describing the difference
4 between a full disclosure and a partial disclosure?

5 A. Sure. A particular disclosure would be when a child
6 shares bits of information, maybe not all of the
7 information at once. And what we know is that disclosure
8 is a process, so children don't usually tell all of the
9 details and everything about what's happened right away.
10 We can expect that they're probably going to tell it over
11 time. A full disclosure would be that when a child tells
12 everything. And again, a lot of that is dependent on
13 who's asking the questions, how the questions are asked
14 and when the questions are asked.

15 Q. In general do children lie?

16 A. You know, children do lie. Adults lie. They
17 usually lie to keep themselves out of trouble, you know.
18 They lie about the cookie out of the cookie jar. They lie
19 about, you know, something their brother or sister did.
20 Children aren't sophisticated liars, though. What we mean
21 by that is they don't have the cognitive ability to
22 anticipate what kind of questions we're going to ask them,
23 you know, in a scenario related to abuse, for example. So
24 they're not sophisticated enough to be able to continue a
25 lie and to anticipate what it is that they're going to be

1 asked.

2 Q. So would it be fair to say that a lie would probably
3 not be consistent if it dealt with sexual abuse, if they
4 had to continue to lie over and over?

5 A. Yeah. I mean, what we would probably see is that
6 children, they may not be able to answer the questions
7 fully and with a lot of detail. You know, one of the
8 things that we look for when we talk to children about
9 abuse scenarios is context. You know, are they able to
10 not just say who and what happened, but can they give you
11 information that lets you know that they're talking about
12 an experience that they're actually had. Something that's
13 a sensory kind of experience, a feeling; touch, a visual,
14 something like that. And those are the kind of things
15 that children don't typically lie about or they have a
16 hard time being consistent in those type details.

17 Q. And what are the most common types of family
18 situations in which a child becomes abused?

19 A. You know, really in any type of family situation a
20 child can be abused. We know that there are situations
21 that are higher risk for abuse. You know, certainly where
22 there's substance abuse involved in a family. There are
23 children in families that are more vulnerable to abuse.
24 Single parent households. Children who are at risk in
25 somehow or another, you know, those types of families and

1 children are sometimes the targets of those who want to
2 abuse children.

3 Q. Okay. Do you mind explaining a little bit more
4 about the at-risk homes?

5 A. Well, if there are any of those high-risk categories
6 such as, you know, substance abuse. Or if there is, you
7 know, a single parent in the household. If there is a
8 child who maybe has behavioral problems, a child who may
9 have developmental delays. Those types of things might be
10 considered at risk. Or things that would put a child or a
11 family at higher risk are more vulnerable to abuse.

12 Q. Thank you. Please answer any questions from the
13 defense.

14 A. Sure.

15 MS. JOHNSON: Judge, I'd just like safe my
16 cross-examination for when the jury comes in.

17 THE COURT: All right. You don't have any
18 questions of the witness then?

19 MS. JOHNSON: I do have questions that I want to
20 ask.

21 THE COURT: For the in-camera hearing, you don't
22 have any questions for her?

23 MS. JOHNSON: Well, no, Your Honor, I wanted to
24 hear what this witness would say and I've got my grounds
25 for ---

1 THE COURT: Okay. Are there any specific
2 objections you have now to her testimony?

3 MS. JOHNSON: I do, Your Honor.

4 THE COURT: What are those?

5 MS. JOHNSON: The first part when she says she
6 knows -- when she starts talking about knows, loves and
7 trusts. You know, that's just going to increase the
8 victimization of this child to the jury. All of her
9 testimony was bolstering my client -- I mean, bolstering
10 this child's testimony. It's appealing to the passions
11 and prejudices of the jury. She is bolstering this
12 child's credibility or lack of credibility, you know, when
13 she says, talking about children, I never said this before
14 in my life. You know, she's just trying to gloss over the
15 impeachable evidence for the state. And you know, I think
16 also by her talking about, you know, children can't
17 anticipate questions of please and pleasing, I think
18 that's kind of a backdoor Jeffcoat issue. You know, I'm
19 not going to be good about explaining this, but she's
20 bolstering this child's testimony as if the prior
21 consistent -- inconsistent statements were allowed
22 pursuant to Jeffcoat. And you, you said that that was not
23 admissible testimony.

24 But, you know, we would just ask that you exclude
25 this witness from testifying. And those are my reasons,

1 Your Honor.

2 THE COURT: Solicitor, are there any evidence in
3 this case of grooming? Is there anything that can help
4 the jury on the grooming aspect, from what I've heard so
5 far?

6 MS. LANDSVERK: Yes, Your Honor. We believe
7 that based on the relationship that [Minor] had with Gary
8 and his wife, the fact that they depended on the family a
9 lot when her mother was homeless and the fact that they
10 really used them ---

11 THE COURT: Does that go to trust or does that
12 go to grooming?

13 MS. LANDSVERK: Your Honor, we would argue it
14 goes to both, because a lot of times before the sexual
15 abuse occurs, the grooming steps in and they make sure the
16 child feels comfortable, the child is happy to be with
17 them and trusts them. I think it ties with trust. So we
18 believe that's part of the state's case.

19 THE COURT: All right. The defense said they
20 had several points, but perhaps didn't articulate them to
21 me. I tried to make notes also. The witness talked about
22 grooming, delayed reporting, partial and full disclosure,
23 dishonesty, family situations, at-risk homes. Did I miss
24 anything as to what issues you're wanting the witness to
25 talk about?

1 MS. LANDSVERK: I think that's all, Your Honor.

2 THE COURT: Okay. Well, out of an abundance of
3 caution in this case, particularly in light of the fact
4 the child is so young, I'm not going to allow you to
5 develop anything with the witness as far as the dishonesty
6 with adults or children, that line. But the rest of them
7 I will allow.

8 MS. LANDSVERK: Thank you, Your Honor.

9 THE COURT: Over the objections. You can talk
10 about delayed disclosure and the trust factors, the
11 grooming and the at-risk homes. I just think in light of
12 the objections made and the prior case law, I think it
13 might be interpreted by the jury as an endorsement of the
14 child's testimony in this case. In this case, I'm not
15 going to allow you to get into the dishonesty aspect ---

16 MS. LANDSVERK: Thank you, Your Honor.

17 THE COURT: --- as far as children. If she
18 wants to talk about everybody's dishonest, but not the
19 difference between the sophistication of children and so
20 forth. Okay?

21 MS. LANDSVERK: Your Honor, if I may just get a
22 little bit of clarification ---

23 THE COURT: All right.

24 MS. LANDSVERK: --- on your last point dealing
25 with -- can I ask her anything about how children

1 communicate sexual abuse to adults?

2 THE COURT: Sure. I think that's already been
3 covered, about the reporting. She talked about that then,
4 the delayed reporting, even as an adult and so forth.

5 MS. LANDSVERK: Sometimes not having, you know,
6 a complete memory and that sort of thing?

7 THE COURT: Right.

8 MS. LANDSVERK: Okay.

9 THE COURT: Just not as to unsophistication of
10 children lying. I don't want that to be interpreted by
11 Appellate Courts in anyway that she's commenting on any
12 child testifying in this case.

13 MS. LANDSVERK: Okay.

14 THE COURT: All right. Ms. Galloway-Williams,
15 you can step down. We'll call you back in a few minutes.

16 THE WITNESS: Okay.

17 THE COURT: Anything else from either party?

18 MS. JOHNSON: No, Your Honor.

19 MS. LANDSVERK: Your Honor, I just wanted to
20 mention that our last witness is actually the doctor that
21 completed the physical exam on the victim. And we would
22 -- the state is planning on qualifying her as an expert,
23 as well. I just wanted to let you know beforehand.

24 THE COURT: All right.

25 All right. Let's have our jury come back, if they're

1 ready.

2 (WHEREUPON, the jury entered the open court at

3 approximately 3:35 p.m.)

4 THE COURT: All right. Solicitor, you may call
5 your next witness.

6 MS. LANDSVERK: Thank you, Your Honor. The
7 state would like to call Shauna Galloway-Williams to the
8 stand.

9 THE CLERK: Do you solemnly swear or affirm the
10 testimony you're about to give in this case to be the
11 truth, the whole truth and nothing but the truth, so help
12 you God?

13 THE WITNESS: Yes, I do.

14 THE CLERK: Thank you, ma'am. If you would have
15 a seat and state your name for the record, please.

16 THE WITNESS: Shauna Galloway-Williams.

17 **SHAUNA GALLOWAY-WILLIAMS,**

18 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

19 **DIRECT EXAMINATION**

20 **BY MS. LANDSVERK:**

21 Q. Good afternoon, Ms. Galloway-Williams. How are you?

22 A. Fine, thank you.

23 Q. Good. Where are you employed?

24 A. I am the Executive Director of the Julie Valentine
25 Center.

1 Q. And what services do you provide at the Julie
2 Valentine Center?

3 A. The Julie Valentine Center is the child abuse and
4 sexual assault recovery center that serves Greenville and
5 Pickens County. So we provide services for children and
6 families who have been impacted by child abuse and sexual
7 assault, as well as adults. And provide education and
8 prevention services, as well.

9 Q. Can you tell me a little bit about your educational
10 background?

11 A. Yes. I have a bachelor's degree in psychology and a
12 master's in counseling. I'm a licensed professional
13 counselor in the state of South Carolina.

14 Q. Okay. And what about your professional background;
15 how long have you been the Executive Director at the Julie
16 Valentine Center?

17 A. I've been the Executive Director now for five years.
18 Prior to that I was the Clinical Director. And prior to
19 serving as the Clinical Director, I provided forensic
20 interviews and contract counseling for the center. I've
21 been working with children and families who have been
22 impacted by abuse and neglect for thirteen years. I've
23 been working in the field of mental health for over
24 seventeen years.

25 Q. What type of professional groups are you a part of?

1 A. I am the immediate past board president of the South
2 Carolina Network of Children's Advocacy Centers. I am
3 also a former board member for the South Carolina
4 Professional Society on the Abuse of Children. I am Co-
5 Chair of the Silent Tears Task Force. And I am a part of
6 the Silent Tears South Carolina Foundation. And I also am
7 a graduate of the Leadership Greenville Program.

8 Q. And can you tell me a little bit about the special
9 training that you have received in the field of counseling
10 children who are thought to be sexually abused?

11 A. Sure. I've received over a hundred and forty hours
12 of skills-based training directly related to working with
13 children who may have been abused or neglected. In
14 addition to that, I've attended numerous seminars and
15 CEU's as part of my licensure since 2004. I also provide
16 training and supervision. I am an adjunct faculty member
17 at the University of South Carolina Upstate in their Child
18 Advocacy Studies Program. I primarily teach the child
19 maltreatment course there. I also conduct training
20 related to recognizing and responding to child sexual
21 abuse. I've done a lot of training with the Greenville
22 County School District in training their administration,
23 training over seven hundred professional in the past year.
24 Also have conducted training related to working with non-
25 offending care givers, as well as the dynamics of child

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1 sexual abuse.

2 Q. And I guess in general how many presentations have
3 you given on child sexual abuse? Can you give me some
4 sort of estimate?

5 A. Well, let's see. There are ten that I have listed
6 on my CV; eleven if I count the most recent one where we
7 presented at the National Association of Attorneys
8 General. Those are all trainings where I conducted
9 training with professionals. In addition to that, I also
10 do awareness trainings and speak to groups about the work
11 of the Julie Valentine Center. And those kind of
12 trainings I don't list here. On average, I do somewhere
13 around forty United Way presentations and other speaking
14 engagements a year.

15 Q. And in fact, did you give a presentation earlier
16 today?

17 A. I did. I had a presentation at Fluor for the United
18 Way.

19 MS. LANDSVERK: Your Honor, at this time the
20 state would like to offer Shauna Galloway-Williams as an
21 expert in child abuse dynamics.

22 THE COURT: Any objection or any voir dire by
23 the defense as to her qualifications as an expert?

24 MS. JOHNSON: No, Your Honor, just my previous
25 objections that were placed on the record earlier.

1 THE COURT: Okay. All right. She'll be
2 qualified as an expert witness.

3 Ladies and gentlemen, let me just explain to you that
4 normally when a person gives testimony, they can testify
5 to what they saw or experienced in some way or heard,
6 sensed. There is an exception, however, for what we call
7 expert testimony. And that's a person who, because of
8 experience or education, are qualified in some field and
9 they're permitted because of the expertise in that field,
10 to give an opinion and the basis of that opinion. This
11 witness has been qualified as an expert in the area of
12 child abuse -- sex abuse -- child sex abuse dynamics and
13 can give opinions. That doesn't mean you must accept the
14 opinion, but it's evidence to be used by you in anyway
15 that you see fit.

16 All right. Solicitor, you may continue your
17 examination of the witness.

18 MS. LANDSVERK: Thank you, Your Honor.

19 Q. Okay. So, as you know, we're here today to talk
20 about child abuse. And are you paid to be here?

21 A. No, I'm not paid to be here.

22 Q. And are you here because of a subpoena?

23 A. Yes.

24 Q. And do you know anything about the defendant Gary
25 Hamilton?

1 A. I do not.

2 Q. Have you ever met the victim Minor [REDACTED] ?

3 A. I haven't.

4 Q. And have you observed Minor [REDACTED] give any
5 statement?

6 A. No, I haven't.

7 Q. Okay. The next issue we're going to discuss is
8 grooming. Can you explain what family grooming is?

9 A. Well, grooming when we're talking about grooming
10 related to child sexual abuse, is when a perpetrator or
11 someone who's going to harm a child develops a trusting
12 relationship with them by giving them special attention,
13 giving them gifts, doing things to really enhance their
14 relationship, and doing that in a way to not only enhance
15 the relationship and develop trust, but also to sort of
16 test the waters with the child to see how far they may be
17 able to take the relationship. So in addition to the
18 special attention and favors and all those things,
19 sometimes grooming involves introducing children to touch
20 in an ambiguous way, you know, sort of bumping up against
21 them, touching them on top of their clothes, seeing how
22 they react, then later touching them in another way and
23 really introducing and developing a trust with the child,
24 but also testing the waters with them to see how the child
25 will react to different things.

1 Q. And is it common for a child or a child's family to
2 be groomed before the sexual abuse occurs?

3 A. Well, most children are abused by someone that's
4 known, loved and trusted to the child and to the family.
5 So a lot of that relationship building is part of the
6 grooming process, really cultivating that relationship
7 with the family. And that a lot of times is why children
8 have a hard time telling someone or letting someone know
9 that this has happened to them.

10 Q. So can a child's disclosure be affected if the
11 perpetrator is a family member or someone they love and
12 trust and know very well?

13 A. That's really one of the main reasons why children
14 don't tell, is because they know, love and trust the
15 person that has done this to them. A lot of times they
16 fear what's going to happen to them or to the person
17 that's done this. A lot of times children have a very --
18 have a lot of really good characteristics so there's a lot
19 of good things about the relationship with the person in
20 addition to the abuse. This may be the one person that
21 gives them the most attention, that they like to play
22 with. This may be the one person that they feel closest
23 to. This may be the one person that the other family
24 members are closest to. Knowing those things and
25 experiencing those things makes it really hard for

1 children to tell that something's happened.

2 Q. How common is delayed disclosure in sexual abuse
3 cases?

4 A. In most cases that we see at the Julie Valentine
5 Center and in my experience and in what the research tells
6 us, most children don't tell right away. And in fact,
7 many adults live into their adult lives without having
8 ever told anyone that this has happened to them. So from
9 my experience and training and education, it's very common
10 that children don't disclose or that they delay their
11 disclosure.

12 Q. Is there a typical time span in which most people
13 delay disclosure?

14 A. No. It can really vary from, you know, hours, to
15 days, to weeks, to years. And then in many cases to never
16 telling.

17 Q. Okay. What type of factors play into delayed
18 disclosure?

19 A. Well, again, you know, one of the strongest factors
20 or one of the biggest influences is that relationship that
21 the child has with the perpetrator; it being a loving,
22 trusting relationship with them or a relationship with the
23 family. Children may fear the consequences of what's
24 going to happen to them or the perpetrator if they tell.
25 They may have been threatened that something's going to

1 happen. Children may know, without anyone even telling
2 them, they may know that there are things that will happen
3 if they tell. That they or something's going to have to
4 move. That someone's not going to be able to take care of
5 them or the household. Children are very aware of some of
6 the consequences that may happen if they tell.

7 Q. And can you please explain the difference between a
8 full disclosure and a partial disclosure?

9 A. Well, a full disclosure would be, you know, a child
10 telling all of the details from start to finish about
11 what's happened. And a partial disclosure would be one
12 where you get one piece of information here and you get
13 another piece here and you may get more later. What we
14 know is that disclosure is a process. That we don't
15 expect that a child or an adult is going to tell every
16 single detail about what's happened to them the first time
17 that they tell someone. Children may tell a little bit
18 about what's happened and, again, test the waters to see
19 what the reaction of people is going to be. Sometimes it
20 depends on the questions that are going to be asked of the
21 child. Children don't always know exactly what we want to
22 know. And so they may not tell us all the details and
23 fully disclosure everything that we would ---

24 MS. JOHNSON: Judge, I'm going to object to
25 this.

1 THE COURT: What's your objection?

2 MS. JOHNSON: Can I take it up outside the
3 presence of the jury.

4 THE COURT: All right. Can you approach the
5 bench?

6 MS. JOHNSON: Yes, sir.

7 (WHEREUPON, a bench conference was held off the
8 record.)

9 Q. Are children usually able to communicate in the same
10 way that adults do, especially when disclosing sexual
11 abuse?

12 A. Well, I mean, depending on the age of a child, a
13 child is going to have different verbal skills. They're
14 going to have -- you know, younger children are not
15 necessarily going to have the same language skills. They
16 may not have the same knowledge and understanding of
17 sexuality and how to articulate what it is that's
18 happened. So the way that children communicate is
19 different than the way that adults communicate.

20 Q. And as far as high risk children, can you explain a
21 little bit about children who are at risk for child abuse
22 and those characteristics?

23 A. Yeah. What we know is that there are certain things
24 that put children and their families at higher risk for
25 abuse. You know, one of the highest risk factors is

1 substance abuse by a care giver. That puts a child and a
2 family at risk for abuse and makes them more vulnerable.
3 Single parent households make children more vulnerable to
4 abuse. And again, none of these things are to indicate
5 that parents are at risk -- I mean, are at fault for this
6 happening. These are just risk factors that often
7 offenders will take advantage of. So single parent
8 households. Households where a child is very young. Just
9 by virtue of being much younger, children are more
10 vulnerable. The less verbal a child is, the less likely
11 they are to be able to talk or tell that something's
12 happened. And often if children have some sort of
13 disability, if children have had behavior problems, if
14 they've been known to get in trouble, those kind of things
15 set children up at higher risk and can often make them
16 targets for offenders.

17 Q. That's all the questions I have for you. Please
18 answer any from the defense.

19 A. Okay.

20 **CROSS EXAMINATION**

21 **BY MS. JOHNSON:**

22 Q. Ms. Galloway-Williams, isn't late reporting equally
23 consistent that it didn't happen?

24 A. Can you repeat the question, please?

25 Q. Isn't late reporting equally consistent with it

1 didn't happen?

2 A. No. Just because a child delays reporting or delays
3 a disclosure, that doesn't really indicate that it didn't
4 happen. Because what we know is that most times children
5 delay disclosure and don't tell right away.

6 Q. But you have no way of knowing or confirming whether
7 something happened or not based on the disclosure?

8 A. Well, as part of an investigation, the team would
9 look for evidence to support whether there is evidence to
10 support the disclosure.

11 Q. Just the disclosure; that's all I'm talking about is
12 the disclosure. It's equally consistent that it didn't
13 happen?

14 A. When a child makes a statement or a disclosure, we
15 evaluate whether there are things that support whether
16 that could have happened or couldn't have happened. And
17 it's not really my job as an interviewer or as a therapist
18 or in any of those roles to really determine whether the
19 child has told the truth or not. That's not really my
20 job.

21 Q. Who have you talked to -- or have you talked to the
22 solicitor's office about this case?

23 A. We met prior to this trial.

24 Q. Okay.

25 A. But did not discuss the details of the case.

1 Q. Okay. Everything you just talked about, you're
2 speaking in generalities; would you agree with me?

3 A. I did speak about it in general terms, but it is all
4 based on research and training and experience.

5 Q. But it's general terms? Yes?

6 A. Yes.

7 Q. Okay.

8 A. Based on research and training and experience.

9 Q. I understand. But you are speaking in generalities;
10 correct? There's no specifics here?

11 A. Yes.

12 Q. Okay. And let's talk about your relationship with
13 the Julie Valentine Center. You don't get paid by the
14 Julie Valentine Center?

15 A. Yes. I am a paid employee of the Julie Valentine
16 Center, so I am paid by the center.

17 Q. Okay. So technically, you are a paid witness?
18 Would you agree with me?

19 A. No. I'm not paid by anyone specifically to be here.
20 The solicitor's office did not pay me to be here. There's
21 not a client that paid for me to be here.

22 Q. I understand. But do you -- if you weren't
23 associated with the Julie Valentine Center, it is likely
24 you wouldn't be here testifying?

25 MS. HINTON: Objection, Judge. She has no way

1 of knowing that.

2 THE COURT: If you could state your -- in the
3 form of a question, please

4 MS. JOHNSON: Yes, sir.

5 Q. Because you are involved with the Julie Valentine
6 Center, you come out and testify; is that right?

7 A. Well, because of my training and experience, I'm
8 called as an expert witness.

9 Q. Okay.

10 A. So even prior to working at the Julie Valentine
11 Center, I had been called upon to testify.

12 Q. And as part of the Julie Valentine Center, you've
13 got a working agreement with law enforcement; is that
14 right?

15 A. We have a multi-disciplinary team protocol with law
16 enforcement, Department of Social Services, solicitor's
17 office, the Guardian Ad Litem, SAFY; a number of others.
18 I have it here.

19 Q. There are no defense attorneys on your board; are
20 there?

21 A. On my board of directors?

22 Q. With your agency? Associated with your agency, I
23 should say?

24 A. No. I do not have any defense attorneys on my board
25 of directors or directly affiliated with the agency.

1 Q. Okay. And you're subpoenaed here by the state of
2 South Carolina; right?

3 A. That is who subpoenaed me today.

4 Q. Okay. And have you ever been subpoenaed by a
5 defendant?

6 A. I have not.

7 Q. Okay. I believe that's all the questions I have for
8 you, Ms. Galloway-Williams.

9 THE COURT: Any redirect?

10 MS. LANDSVERK: None, Your Honor.

11 THE COURT: Any objection to this witness being
12 excused?

13 MS. JOHNSON: None.

14 THE COURT: All right. Thank you. You may be
15 excused, Ms. Galloway-Williams.

16 You may call your next witness, Solicitor.

17 MS. LANDSVERK: Thank you, Your Honor. The
18 state would like to call Dr. Mary Fran Crosswell to the
19 stand.

20 MS. JOHNSON: Judge, I do have a matter of law
21 to take up.

22 THE COURT: Could I see you just a minute up
23 here about ...

24 (WHEREUPON, a bench conference was held off the
25 record.)

1 THE CLERK: Do you solemnly swear or affirm the
2 testimony you're about to give in this case to be the
3 truth, the whole truth and nothing but the truth, so help
4 you God?

5 THE WITNESS: I do.

6 THE CLERK: Thank you, ma'am. If you would have
7 a seat and state your name for the record, please.

8 THE WITNESS: My name is Mary Fran Ratchford
9 Crosswell.

10 MARY FRAN CROSSWELL, M.D.,

11 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. LANDSVERK:

14 Q. Good afternoon, Dr. Crosswell. Where are you
15 employed?

16 A. I'm employed by the Greenville Health System in
17 Greenville, South Carolina.

18 Q. Okay. And what is your current position?

19 A. I am a child abuse pediatrician in the division of
20 forensic pediatrics child abuse and neglect.

21 Q. And could you explain your educational background to
22 the jury?

23 A. I received my undergraduate degree from Wake Forest
24 University. I received a medical degree from the
25 University of Louisville School of Medicine. I completed

1 a pediatric residency at the Greenville Hospital System.

2 Q. Okay. And would you tell me a little bit about your
3 pediatric residency?

4 A. It was a three-year residency program that covered
5 inpatient and outpatient general pediatric care.

6 Q. And what, if any, special training have you had in
7 the field of child abuse?

8 A. I have done numerous continuing medical education
9 courses. And in 2011 was able to sit for the board
10 certification for child abuse pediatrics. So currently
11 I'm certified in -- board certified in both general
12 pediatrics and child abuse pediatrics.

13 Q. Okay. And what type of continuing medical education
14 have you received?

15 A. I have gone to numerous courses over the years, to
16 intensive training on sexual abuse evaluation, as well as
17 abusive head trauma, as well as more general approach to
18 multiple forms of the medical evaluation and child
19 maltreatment.

20 Q. And have you given any presentations on the topic of
21 child abuse?

22 A. Yes, I have.

23 Q. Okay. Could you give me a few of those?

24 A. I am responsible for teaching medical students and
25 residents about child abuse. I assist in training law

1 enforcement and child protective service agencies in their
2 trainings to assess the medical component of child abuse.
3 I have spoken at statewide conferences on the topic of
4 child abuse.

5 Q. And what leadership positions do you hold in this
6 field?

7 A. I am a volunteer. I serve on the board of non-
8 profit agencies in the area of child abuse. And I'm a
9 member of a number of professional societies associated
10 with child abuse.

11 Q. Okay. And how many years of experience do you have
12 specifically in this field?

13 A. I have been employed in this capacity since 2006, so
14 almost eight years.

15 Q. And could you estimate how many child abuse
16 examinations you have given?

17 A. I roughly do two hundred to two hundred fifty a
18 year, so well over a thousand child abuse medical
19 evaluations.

20 Q. And have you previously qualified as an expert in
21 the field of child abuse examinations and testified in
22 court before?

23 A. Yes, I have.

24 Q. How many times have you been qualified?

25 A. I would estimate twenty to twenty-five times.

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1 MS. LANDSVERK: Your Honor, at this time the
2 state would like to offer Dr. Mary Fran Crosswell as an
3 expert in examining children thought to be sexually
4 abused.

5 THE COURT: Any voir dire of this witness or any
6 objection?

7 MS. JOHNSON: No, Your Honor.

8 THE COURT: All right. Without objection,
9 she'll be qualified as an expert. You may proceed.

10 Q. Okay. Dr. Crosswell, did you have an opportunity to
11 examine Minor [REDACTED]?

12 A. Yes, I did.

13 Q. Okay. Do you remember the date of the exam?

14 A. The date of the exam was November 28th, 2011.

15 Q. And what type of exam was performed and for what
16 purpose?

17 A. She was referred for an outpatient evaluation for
18 allegations of sexual abuse.

19 Q. Okay. Can you explain how that exam is performed?

20 A. Yes. We perform our outpatient examinations at the
21 Julie Valentine Center. The child is brought to the
22 center by a care giver, is met by a child life specialist
23 who is also employed by the hospital. She brings the
24 child and the care giver back to the exam room where the
25 process is explained in detail to the child and the care

1 giver. The child life specialist allows the child to
2 actually perform the examination on an anatomically
3 correct doll so that he or she has a full understanding of
4 what is about to happen to him or her. Once that has
5 taken place, I come in and take a detailed medical history
6 from the care givers. I ask the care givers to step out
7 of the room and attempt to take a history from my patient,
8 him or herself. Once that is complete we perform -- I
9 perform the physical examination on the child and
10 determine if any laboratory testing is needed, after
11 consideration of both the history and the physical exam.

12 Q. Okay. Do you remember who the care giver was when
13 Minor was brought to the exam?

14 A. Her mother and her maternal grandmother both brought
15 her to the exam.

16 Q. Okay. Did they both sit in on the exam with her?

17 A. They were both present for the examination portion,
18 but not for the history portion.

19 Q. Okay. And you discussed, talking about the anatomy
20 of, you know, the child picking out specific parts on the
21 doll, and then, of course, you performing the anatomy
22 exam. Can you explain that in a little bit more detail?

23 A. So the purpose of using the doll from the medical
24 perspective is simply to allow the child to understand the
25 medical process. So the child life specialist allows --

1 would have allowed her to use the stethoscope to listen to
2 her heart and her lungs. She would have allowed her to
3 use the culpascope, which is a piece of medical equipment
4 we use for sexual abuse evaluations to look at the doll's
5 genital area. Also, it's important for us to know what
6 the child calls her private parts. And so she will use
7 the doll to have the child label what he or she calls
8 their different private parts.

9 Q. And what specific areas of the anatomy did you
10 examine?

11 A. When I do my physical exam, it's an entire head to
12 toe physical exam. So literally start at the head and
13 work my way down; eyes, ears, nose, mouth, heart, lungs,
14 skin. And then the last piece of the exam is the genital
15 evaluation.

16 Q. Okay. And did you try to elicit any sexual abuse
17 information in this case?

18 A. During my history, I assess for general safety and
19 also if anyone has harmed them, a perceived harm and
20 before.

21 Q. So what sort of questions did you ask Minor?

22 A. My questions are very generally. Typically I start
23 off, and what I started off with her: Has anyone ever
24 hurt you before? Moving on: Has anyone ever touched you
25 in a way you didn't like. And then depending on her

1 responses, would have tried to seek more information for
2 or to guide my physical exam and appropriate laboratory
3 testing.

4 Q. Okay. So would it be accurate to say that most of
5 the questions are non-leading ---

6 A. Correct.

7 Q. --- in style? Okay. And did [Minor] disclose any
8 sexual abuse to you?

9 A. Yes, she did.

10 Q. Okay. And during the appointment, did she tell you
11 when the sexual abuse happened?

12 A. Yes, she did.

13 Q. Okay. What did she tell you? What relates to just
14 when it happened?

15 A. That it happened on the way to church.

16 Q. Did she give you a time frame as far as months
17 beforehand, before she saw you?

18 A. No, she did not.

19 Q. Okay. And after you examined [Minor], what were your
20 findings on the exam?

21 A. There were no signs of any acute or chronic injury
22 to her genital area.

23 Q. And how does this differ from a normal exam?

24 A. It is no different from a normal exam. It was a
25 normal exam.

1 Q. Okay. Do you mind drawing us a diagram to kind of
2 depict your findings and explain the difference between --
3 if there is a difference -- from just a normal ---

4 A. Sure

5 Q. --- exam and what that looks like? If you would, if
6 the court allows you to go up to this area and sketch ---

7 MS. JOHNSON: Your Honor, may we approach?

8 THE COURT: Yes, ma'am.

9 (WHEREUPON, a bench conference was held off the
10 record.)

11 Q. Okay. Dr. Crosswell, if you don't mind stepping
12 down and coming over here. I'm going to turn this
13 overhead on and you can kind of, if you don't mind, draw
14 how the exam went and what you did during the exam.

15 A. So when you first look at the female genital area,
16 there's two what we call fatty layers of tissue that need
17 to be spread aside and these are called the labia majora.
18 Deep to this layer of tissue is another layer of tissue
19 which is called the labia minora. And then this area is
20 the clitoris. So even deeper still you will find the
21 first opening, which is where urine comes out, which is
22 the urethra. And then beneath that there is the base of
23 the vaginal canal. This is the vagina. And then just
24 beyond that is the area where bowel movements are
25 expressed, and that is the anus. Partially covering the

1 vagina is a piece of tissue which is called the hymen.

2 And so on many sexual abuse evaluations, we are evaluating
3 this entire area. We're looking for any scarring or
4 abrasions, any bruising, any differentiation of the
5 hymenal tissue. The majority of times, it is a normal
6 exam; either because the injury, if it occurred, has
7 healed without leaving any signs, or the type of abuse
8 didn't leave an injury that we could see with the eye.

9 Q. Thank you. Okay. My next question involved what
10 you just touched on. Would you always expect to find
11 evidence of trauma when you're doing the exam?

12 A. No. Most of the time that we do what we call
13 chronic sexual abuse exams, so those that have occurred
14 more than seventy-two hours after the incident, we do not
15 have any physical findings that are specific for child
16 sexual abuse. Again, this is very -- the tissue in this
17 area is mucosal tissue, so even if there is an injury, it
18 can heal rapidly, within days of the time that it occurs.

19 Q. Okay. And does a penetrating injury usually leave
20 scarring at all? Does it have to leave scarring?

21 A. It does not have to leave scarring. There are
22 medical studies to support this, you know, up to eighty-
23 five percent of children do not have specific findings in
24 cases where the perpetrator has been criminally convicted
25 for the abuse.

1 Q. Okay. And as far as you know, was the time lapse
2 between the sexual assault and the time [Minor] saw you more
3 than seventy-two hours?

4 A. Yes. It was more than ten days, according to the --
5 what I had documented and according to the police report.
6 I don't recall the date of the police report.

7 Q. So a normal exam can still be consistent with [Minor]
8 [Minor]'s medical history of sexual assault?

9 A. Yes.

10 Q. Just one moment. Okay. You stated earlier that the
11 care givers are not present during the history portion of
12 your exam. Is that when [Minor] discloses to you?

13 A. Correct. So when I'm taking the history from my
14 patient directly, no care givers are in the room.

15 Q. Okay. So the mother was outside of her presence
16 when she discloses to you?

17 A. That is correct.

18 Q. Thank you, Dr. Crosswell. That's all the questions
19 I have for you. Please answer any from Ms. Johnson.

20 **CROSS EXAMINATION**

21 **BY MS. JOHNSON:**

22 Q. Dr. Crosswell, a normal exam is also consistent that
23 there was no sexual abuse?

24 A. A normal exam could be consistent with no sexual
25 abuse.

1 Q. Okay. Again, this child had no anal or no vaginal
2 tearings; is that right?

3 A. That's correct.

4 Q. Okay. Now, you also noted in your reports that this
5 child was having toileting issues; is that correct?

6 A. Yes.

7 Q. That she was not completely potty trained?

8 A. That's correct.

9 Q. That it was not a new problem; is that right?

10 A. Correct.

11 Q. Okay. And you also ordered a specimen, a urine
12 specimen?

13 A. That's correct.

14 Q. And what were the results of that specimen?

15 A. She did have a urinary tract infection. And other
16 results were negative.

17 Q. Okay. But typically urinary tract infections in
18 young girls are caused by toileting issues; would you
19 agree with me?

20 A. It can be caused by a variety of issues.

21 Q. Right. But the most common factor is the
22 transmission of, is it E.coli?

23 A. Correct.

24 Q. And that is present, I guess, around the bowel area?

25 A. That's correct.

1 Q. Okay. And the bacteria can get up around the
2 vaginal area from the ---

3 A. They can get up around the urethra, which is where
4 the urinary tract infection would cause.

5 Q. And so this child, to your knowledge, didn't have
6 any UTIs prior to your treatment of her?

7 A. Not by history from the care giver.

8 Q. Okay. And just did you -- were you aware that this
9 child was on MiraLAX at a later time?

10 A. At a later time, no, I would not have been aware of
11 that.

12 Q. What is MiraLAX?

13 A. MiraLAX is a stool softener that is often used in
14 constipation, to treat constipation.

15 Q. Okay. So would you say digestion issues or just
16 issues with bodily functions?

17 A. Correct.

18 Q. And that's not a good way of phrasing it, but ...
19 And this is getting real basic, but UTIs can also be
20 caused from, again, toileting issues. But my question to
21 you is, why is keeping clean and wiping correctly, why is
22 that important?

23 A. I'm not sure I understand your question.

24 Q. Does proper toileting prevent UTIs or can it present
25 UTIs, is what I'm trying to ask?

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1 A. It depends on the cause of the UTI. It's a good
2 preventative measure. And pediatricians and nursery
3 providers teach the front to back wiping to try to prevent
4 that introduction of the bacteria to the urethra. But it
5 can be introduced other ways, as well. So, you know, I'm
6 not certain this was related to toileting issues or some
7 other issue.

8 Q. Right. And you -- again, you have no idea why this
9 child had a UTI; correct? Or what caused the UTI, I
10 should say?

11 A. No.

12 Q. Okay. You are contracted or you contract with the
13 Julie Valentine Center; is that right?

14 A. No. The hospital system rents space from the Julie
15 Valentine Center in order for us to perform our medical
16 evaluations there.

17 Q. Okay. But you perform the evaluations at the Julie
18 Valentine Center?

19 A. Correct.

20 Q. And you met with the prosecutors in this case?

21 A. After they subpoenaed me, yes.

22 Q. Okay.

23 MS. JOHNSON: Beg the court's indulgence.

24 Thank you, Dr. Crosswell. I appreciate it.

25 THE COURT: Any redirect?

1 MS. LANDSVERK: Yes, Your Honor, just quickly.

2 **REDIRECT EXAMINATION**

3 **BY MS. LANDSVERK:**

4 Q. Could a UTI potentially point to sexual abuse?

5 A. It could be -- the introduction of the bacteria to
6 the urethra could be caused by sexual abuse, as well.

7 Q. Okay. Does sexual abuse put the victim at high risk
8 of getting a UTI?

9 A. Yes. It puts her at higher risk than a typical
10 three year old child.

11 Q. Thank you.

12 MS. JOHNSON: Judge, I do have redirect
13 (verbatim).

14 THE COURT: Briefly.

15 **RECROSS EXAMINATION**

16 **BY MS. JOHNSON:**

17 Q. More than likely the bacteria would have died? The
18 E.coli doesn't live two months ---

19 A. I wouldn't be able to comment on that with any
20 degree of certainty.

21 Q. More than likely she would have had signs at around
22 the time this allegedly happened?

23 A. I would anticipate that she would have signs closer
24 to the time of the incident.

25 Q. Thank you.

1 THE COURT: Thank you, Doctor. You may step
2 down.

3 Any objection to this witness being excused?

4 MS. JOHNSON: No, Your Honor.

5 THE COURT: Thank you. You may be excused.

6 The state may call its next witness.

7 MS. HINTON: Thank you, Your Honor. That's the
8 state's case.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, this will be a time for a -- a good time for us
11 to take a break. I'll ask you again if you'll go back to
12 your jury room. I remind you again, you shouldn't be
13 discussing the case. You shouldn't be talking about
14 anything that relates to the case. Certainly the law has
15 not been given to you. Make sure you don't discuss the
16 case with each other. We'll take care of a short break
17 for ourselves and a legal matter and call you back
18 shortly.

19 Everyone else, please remain seated.

20 (WHEREUPON, the jury exited the open court at
21 approximately 4:19 p.m.)

22 THE COURT: All right. Are there any matters we
23 need to take care of before we settle the record and talk
24 with Mr. Hamilton about his right to testify?

25 MS. HINTON: Your Honor, if I may briefly before

1 Ms. Johnson makes her motion. It is my understanding that
2 Exhibits 1 through 8 are into evidence. I just wanted to
3 confirm that.

4 THE COURT: Okay. I believe they are in. Is
5 that true, Madam Court Reporter? Everything -- all
6 exhibits are in?

7 THE COURT REPORTER: Yes.

8 THE COURT: Okay. Ms. Johnson.

9 MS. JOHNSON: Judge, just housekeeping. We had
10 a bench conference and asked the -- or I objected to the
11 drawing by the doctor or of the doctor. Just wanted to
12 place that on the record. Just as a 403 objection, Your
13 Honor.

14 THE COURT: All right. As to specifically Ms.
15 Shauna Galloway-Williams testifying to the reports from
16 the children, is that what ---

17 MS. JOHNSON: No, Your Honor. Just that drawing
18 that ---

19 THE COURT: Oh, the drawing?

20 MS. JOHNSON: When there was a normal finding.

21 THE COURT: Yeah, you objected to the drawing as
22 being improper since the witness had already testified
23 that there was no signs of abuse, that was nor relevant.
24 I overruled your objection, feeling that maybe the
25 question was asked too soon by the state as to her finding

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1 without going through it all. I believe that was helpful
2 for the jury to be able to know the thoroughness of her
3 exam and exactly what she was doing in her exam. I feel
4 that was pertinent for the jury to know, for all parties,
5 as to how thorough the exam was. I think that's one of
6 the things in the evidence they'll need to know. But your
7 objection is noted for the record, Ms. Johnson.

8 MS. JOHNSON: Thank you, Your Honor.

9 My next motion, Your Honor, is at this time I would
10 respectfully ask the court for a directed verdict on
11 behalf of Mr. Hamilton as to the CSC. There's no credible
12 testimony that any penetration occurred. I think the
13 child said, with lots of leading questions, which I know
14 is appropriate, but her butt -- in her butt. You know, I
15 don't want to give the court an anatomy lesson, and I'm
16 the least qualified person to do that. But in the butt,
17 you know, is less than, you know, up an anus. And I
18 apologize for being crude. But in your butt is a touch.
19 Up your anus is a penetration. And that was -- there's no
20 credible evidence that any penetration occurred. And we
21 would respectfully request a directed verdict.

22 THE COURT: Any other motions before I rule on
23 that one?

24 MS. JOHNSON: No, Your Honor. I do have the
25 issue of his bond.

1 THE COURT: Okay. I believe I tried to listen
2 carefully to all the evidence given from the child, from
3 the statements given. I believe there's substantial
4 circumstantial evidence and direct evidence that would
5 allow this to go to the jury for our jury to make a
6 determination of the facts. I'll respectfully deny your
7 motion.

8 Before we get to the bond, let's see if we can't
9 settle the record. If you -- Mr. Hamilton, can you hear
10 me all right from right there?

11 THE DEFENDANT: I can hear you pretty good.
12 Yeah.

13 THE COURT: Well, I want to make sure you can
14 hear me good. I'll be glad to step down if I need to.

15 THE DEFENDANT: Yeah, I can hear you.

16 THE COURT: All right. You can just remain
17 seated if you'd like, sir.

18 THE DEFENDANT: I can hear you.

19 THE COURT: What I want you to do, please, sir,
20 is to raise your right hand.

21 Do you swear or affirm the testimony you're about to
22 give me will be the truth, the whole truth and nothing but
23 the truth, so help you God?

24 THE DEFENDANT: I do.

25 THE COURT: All right, sir. Mr. Hamilton, I

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1 need to go over some legal matters with you. I'm
2 confident your lawyer has already done this, but I need to
3 be satisfied in my own mind that you understand these.
4 Now, as I go through these, if you have a question, you
5 just, through your lawyer, ask me to repeat anything and
6 I'll be glad to do that; okay?

7 We have a constitution in South Carolina, we have a
8 constitution in the United States of America, that
9 indicate that a person who's been charged with an offense
10 such as you can't be required to give testimony. They
11 can't be required to answer questions, to be a witness
12 against himself.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That means you can't be required to
15 testify in this case. Nobody can make you testify.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, you have a right to testify if
18 you want to.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You testified yesterday in the
21 hearing we had. But that was not before the jury. So you
22 have that right to either testify before the jury or not
23 testify, and nobody can give that up except you. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, if you decide you want to
2 testify, give the jury your testimony, you'll be subject
3 to the same rules that govern any other witness. In other
4 words, your lawyer can ask you questions, the state can
5 ask you questions under oath. If you have any prior
6 convictions that involve dishonestly or false statements
7 or any crime that you could have been sentenced to more
8 than a year in jail and the court determines that the
9 state would be allowed to use that to attack your
10 credibility, then I'll make that decision. But that might
11 be one of the things that I'll allow the state to do, is
12 bring up prior criminal records. Your decision to testify
13 has got to be made by you voluntarily and intelligently,
14 without any pressure or coercion from anyone else. I want
15 to make sure you understand that you have those
16 constitutional rights not to testify. Do you understand
17 what I've explained so far?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, Mr. Hamilton, you may decide
20 you don't want to testify. If that is your choice, then
21 I'm going to tell the jury that the fact you chose not to
22 testify can't be held against you in anyway, there'll be
23 no prejudice against you because you chose not to testify.
24 I'm going to tell the jury, they can't even talk about it
25 in the jury room, that you didn't testify.

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1 Now, whether or not you testify is your decision.

2 You can talk with your lawyer, you can talk with family,
3 with friends, with anyone else, but that's a decision that
4 you will have to make. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you have any questions about what
7 I've explained to you?

8 THE DEFENDANT: No, sir.

9 THE COURT: You don't have any questions of me?
10 You understand you can testify or not testify; correct?

11 THE DEFENDANT: Yes.

12 THE COURT: Does the state has any impeachable
13 offenses to which they would use against the defendant?

14 MS. HINTON: Your Honor, he does have a 1991
15 shoplifting and a 1994 fraud check. And I realize from
16 the outset that may not be admissible. However, in the
17 Jackson v. Denno yesterday, he did mention he had never
18 been in trouble with law enforcement before. If that were
19 elicited as testimony, we would ask to go into that at
20 that point.

21 THE COURT: I think that's already into evidence
22 that he had been involved with law enforcement. I'll not
23 allow the old convictions to be used against him. So
24 there won't be any prior offenses.

25 They won't be able to say that you were convicted of

1 some charges in the past, back in 1991 and 1994, the state
2 will not be allowed to use those, Mr. Hamilton. Do you
3 understand that?

4 THE DEFENDANT: Yes. I understand it.

5 THE COURT: All right. Let's take a short
6 break. I'll let you talk with your lawyer and then we'll
7 be ready to proceed with the trial of the case. Let's
8 take about a ten minute break.

9 (WHEREUPON, the court stood at recess for a short
10 break.)

11 THE COURT: All right. Ready to proceed?

12 MS. JOHNSON: Yes, Your Honor.

13 THE COURT: All right. Ms. Johnson, is your
14 client going to be testifying in the case?

15 MS. JOHNSON: No, Your Honor. He has informed
16 me that he does not wish to testify.

17 THE COURT: All right. So I'll call the jury
18 back and let you rest on the record. We'll break for the
19 day. It's nearly five o'clock. We'll be ready to give
20 closing statements tomorrow at nine o'clock.

21 Okay. If our jury is ready, Mr. Evans, you can have
22 them come in.

23 (WHEREUPON, the jury entered the open court at
24 approximately 4:48 p.m.)

25 THE COURT: All right. We're now ready to

1 proceed.

2 Ms. Johnson, you may call your first witness.

3 MS. JOHNSON: Judge, at this time the defendant
4 rests.

5 THE COURT: All right. Ladies and gentlemen,
6 you've heard all the testimony that's to be offered in the
7 case. That means the next stage in the case will be the
8 closing statements of the attorneys. They'll have a
9 chance to summarize their views of the evidence and then
10 the case will be yours to decide after I instruct you on
11 the law. Because of the lateness of the hour, I think it
12 would behoove all of us to do that in the morning rather
13 than break up their argument and my charge, even though we
14 could take a few more minutes today. I'm going to dismiss
15 you till nine o'clock in the morning. If you'll be back
16 in your jury room at nine o'clock, we'll be ready with the
17 closing statements and then I'll give you an instruction
18 on the law and the case will be yours to decide.

19 In the meantime, of course, it's not yours to decide.
20 It's not yours to discuss with anyone. It's not yours to
21 do any kind of independent research or social media. I
22 told you all those things. I need to remind you again. I
23 don't know whether there will be any news coverage on the
24 evening news or the morning paper, but if that were to be
25 the case, refrain from listening to any of that or reading

1 any of that. You've made a high commitment to both the
2 state of South Carolina and to the defendant. And while
3 we're at the end of the trial, I want to make sure that
4 purity remains. And I know you'll assist me in that and
5 fulfill the obligation that you've made to these parties.

6 See you back in the morning at nine o'clock, ladies
7 and gentlemen. Have a good evening.

8 Everyone else, please remain seated while the jury
9 departs.

10 (WHEREUPON, the jury exited the open court at
11 approximately 4:50 p.m.)

12 THE COURT: All right. We'll have a verdict
13 form for you to look at tomorrow. I believe it'll be
14 self-explanatory as to both charges, for the jury
15 foreperson to sign. I'll also have Mr. Welborn to make a
16 selection for the alternate in the morning and based on
17 the consent of both parties, when I send them back to the
18 jury room, I'll let the remaining alternate know that he
19 or she will not be serving. Of course, we may lose
20 another one tonight, so we'll just wait till tomorrow to
21 do that.

22 Anything else other than bond that we need to talk
23 about this evening?

24 MS. HINTON: Your Honor, did you want to discuss
25 the charges tonight?

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1 THE COURT: Be glad to. Yeah, let's do it
2 tonight rather than tomorrow. Then we can talk about the
3 bond. Do y'all have any specific requests for charge?
4 I'll be charging the law, and of course, this is the old
5 criminal sexual conduct with a minor charge before the --
6 I think the other one was enacted in 2012. This occurred
7 in '11, so it'll be under the old act. The same for the
8 lewd act with a minor. I'll give them a charge of those
9 that were in effect at that time. I'll charge presumption
10 of innocence, burden of proof and right to not testify on
11 behalf of the defendant. Those are the charges that I
12 normally give. I'll be glad to hear any additional
13 charges that either of you want me to consider.

14 MS. JOHNSON: Judge, I would ask for a charge on
15 the voluntariness of a statement.

16 THE COURT: Yeah, I'll certainly do that. And
17 I'll explain to them, it's been admitted, but it's up to
18 them to make that decision. I'll go through all the
19 factors about education and about Miranda warning and
20 setting and length of the interrogation; those kind of
21 things. I'll charge that.

22 MS. JOHNSON: Thank you, Your Honor.

23 MS. HINTON: And Your Honor, will you be
24 charging direct and circumstantial evidence?

25 THE COURT: I will.

1 MS. JOHNSON: Direct and circumstantial?

2 THE COURT: Right. Okay. How about Mr. Cumby,
3 is he ---

4 MS. JOHNSON: Your Honor, he's present.

5 THE COURT: He's here? Good.

6 MS. JOHNSON: Yes, sir.

7 THE COURT: Mr. Cumby, I understand from the
8 defense that you were on Mr. Hamilton's bond. The bond
9 has expired now because the jury has been sworn and the
10 case has proceeded. I understand you are willing to
11 continue on his bond; is that true?

12 MR. CUMBY: Yes, sir.

13 THE COURT: All right, sir. What was the amount
14 of the bond?

15 MR. CUMBY: I don't remember.

16 THE COURT: All right. Whatever the bond was
17 that the preceding judge had set, you're willing to
18 maintain all the conditions of that bond, including GPS
19 monitoring?

20 MR. CUMBY: Yeah. He was on electronic
21 monitoring at the time, so I didn't know if you needed a
22 GPS for now?

23 THE COURT: How difficult would that be
24 overnight to do that?

25 MR. CUMBY: Not difficult at all.

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1 THE COURT: You could add that on? We've talked
2 about that before. So you're going to remain on his bond.
3 If he's not here tomorrow, then you understand the bond
4 will be revoked?

5 MR. CUMBY: Yes, sir.

6 THE COURT: All right, sir. Thank you for being
7 here, Mr. Cumby.

8 Mr. Hamilton.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Let me mention this to you now.
11 Your bondsman has agreed to stay on your bond. Normally
12 there would not be a bond once the trial had started and
13 you would be incarcerated tonight, put in jail. But I'm
14 going to allow you to remain out based on Mr. Cumby's
15 statement to the court that he would assure your presence
16 here tomorrow; he'd make sure you were here. I need you
17 to understand, you need to make sure you're here, as well.
18 Mr. Cumby is going to make sure you're here, but if he
19 can't, then I want you to understand, Mr. Hamilton, that
20 if you were not to be here at nine o'clock in the morning,
21 the trial is going to continue. Your lawyer is going to
22 make a closing statement, the state's going to make a
23 closing statement. And I'm going to instruct the jury on
24 the law. They're going to decide the case whether or not
25 you're here. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: It certainly would be to your
3 benefit to be here. They've seen you here so far. If
4 they don't see you here tomorrow, it could jeopardize you.

5 THE DEFENDANT: I assure you, I'll be here.

6 THE COURT: I just want to make sure you
7 understand that the trial will proceed whether or not
8 you're here.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Everybody have a good
11 evening. See you tomorrow.

12 (WHEREUPON, the court stood at recess for the day.)

13 **July 30, 2014**

14 (WHEREUPON, Court convened with all parties present
15 and the following proceedings were had.)

16 THE COURT: We've got a verdict form prepared if
17 y'all would like to look it over to make sure the names
18 are spelled right.

19 Any problems with the verdict form?

20 MS. HINTON: Not from the state, Your Honor.

21 MS. JOHNSON: No, Your Honor.

22 THE COURT: All right. I've asked the clerk to
23 select one of the names for our alternate, so have you got
24 that done yet. He's holding up the name that he has
25 picked, which would be Mr. Durham. So he'll be the

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1 designated alternate. We'll release Ms. Wimphrie.

2 Any matters we need to take care of before the jury
3 comes in?

4 MS. HINTON: Not from the state, Your Honor.

5 MS. JOHNSON: Judge, I do want to just renew my
6 motions for the directed verdict and for the indictment on
7 the double jeopardy issues.

8 THE COURT: All right. Your objection is noted
9 and respectfully denied.

10 If our jury is ready, you can have them come in.

11 (WHEREUPON, the jury entered the open court at
12 approximately 9:11 a.m.)

13 THE COURT: Good morning, ladies and gentlemen.
14 We're now ready to have the closing statements of the
15 attorneys. Again, I urge you to listen carefully as they
16 address you, even though this is not evidence. The
17 evidence has been closed. All the evidence is in. Each
18 of these attorneys will have a chance to address you in
19 closing. After that I'll instruct you on the law and then
20 the case will be yours to decide.

21 Solicitor, you may make your closing statement.

22 MS. HINTON: Thank you, Your Honor. May it
23 please the court. Ms. Johnson.

24 **CLOSING STATEMENT**

25 **BY MS. HINTON:**

1 In August of 2011, [Minor] [REDACTED] went to church to
2 learn about God. Gary Hamilton went to church to steal
3 her innocence. [Minor] [REDACTED]'s mother was going through a
4 tough time. Not disputed. She needed some help. She
5 sent [Minor] to stay with Gary. Gary, on that day in
6 August, took his mentally challenged son to church and
7 dropped him off in Norris and then arrived at church in
8 Central. Parked in the back of the church. Got out of
9 the front seat, went to the back, took three year old
10 [Minor] out of her booster seat, removed her tights and her
11 panties, rubbed on her vagina and penetrated her. After
12 that he grabbed on his penis, and as [Minor] said, he pulled
13 on it and screamed. After that he sat on the steps of the
14 church with [Minor] and then he took her home.

15 Gary Hamilton has been charged with two counts. One,
16 CSC first with a minor and the other is lewd act on a
17 minor. And I want to briefly go through the elements. I
18 told you I would do that in my opening. And the judge is
19 going to fully instruct you on them, but I wanted to
20 briefly give you an outline of what the elements of each
21 charge are.

22 Lewd act on a minor. It requires that the defendant
23 be over the age of fourteen and the victim be under the
24 age of sixteen. We know that to be true. We know that
25 the defendant was in his mid-fifties and [Minor] was three

1 years old. It requires that you commit or attempt to
2 commit a lewd act. Removing a child's tights and panties
3 so that you can penetrate her is a lewd and lascivious
4 act.

5 With the intent of arousing. [Minor] in the best way
6 that she can, because she's only six years old, described
7 Gary Hamilton masturbating. We know that Gary Hamilton is
8 capable of that because his own wife testified she's been
9 married to him for over twenty years ---

10 MS. JOHNSON: Objection, Your Honor.

11 THE COURT: What's your objection?

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 **CLOSING STATEMENT CONTINUED**

15 **BY MS. HINTON:**

16 Brenda Hamilton testified that over the twenty years
17 that she's been married to him, she's never once heard
18 that he cannot get an erection. And that is not why they
19 don't have sexual intercourse anymore. So we know that it
20 was for the intent of arousing him.

21 The second crime is criminal sexual conduct first
22 degree with a minor. It requires that [Minor] be
23 under the age of eleven. We know that because she's still
24 only six years old today. And it requires a sexual
25 battery. A sexual battery is any intrusion into the body,

1 however slight. You heard [Minor] testify that he stuck his
2 finger in her butt. I want to briefly touch on that,
3 because as the defendant told you, he put his fingers in
4 her vagina. Now, to a three year old, the vagina and the
5 butt are very similar. They're very small people. But
6 either way, we have both testimony from [Minor] and a
7 confession that the defendant inserted his finger into the
8 victim. The elements have been met.

9 I want to focus briefly on the defendant's
10 confessions. You're going to have those statements back
11 there with you. They're in evidence. You can read them.
12 Remember that Gary Hamilton not only gave written
13 statements; he gave oral statements, as well. They're
14 just as important. There's been a lot of talk about Gary
15 Hamilton being special ed. I'm certainly not downplaying
16 the fact that perhaps he is in special ed. That comes
17 from his own mouth. That's what he told the officers.
18 But we heard testimony from his own family that while he
19 can't read and write, he knows right from wrong. He's
20 raised children, four of them; one of which is special
21 needs, which I would charge you is no easy task. He's
22 been married for over twenty years and he's held several
23 jobs. Never once was he put on disability for his mental
24 infirmities. It has always been physical. Gary Hamilton
25 knows what he's doing.

1 Further, in the testimony of Chief Justice, Khristy
2 Justice, Gary Hamilton demonstrated with his hand what he
3 did to **Minor** **[REDACTED]**. Gary Hamilton is not dumb. He's not
4 confused by what he did. He also signed waivers. And I
5 want to touch on that briefly, especially the Anderson
6 waiver. I want you to keep in mind that his wife and
7 daughter were there with him that day. At that point they
8 were not convinced that Mr. Hamilton had done this. They
9 were sticking by him. Yet none of them said, wait a
10 minute, my dad can't do this, my husband can't do this.
11 And that's because they knew that he understood what was
12 going on. They had no issue with whether or not it was
13 safe for Gary Hamilton to go back there on his own; never
14 once.

15 Gary also told many stories to try to get out of what
16 he did. He confesses to penetrating her in her vagina to
17 Michael Collins. He says he slightly did it. So Michael
18 Collins starts talking to him about it and then it gets
19 real. And then he's got to come up with some reason why
20 he did it. First he grabs her by her waist to pull her
21 out of the car seat. You don't do that. Anyone with
22 children knows you grab them from their armpits. It would
23 be incredibly difficult to lift a child out of their car
24 seat with your hands around their waist, especially if you
25 have physical infirmities. He reaches under her dress,

1 moves her panties to the side and penetrates her. That
2 doesn't happen.

3 The second story he tells is she's falling. She
4 falling. He goes to catch her, I assume with one hand.
5 With the other hand he reaches under her dress, moves her
6 panties and penetrates her. That doesn't happen.

7 Then he says that she's wet herself and he wipes her
8 with his bare hand. That doesn't happen. And when you
9 wipe a child, you don't penetrate them either.

10 Gary also said in the beginning that he didn't take
11 **Minor** to church alone; ever. That's huge. Because when
12 the police arrive at Gary's home, Gary knows he's in
13 trouble. So the first thing he's got to do is say he's
14 never taken her to church alone. We know that that's
15 true, because Gary's confessed to it. We know that he's
16 taken **Minor** to church alone.

17 Gary Hamilton knew what he was doing. And to me the
18 most profound thing, and you'll have this back there, as
19 well, is State's Exhibit Number 8, where Gary Hamilton did
20 not hesitate to mark where he parked that day when he did
21 what he did to **Minor**. You'll also notice in both
22 of his statements he said that he went and sat on the
23 steps of the church. Gary Hamilton parked in the back of
24 the church. No one else was there. Gary Hamilton admits
25 to that. But Gary Hamilton isn't going to sit right here.

1 There aren't any steps. Gary Hamilton goes to sit almost
2 to the front of the church where there are steps. If you
3 had physical infirmities why would you park near the back
4 of the church when no one else is there and there is
5 plenty of parking right by where you're going, unless you
6 were going so that you could hide what you were doing.

7 We know that the statements of Gary Hamilton weren't
8 forced. And how do we know that? Well, what I found very
9 interesting is that the defense challenged almost every
10 statement that Gary made, except for one, and that was the
11 statement that he gave at his home. You have two
12 officers, and I made sure I asked them, were you armed?
13 Did you have your sidearm? They were. The two officers,
14 the same intimidating officer, Michael Collins, who the
15 defense attacked later. They're there. They're asking
16 him about it, but that statement is okay, because in that
17 statement he didn't confess. You cannot have it both
18 ways. He cannot be forced to make a statement when it
19 doesn't work in his favor and then not forced to make it
20 when it happens to be beneficial. That's not how it
21 works. We also know that when he got in the car with his
22 family, people who loved him and cared about him and were
23 supporting him, the first thing he says to them is, please
24 don't hate me. They're not intimidating people. They're
25 his family. They're his daughter, his wife. Yet he says,

1 please don't hate me. And again, he confesses to them by
2 handing them the statement of what he's just said to them.
3 Gary knew what was in that statement. That's why he
4 didn't want his family to hate him. He never once told
5 them that he was forced. He said, don't hate me.

6 Gary knew it was wrong. How do we know that? He
7 lied about it. He lied. But the problem with Gary is
8 that he was dealing with veteran detectives, and he didn't
9 anticipate that. They weren't buying his lies. And they
10 have been trained to sift through those lies until they
11 get to the truth. We also know that Gary knows it was
12 wrong because his daughter has been sexually molested when
13 she was a child. And what was her response that Gary
14 said? He wanted to kill the man. He knows that doing
15 this to a child is wrong, but he couldn't help himself.

16 We also know that Minor is consistent. Minor said to
17 you on the witness stand what happened. She told you.
18 She disclosed to her mom in September of 2011. She
19 disclosed to Mary Jane in October of 2011. And she
20 disclosed to Dr. Crosswell in November of 2011. And she
21 sat in here today, only six years old, and told you what
22 happened.

23 Shauna Galloway-Williams came in and testified. And
24 she came to testify about child abuse in general. And the
25 reason her testimony is so important is that she's a

1 trained professional. She sees this every day. And the
2 things that she said, having never met [Minor], not knowing
3 anything about the situation, or Gary Hamilton, describes
4 [Minor]'s situation; that it's someone you know, you love
5 and you trust. [Minor] testified she liked Gary. Gary was
6 probably, at that time, the most stable thing that she
7 had. It's somebody that grooms you, they take you in,
8 they're kind to you, they work on that trust with you.
9 That's exactly what Gary did. And as Shauna stated, [Minor]
10 is at high risk. Her mom admitted to having substance
11 abuse problems. She comes from a single-parent family.
12 Her dad is incarcerated. She was at high risk. Gary knew
13 that. Gary took advantage of that.

14 Now, I want to briefly touch on the defense strategy.
15 To me they've done what I call kitchen sink defense.
16 They've thrown everything at you hoping something sticks.
17 But the best that they've got is that [Minor] [redacted] doesn't
18 remember what she got on her third birthday. And that
19 [Minor] [redacted] doesn't remember what she got for Christmas
20 at age three. The best they've got is that Christine went
21 through a tough time. That when she was six months old,
22 [Minor] was in a car where somebody was shot at. That's the
23 best that they've got. The best that they've got is that
24 Michael Collins is more physically fit than Gary Hamilton.
25 But they cannot deny Gary's own words, which you will have

1 back there with you.

2 The state has the burden of proof in this case, and I
3 told you that from the get-go. You have to be firmly
4 convinced of Gary's guilt. Remember the testimony. What
5 motive do these people have to lie? Minor went
6 through a traumatic experience and then went through a
7 traumatic medical exam. That's not fun for any kid. It
8 may be a standard exam, but it's a doctor and it's scary
9 and they're looking at your genitals. That's not fun for
10 anybody.

11 Christine. Gary was her biggest helper. Why would
12 she want to turn on him? She didn't even believe it at
13 first. She didn't want to believe it. She waited till
14 Minor said it again, and then she couldn't deny it. She
15 didn't want to think that this had happened to her little
16 girl.

17 His own family. Brenda is still married to him; they
18 can't afford to get divorced. She has nothing to gain.

19 His daughter. You saw how torn up she was. Think
20 about these things when you're deliberating about this
21 case.

22 Before you deliberate, I ask that you do one thing
23 when you go back into your jury room. I ask that you sit
24 for two minutes in silence and stare at each other.

25 Because according to Gary, that's what he did for two

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1 minutes, he rubbed on her and penetrated her. I assure
2 you that two minutes is going to seem like a long time.
3 Two minutes is only a fraction of the amount of time that
4 **Minor** **[REDACTED]** has suffered. And that's because, while the
5 abuse happened for two minutes, the impact has lasted her
6 entire life, her entire short life. I think about what
7 Christine said about that three year old on the beach,
8 happy-go-lucky, innocent. Ignorant of the world around
9 you. Ignorant of what Gary Hamilton was capable of doing
10 to her. Carefree.

11 In Ms. Johnson's opening, she told you that the state
12 was molested -- was the molester. I find that incredibly
13 offensive, because molesting is not something that you
14 toss around that word. It's not funny. It's not an
15 insult to throw at something. It's something that the
16 state takes very seriously. And we respect this courtroom
17 and you more than to throw insults back and forth. And
18 it's repulsive that the defense is making Gary Hamilton
19 out to be the victim in this case.

20 Gary Hamilton's cloak has unraveled. The threads
21 have been pulled. He's left exposed. So I ask you to go
22 to your jury room, consider the evidence and return the
23 only verdict that speaks the truth, which is guilty on
24 both counts. Thank you.

25 THE COURT: Ms. Johnson, you may address the

1 jury in your closing.

2 MS. JOHNSON: Your Honor, I have a matter of law
3 that I would like to take up outside the presence ---

4 THE COURT: Okay. Ladies and gentlemen, we have
5 another matter of law that we need to take care of at this
6 time, so if you would go back to your jury room. Don't
7 discuss the case at this time. We'll call you back in
8 just a moment.

9 (WHEREUPON, the jury exited the open court at
10 approximately 9:28 a.m.)

11 THE COURT: Yes, ma'am.

12 MS. JOHNSON: Your Honor, at this time, on
13 behalf of Mr. Hamilton, I would respectfully move for a
14 mistrial based on the solicitor's inflammatory and
15 mischaracterize statements. We had a bench trial and I
16 approached about Ms. Batson's -- or excuse me -- Ms.
17 Hinton's characterization of the wife, something about
18 masturbating, which was not in evidence. And I should
19 have also objected to her opening about characterizing him
20 as a Godly man -- or ungodly man. That was not in
21 evidence. And you clearly denied any evidence to come in
22 about that. All of this is trying to appeal to the
23 passions and prejudice of the jury. And I would just
24 object to her closing in its entirety and we would
25 respectfully move for a mistrial.

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1 THE COURT: All right. Let me make sure I
2 understand. What we -- you approached the bench on is
3 when she said something to the effect that he masturbated
4 and even though he said he couldn't, his wife said he
5 could.

6 MS. JOHNSON: That was not in evidence, to my
7 understanding.

8 THE COURT: All right.

9 MS. JOHNSON: And also, her first statement was
10 highly inflammatory and highly prejudicial. All this was,
11 was an attempt to inflame the jury and appeal to the
12 passions and prejudices of the jury. And we would
13 respectfully request a mistrial.

14 THE COURT: And her first statement was that she
15 went to church to worship God and he went to church to
16 take ---

17 MS. JOHNSON: Take the innocence of her.

18 THE COURT: --- advantage of her.

19 MS. JOHNSON: Yes, sir.

20 THE COURT: Something to that effect. That's
21 what you object to?

22 MS. JOHNSON: That's my objection.

23 THE COURT: All right. Solicitor, be glad to
24 hear from you about those.

25 MS. HINTON: Judge, I mean, frankly, I am so

1 frustrated at this point, I am going to have a hard time
2 articulating an argument because I'm frankly furious. But
3 as to the mistrial, Judge, I didn't even get the full
4 statement out. I wasn't going to say that she had seen
5 him masturbating. I was going to say that she said he
6 could get an erection. I wasn't even allowed to develop
7 my thought.

8 Second of all, the opening statement about Minor went
9 to church to learn about God and he went to take away her
10 innocence, that is not inflammatory. I mean, the state is
11 a molester. That is inflammatory. And I let that go,
12 Judge. And I've been very patient with Ms. Johnson. But
13 I've had enough. And I don't think that it warrants a
14 mistrial. And frankly, I'm tired of the objections and
15 approaching the bench. And that's all I have to say.

16 THE COURT: Ms. Johnson.

17 MS. JOHNSON: If I could respond. Your Honor,
18 I've got to represent my client. You know, if this is too
19 emotional for Ms. Hinton, then, you know, I'm ---

20 MS. HINTON: Judge, I'm going to object to that.
21 I have been very patient with her.

22 THE COURT: All right. What is your objection?

23 MS. JOHNSON: Your Honor, my objection is, as I
24 stated, this entire statement was inflammatory and it was
25 not based on the facts that were in evidence, appealing to

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1 the passions and prejudice of the jury, which is not the
2 evidence.

3 THE COURT: All right. You can address that to
4 me ---

5 MS. JOHNSON: I apologize.

6 THE COURT: --- rather than pointing that way,
7 if you would, please. As I recall the evidence, Ms.
8 Johnson, Brenda Hamilton did offer testimony about his
9 capabilities, that she had never heard a doctor say that
10 he was impotent or that she had never experienced that in
11 the marriage. I thought I heard her testify to that.

12 MS. JOHNSON: Judge, my recollection was that
13 there was no testimony about an erection or masturbating.
14 It was he couldn't have sex. And that is just a blatant
15 mischaracterization.

16 THE COURT: I just heard it differently, Ms.
17 Johnson. I believe that the wife did testify to those
18 issues. Maybe not using the same words. But I don't
19 believe the argument was outside of the bounds that the
20 Supreme Court has set for inflammatory argument. I'm
21 going to respectfully deny your motion for a mistrial.
22 Certainly your record is protected on those issues.

23 MS. JOHNSON: You know, this whole time, I've
24 got to represent this man ---

25 THE COURT: Yes, ma'am. I understand that. I

1 understand you're representing your client. You don't
2 have to explain that to me. I've represented clients.
3 I've been a lawyer. I know -- I've represented
4 defendants. Never been a solicitor, but I've represented
5 defendants in my past. So I know exactly what you're
6 doing.

7 MS. JOHNSON: And I would also ask for a brief
8 break.

9 THE COURT: All right. Let's take a five minute
10 break and then we'll be ready to proceed with your closing
11 statement.

12 We'll be at ease for five minutes.

13 (WHEREUPON, the court stood at recess for a short
14 break.)

15 MS. HINTON: Judge, the back and forth has got
16 to stop. I'm not going to allow Ms. Johnson to continue
17 to address me about issues of the trial.

18 MS. JOHNSON: The back and forth ---

19 THE COURT: Ladies, listen -- let's take a
20 break. Y'all come back to chambers, please.

21 (WHEREUPON, the court stood at recess for a short
22 break.)

23 THE COURT: All right. All the technical
24 equipment is in working order; I assume. Everybody ready
25 to proceed?

1 MS. HINTON: Yes, Your Honor.

2 MS. JOHNSON: Yes, Your Honor.

3 THE COURT: All right. Let's have our jury come
4 in if they're ready.

5 (WHEREUPON, the jury entered the open court at
6 approximately 10:28 a.m.)

7 THE COURT: Thank you very much for your
8 patience, ladies and gentlemen. We're now ready to
9 proceed with the trial. Now it's time for the defendant
10 to make a closing statement to you. And again, I urge
11 you to listen carefully as she addresses you. I'll
12 instruct you on the law after she's completed.

13 Ms. Johnson, you may address the jury in your
14 closing.

15 MS. JOHNSON: Thank you, Your Honor, may it
16 please the court. Ms. Hinton.

17 **CLOSING STATEMENT**

18 **BY MS. JOHNSON:**

19 Yesterday I told you that there was only one molester
20 in the courtroom and that was law enforcement, and I mean
21 that. Gary Hamilton is not a child molester. I do not
22 throw around that term molestation freely or without care.
23 It's a violation of my client's rights. And I'm going to
24 go over all that.

25 There are so many reasonable doubts in this case, and

1 I want you to remember that reasonable doubt is to be
2 resolved in our favor. This table had the burden of proof
3 and they didn't prove their case.

4 Let's start with the banner waving confessions.
5 These are copies of these confessions here. Just like I
6 tore up the indictments yesterday, I can tear these up.
7 Because they absolutely have no meaning. Ask yourself to
8 these officers, what is it that they didn't want you to
9 see in this age where video recording and audio recording
10 is so prevalent? What is it that you weren't seeing?
11 Don't buy their excuses.

12 Well, when this video comes up, my reasonable doubt
13 one; no video. We're having some issues.

14 MS. JOHNSON: Your Honor, may Mr. King help me?

15 THE COURT: Yes.

16 MS. JOHNSON: Thank you.

17 **CLOSING STATEMENT CONTINUED**

18 **BY MS. JOHNSON:**

19 Okay. So reasonable doubt number one. Where's the
20 video? Let's start with Detective Collins' statement.
21 It's the worst. He calls it, I challenged him. I call it
22 intimidation. We don't know what went on behind these
23 closed doors with either group. But he beat down a
24 simpleminded and immobile man. That is facts in this
25 case, that he is immobile and simpleminded. He's in a

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1 room by himself with this man. Again, he calls it
2 challenges. I call it intimidation. Versions -- he gets
3 the final product after many versions. We will never
4 know, never really know, what happened here. What didn't
5 they want you to see? It sure would have been nice to be
6 a fly on the wall.

7 Now, the Central confession, I also have a problem
8 with that. The fact that this group took a second
9 confession shows that my client is simpleminded. If you
10 confess to something the first time, when somebody asks
11 you to take a second confession, you're going to say, man,
12 I already confessed, go on. But that's not what happened
13 here. You know why? Because these confessions are
14 worthless. They're so-called confessions. And again,
15 they demonstrate he's simpleminded. You always hear these
16 statements about sausage and legislation. You don't want
17 to see the process; you just want to see the end result.
18 No. I want to see the process here. Think about who the
19 power person is when a simpleminded person is dealing with
20 our government.

21 Reasonable doubt number two. Mobility and
22 intelligence are already disadvantages. The state,
23 through their own witnesses, hostile witnesses, those who
24 know Gary, said he could read and write on direct. And
25 then his daughter gets up here on cross-examination. What

1 books can he read -- or does he read? Oh, he doesn't know
2 how to read. And another fact that's so salient. The
3 daughter has to pull over on the side of the road to read
4 this confession because she's the only one that can read.
5 I don't know what I said.

6 Reasonable doubt three. Can't read and write. The
7 police molested and violated my client's rights. And they
8 want to talk about, oh, he's been disabled all of his
9 life, it's just for physical problems. You're right. He
10 was a laborer all of his life. He had a warm body. But
11 his mind is very limited. He's not an intelligent man.
12 His deficiency is not something we just cooked up two days
13 ago. Special education; it's all over these police
14 statements. Special education. Special education. These
15 are waivers. Look at this writing of Gary Hamilton's
16 name. He didn't write -- he sure didn't write this.
17 That's in Detective Justice's hand. But just look at this
18 handwriting. Does that look like somebody that's gotten
19 anywhere in life? He's not a rocket scientist. He's a
20 mentally challenged man.

21 Reasonable doubt four. Special education calls for
22 special procedures and protocol by the police that they
23 didn't take. These officers had no incentive to really
24 understand if Gary understood or understands his rights.
25 They have an incentive to exploit them and get

1 convictions. Citizens of our great land should not
2 tolerate this.

3 And let's talk about exploitation. [Minor] was
4 exploited by the state of South Carolina. They dress up
5 their child witness. You heard her say they helped her
6 pick out her dress. Is that real? They are dressing
7 their doll for the show. Don't fall for this disingenuous
8 (verbatim) tactic. And let's talk about grooming here.
9 Again, I ask that you do not buy what the state was
10 selling. As sad as these allegations are, they used [Minor]
11 as a prop.

12 Reasonable doubt number five. Lack of details by
13 [Minor]. Now, as the solicitor was hovering over [Minor], she
14 gave little details. You are the trier of fact. You get
15 to decide what you heard. And I apologize for being
16 graphic here. It has been testified that Gary had nasty,
17 oozing fingers; hardened, calloused. Wasn't that
18 something this child felt? No, it's not, because she
19 didn't feel it, because it didn't happen.

20 Reasonable doubt six. No detail of the fingers.
21 Which also leads me into my next point. Or the sensation
22 of her anus being penetrated or touched. You're going to
23 remember how it feels. There's no description here.
24 [Minor]'s memory is fallible. [Minor] couldn't remember what
25 she got for her birthday when she was three; what she got

1 for Christmas. But she remembers this? Yeah, because of
2 extreme influence, perception and preparation.

3 But let me talk about perception. Perception that
4 became a reality. Again, [Minor] couldn't give any details
5 about the touch, the supposed touch. Is that acceptable?
6 No.

7 Reasonable doubt seven. There is no detail from this
8 child how she was in the booster seat in the back of a
9 car. Three hundred plus pound Gary, who is immobile,
10 somehow standing up with his cane and leaning in the car?
11 How can this man stand for two minutes? How can he stand
12 for two seconds, when it's an ordeal for him to move? How
13 can a child perceive an event and then accurately recall
14 it a week later and now three years later.

15 Reasonable doubt number 8. Most people can't
16 remember what they had for lunch last week, and she's
17 remembering these details; some for the first time
18 yesterday, three years later. Is that reasonable? No,
19 it's not. She also said on cross that she's never -- let
20 me -- that I've never said those statements in my life,
21 talking about Gary allegedly threatening her. You know
22 why? Because it didn't happen.

23 Reasonable doubt number ten. The child said she was
24 wearing tights. What child wears tights in August?

25 Reasonable doubt number eleven. [Minor] said she only

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Closing Statement by Ms. Johnson

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1 met with three people, Brittany, Brandi and Mama. Well,
2 we know that's not correct. It's inconsistent. We know
3 that she met with the solicitor's office many times. We
4 know that she's talked to mama over and over about this.
5 Again, it's perception that becomes reality. Again, and
6 the state wants to talk about grooming. How dare they.
7 [Minor] has lived an awful life for six years. She's
8 seen her daddy beat her mama, parents being involved in
9 drive-by shootings, daddy's in jail, she's tossed from
10 house to house. She's been neglected. No stability. You
11 decide where her problems stem. The only stability was
12 Julie and Gary and his family. They're the ones who took
13 care of [Minor] when her own mama didn't, for whatever
14 reason. Mama is trying to rehabilitate her relationship
15 with [Minor]. She already has a nose for sexual abuse. She
16 believes that what happened to her is going to happen to
17 her daughter. Because of her life experience, she will
18 read in the facts that aren't there.
19 Reasonable doubt twelve. Gary says vagina. [Minor]
20 says butt. [Minor] knows exactly what that part of the body
21 is. She demonstrated it on the stand yesterday.
22 Reasonable doubt. Get your fat -- I would ask law
23 enforcement, talk to your victim before you go get a
24 statement from the defendant. Make sure they're on the
25 same page. Because it didn't happen. There's reasonable

1 doubt. Get your facts straight first. And the state is
2 wrong. These so-called confessions don't say anything
3 about penetration.

4 Again, all of these reasonable doubts are to be
5 resolved in favor of my client. And I implore you to
6 judge the facts on the evidence, not the adorable nature
7 of the child. Any thought of what if it was my child,
8 would be a violation of your oath. This case was poorly
9 investigated. Ask yourself, why isn't Pickens County
10 here? What is the state hiding? They're the first agency
11 that came out and investigated this case. Didn't they get
12 the initial report?

13 This case was passed around like a hot potato.
14 That's reasonable doubt number thirteen. Nobody knows
15 where it happened, because it didn't happen. Three police
16 agencies can't figure this out. These are people who get
17 paid to figure this out, because no one knows and no one
18 can say that this happened.

19 And the final reasonable doubt, reasonable doubt
20 fourteen. The state hasn't provided you with anything
21 other than Gary cleaning up this child's poopie panties.
22 This is what she likely perceived. And the state hasn't
23 disputed otherwise. The child said she wasn't potty
24 trained. The mom said she wasn't potty trained. She
25 didn't have a UTI, urinary tract infection, in August of

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1 2011, when this allegedly took place. But when she met
2 with Dr. Crosswell, she had a UTI likely from her
3 toileting issues, which only gives credence to the fact
4 that there were problems.

5 When a parent is cleaning up a three year old child,
6 and I apologize for being graphic here, with diarrhea or
7 an accident that's everywhere, and I mean everywhere, it's
8 everywhere. If this is a CSC or a lewd act, every parent
9 in America could be considered guilty. Only someone you
10 know, love and trust is going to wipe your bottom.

11 Ladies and gentlemen of the jury, my client is guilty
12 of one thing, and that is being simpleminded.

13 On behalf of Mr. Hamilton, I want to thank you
14 for your service. And I'm going to ask that you return a
15 verdict of not guilty on all charges. Thank you.

16 **CHARGE**

17 **BY THE COURT:**

18 Madam Forelady and ladies and gentlemen of the jury,
19 it's now my responsibility to instruct you on the law of
20 the case. Let me remind you that the fact that in this
21 case that the indictments that I read to you at the start
22 of the case, they charge Mr. Hamilton with committing a
23 lewd act upon a child and also with a criminal sexual
24 conduct with a minor in the first degree. These
25 indictments are not evidence. The fact that he's been

1 arrested and charged and indicted can't be considered by
2 you as evidence. It doesn't create any presumption of
3 guilt. The indictments are merely the charging papers by
4 which the case is brought to this court for disposition.

5 Now, as I mentioned, there's two separate indictments
6 and each of those is distinct one from another. Your
7 responsibility is to decide each indictment separately
8 from the evidence and the law applicable to that case,
9 uninfluenced by your decision on the other one. In other
10 words, the defendant can be acquitted or convicted on
11 either or both of the charges. And your verdict form will
12 reflect that there are two charges for which you are to
13 write separate verdicts.

14 Now, the defendant entered a plea of not guilty, and
15 by doing that, that burden becomes on the state of South
16 Carolina to prove his guilt. A person charged with
17 committing a criminal offense in South Carolina is never
18 required to prove himself innocent. That's an important
19 rule of law, that in a criminal trial, no matter how
20 serious the charge may be, the one to whom that charge is
21 stated will always be presumed innocent of that crime for
22 which that indictment was issued, unless guilt has been
23 established by evidence satisfying you, the jury, of that
24 guilt beyond a reasonable doubt.

25 Presumption of innocence doesn't end when you begin

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1 your deliberations. It accompanies the defendant
2 throughout the trial until you have reached a verdict of
3 guilt based upon evidence satisfying you of that guilt
4 beyond a reasonable doubt. Presumption of innocence is
5 not a mere legal theory. It's not just a legal phrase
6 that's tossed about. It is a substantial right to which
7 every defendant is entitled, unless you, the jury, are
8 satisfied from the evidence of his guilt beyond a
9 reasonable doubt.

10 Now, you may ask yourself, what is a reasonable doubt
11 in the law? A reasonable doubt is the kind of doubt that
12 would cause a reasonable person to hesitate to act. Some
13 of you may, in the past, have had an opportunity to serve
14 as a juror in a court and the judge told you that it was
15 only necessary to prove that a fact was more likely true
16 than not true by what was called the preponderance of the
17 evidence or the greater weight of the evidence. In a
18 civil court that is the burden of proof. In criminal
19 cases, however, the state's proof is more powerful than
20 that. It is proof beyond a reasonable doubt. That would
21 be proof that leads you firmly convinced of the
22 defendant's guilt.

23 There are very few things in this word, ladies and
24 gentlemen, that we know with absolute certainty, and in
25 criminal cases the law doesn't require proof that

1 overcomes every possible doubt. If, based upon your
2 consideration of the evidence, you're firmly convinced
3 that the defendant is guilty of the crimes charged, then
4 you must find the defendant guilty. If, on the other
5 hand, you think there's a real possibility that the
6 defendant is not guilty, you must give the defendant the
7 benefit of that doubt and find him not guilty.

8 Now, let me remind you that during the trial, you and
9 I have had certain duties to perform. As the trial judge
10 it's been my responsibility to preside over the trial of
11 the case, to rule on the admissibility to evidence offered
12 during the trial. You're to consider only the competent
13 evidence before you. If there was any testimony to which
14 objection was made and sustained or any matters that were
15 ordered stricken from the record in this case, then you
16 must disregard such matters. You're to consider only the
17 competent evidence before you that's been presented during
18 the trial from the witness stand, the exhibits that have
19 been made a part of the record and that alone.

20 I have the additional duty to charge you the law
21 that's applicable in this case. As the presiding judge,
22 I'm the sole judge of the law in the case. It's your duty
23 as jurors to accept that law and apply the law just as I
24 state it to you. If any of you have an idea of what the
25 law is or a notion of what the law ought to be and it's

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1 not in concert with what I now tell you the law is, then
2 you must abandon such an idea, because under your oath
3 you've sworn to accept the law and apply the law just as I
4 state it to you.

5 In every case that's tried in this courtroom before a
6 jury, that jury becomes the sole exclusive judge of the
7 facts in a case. The trial judge can't intimate or state
8 or comment on or make any statement whatsoever to a trial
9 jury about the facts in a case. Since you, the jury, are
10 the sole judges of the facts, you're not to infer from
11 what I've said during the progress of the trial, any
12 rulings I've made on the admissibility of the evidence or
13 otherwise, anything I say to you now in the course of this
14 instruction to you, that I have an opinion about the
15 facts. I don't have an opinion about the facts. The law
16 of South Carolina, even in our constitution, it's
17 prohibited for a trial judge to have an opinion about the
18 facts. That's a matter solely for you, the jury, to
19 determine. You decide the effect, the value, the weight
20 and the truth of the evidence presented during the trial.

21 Now, there are two types of evidence which are
22 generally presented in a trial. There's what's called
23 direct evidence and circumstantial evidence. Direct
24 evidence directly proves the existence of a fact. It does
25 not require a deduction. Circumstantial evidence is proof

1 of a chain of facts and circumstances that indicate the
2 existence of a fact. Crimes may be proven by
3 circumstantial evidence. The law makes no distinction
4 between the weight or the value to be given either direct
5 or circumstantial evidence. However, to the extent the
6 state relies on circumstantial evidence, all circumstances
7 must be consistent with each other, and when taken
8 together, point conclusively to the guilt of the accused
9 beyond a reasonable doubt. If these circumstances merely
10 portray the defendant's behavior as suspicious, the proof
11 has failed. The state has the burden of proving the
12 defendant's guilt beyond a reasonable doubt and this
13 burden rests with the state, regardless of whether the
14 state relies upon direct evidence, circumstantial evidence
15 or some combination of the two. You should weigh all the
16 evidence in the case. After weighing that evidence, if
17 you're not convinced beyond a reasonable doubt of the
18 defendant's guilt, then you must find the defendant not
19 guilty.

20 Now, necessarily, ladies and gentlemen, you're going
21 to need to determine the credibility of the witnesses who
22 testified in the case. Credibility simply means
23 believability. It becomes your duty, as jurors, to
24 analyze and evaluate the evidence, determine which
25 evidence convinces you of its truth. In determining the

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1 believability of witnesses who have testified in the case,
2 you can believe one witness over several witnesses. You
3 can believe several witnesses over one witness. In your
4 discretion, you can believe part of the testimony of a
5 witness and reject the remaining part of the testimony of
6 that very same witness. You can believe the testimony of
7 a witness in its entirety or you can reject the testimony
8 of a witness in its entirety. You can consider whether
9 any witness has exhibited to you any bias or prejudice or
10 other motive in the case. You can consider the appearance
11 of the witness while on the witness stand. You can ask
12 yourself questions, was that witness consistent or
13 inconsistent to other evidence? Did that help bolster
14 that particular witness's testimony or did it damage that
15 particular testimony? In other words, was it strengthened
16 or weakened by other evidence? It's totally your
17 prerogative, ladies and gentlemen, to determine the
18 credibility of the witnesses who have testified, taking
19 into consideration their demeanor and in light of all the
20 other evidence that you have to weigh.

21 Now, I briefly told you that the rules of evidence
22 ordinarily would not permit a witness to testify to
23 opinions or conclusions, but there is an exception for
24 what we call expert witnesses. And a witness, who by
25 education and experience, has become an expert in some art

1 or science or profession or other calling, may state an
2 opinion and state that opinion as to any relevant and
3 material matter in the case and may also give a reason for
4 that opinion. Now, you should consider an expert's
5 opinion received in evidence in the case, and like other
6 evidence, give it the weight that you believe it deserves.
7 If you decide the opinion of that expert witness is not
8 based upon sufficient education and experience, or if you
9 conclude that the reasons given in support of the opinion
10 are not sound or the opinion is outweighed by other
11 evidence, you may disregard the opinion entirely. An
12 expert witness's testimony should be given no greater
13 weight than that of any witness simply because the witness
14 is an expert. Further, you're not required to accept an
15 expert's opinion, even though it may be uncontradicted.

16 Now, in order to establish criminal liability,
17 criminal intent must be established and is required and it
18 must be proven by the state beyond a reasonable doubt.
19 Criminal intent is always a matter that must be determined
20 by a jury from the circumstances surrounding the
21 situation. There's no way to prove intent to a
22 mathematical certainty. The law says that criminal intent
23 may be inferred from the circumstances shown to have
24 existed. It's not necessary to establish intent by direct
25 and positive evidence, but it may be established by

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1 inference in the same way as any other fact, taking into
2 consideration the acts of the parties and all the facts
3 and circumstances of the case. Criminal intent is a
4 mental state. It's a conscious wrongdoing. It's up to
5 you to determine what the defendant intended to do based
6 upon the circumstances shown to have existed.

7 Now, I instruct you, ladies and gentlemen, and
8 emphasize to you, the fact that in this case the defendant
9 did not testify is not a factor to be considered by you in
10 your deliberations and in your consideration of the
11 questions of the guilt or innocence of the defendant. It
12 must not be considered by you in any manner whatsoever. A
13 defendant has a constitutional right to remain silent and
14 the assertion of this right must not be considered by you
15 in your deliberations. I repeat, under your oath, you're
16 to draw no conclusion whatsoever from the fact that the
17 defendant in this case did not testify. That fact should
18 not even be discussed by you in your jury room. The
19 burden of proof, as I've stated, is on the state of South
20 Carolina. The defendant is not required to prove his
21 innocence. That burden remains on the state to prove
22 guilt beyond a reasonable doubt.

23 Now, certain statements alleged to have been made by
24 the defendant have been admitted into evidence in this
25 case. While the court has determined that the statements

1 are admissible, I instruct you that you make the ultimate
2 decision of whether or not the defendant made the
3 statement. If the defendant did make the statement, you
4 must determine whether the statement was made by the
5 defendant voluntarily and of his own free will. This
6 means that the statement was not caused by pressure or
7 force or fear, threats, coercion or intimidation or by any
8 hope or promise of leniency or reward of any kind. Now,
9 in determining whether the statement was voluntary, you
10 should consider both the characteristics of the defendant
11 and the details of the questioning. Among the factors you
12 can consider would be the age of the defendant, the
13 education of the defendant or lack of education, the
14 mental ability and capacity of the defendant, the
15 intelligence, the defendant's background and environment,
16 the place and length of the detention, the nature of the
17 questioning, and the advice or lack thereof of the
18 defendant of his constitutional rights, including but not
19 limited to the right to remain silent, that any statement
20 could be used against him in a court of law, the right to
21 have a lawyer present, that if he could not afford a
22 lawyer that a lawyer would be appointed to represent him
23 without any cost, that he could stop making any statement
24 at any time. You must carefully consider all the
25 surrounding circumstances before you give any weight to

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1 the alleged statements. The state has the burden of
2 proving beyond a reasonable doubt that the alleged
3 statements were voluntary. If you determine the statement
4 was, you may give the statement any further consideration
5 that you deem proper. You must decide what weight, if
6 any, should be given to the alleged statement. If you
7 determine the alleged statement was not a free and
8 voluntary statement of the defendant, you should not
9 consider the statement at all.

10 Now, as I stated to you, ladies and gentlemen, the
11 defendant has two charges in this case. The first charge
12 is that of first degree criminal sexual conduct with a
13 minor. The state must prove beyond a reasonable doubt
14 that the defendant engaged in a sexual battery with the
15 victim. A sexual battery is sexual intercourse,
16 cunnilingus, fellatio, anal intercourse, or any intrusion,
17 however slight, of any part of a person's body or of any
18 object into the genital or anal opening of another
19 person's body, except, of course, when the intrusion is
20 accomplished for medically recognized treatment for
21 diagnostic purposes. The state must then prove beyond a
22 reasonable doubt that the victim was less than eleven
23 years old at the time of the sexual battery. Consent or
24 willingness or indifference or ignorance on the part of
25 the minor, if any, as to what was taking place does not in

1 any way affect the charge of criminal sexual conduct with
2 a minor, because a child of this age cannot legally
3 consent to sexual intercourse.

4 The defendant is also charged with committing a lewd
5 act on a minor. The state must first prove beyond a
6 reasonable doubt that the defendant was over the age of
7 fourteen. Next, the state must prove that the defendant
8 wilfully and lewdly committed or attempted to commit a
9 lewd or lascivious act on or with the body or its part of
10 a child under the age of sixteen years, with the intent to
11 arouse, appeal to or gratify the lust, passions or sexual
12 desires of the defendant or of the child. Wilfully means
13 voluntarily and intentionally, without specific intent to
14 do something the law forbids. Lewd means obscene or
15 lustful, indecent or lecherous. Lascivious means
16 intending to incite the lusts, lewd, indecent, obscene or
17 intending to deprave the morals in respect to sexual
18 relations.

19 Now, Madam Forelady, I have prepared a verdict form
20 for you. I believe it'll be self-explanatory. Each of
21 the charges are listed on there. It merely says that if
22 the jury find that the state has met its burden of proof,
23 then of course, your verdict would be guilty. If you find
24 the state has failed in anyway to meet its burden of proof
25 beyond a reasonable doubt, your verdict would be not

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1 guilty. One is listed before the other. Obviously, the
2 choices -- one has to be listed before the other. There's
3 no significance in the order in which they're listed.
4 Also, one charge is listed and the other charge is listed.
5 After you've made that decision on each of the charges,
6 Madam Forelady, you sign your name as foreperson, date it,
7 and we'll receive your verdict back here in the courtroom.

8 All twelve of you must agree upon a verdict. Your
9 verdict cannot be based upon sympathy or passion or
10 prejudice or emotion or any other consideration not in
11 evidence in the case. Let me remind you, you're free to
12 ask me any questions concerning the law that I've just
13 given you. Remember, it's impermissible for me to answer
14 any questions you have regarding the facts of the case.
15 That's your prerogative and yours alone, as the sole fact
16 finders.

17 As I mentioned to you earlier, one of your jurors was
18 discharged earlier in the week. We have two alternates.
19 We only need one to decide the case. Mr. Durham will be
20 the one who will be the alternate who will be
21 participating in the deliberations, the first alternate
22 chosen, and was randomly selected. So he will be
23 participating in the deliberations. The other alternate
24 will be excused. But I'm going to ask all thirteen of
25 you, if you would, to please go back to your jury room at

1 this time. Don't start your deliberations just yet.
2 There's a matter of law that I need to take care of with
3 the attorneys. Hopefully, in a few moments I'll be able
4 to send the verdict form back with the exhibits and
5 instructions then to begin your deliberations. But for
6 right now, don't start discussing the case. I'll ask, if
7 you would, all of you, please retire back to the jury
8 room.

9 (WHEREUPON, the jury exited the open court at
10 approximately 11:08 a.m.)

11 THE COURT: Any exception to the charge, from
12 the state?

13 MS. HINTON: No, Your Honor.

14 THE COURT: From the defense?

15 MS. JOHNSON: No, Your Honor.

16 THE COURT: All right. If y'all will make sure
17 all the exhibits are in order and the verdict form that
18 the clerk has here for you.

19 You can tell the jury they can begin their
20 deliberations and have Ms. Wimphrie come out here for a
21 moment, please, to dismiss her.

22 (WHEREUPON, the exhibits and verdict form were
23 delivered to the jury at approximately 11:10 a.m., at
24 which time the jury began deliberations.)

25 THE COURT: Ms. Wimphrie, thank you very much

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1 for your service. We've got twelve jurors. We won't need
2 your services on this case. Thank you very much, though,
3 for serving with us. You're free to go. You need to call
4 back tonight after six o'clock. You're certainly welcome
5 to stay with us if you'd like. It's just up to you. We
6 don't need you anymore today. We have other jurors coming
7 in to start another trial. Thank you very much for your
8 service. If you'll call back tonight after six. You can
9 just go now with Mr. Evans. He'll show you the way out.
10 Thank you very much, ma'am.

11 All right. We'll be at ease until we hear from our
12 jury.

13 (WHEREUPON, the court stood at recess awaiting the
14 verdict of the jury.)

15 THE COURT: Let's go on the record now before
16 the jury comes in. We have a question from the jury.
17 This will be marked as Court Exhibit Number 6. It says,
18 we need the criteria for each of the charges. I'll
19 recharge them on the elements of both offenses. That'll
20 be marked as Court Exhibit Number 6.

21 (WHEREUPON, Court Exhibit Number 6 was marked for
22 identification.)

23 (WHEREUPON, the jury entered the open court at
24 approximately 11:28 a.m.)

25 THE COURT: All right. Madam Forelady, ladies

1 and gentlemen of the jury, I have a note about requesting
2 the criteria for each of the charges. I'll go through
3 these again with you.

4 First of all, the first degree criminal sexual
5 conduct with a minor. For this charge, the state must
6 prove beyond a reasonable doubt that the defendant engaged
7 in a sexual battery with the victim. A sexual battery is
8 sexual intercourse, cunnilingus, fellatio, anal
9 intercourse or any intrusion, however slight, of any part
10 of a person's body or of an object into the genital or
11 anal opening of another person's body, except when that
12 intrusion is accomplished for medically recognized
13 treatment for diagnostic purposes. The state must then
14 prove, beyond a reasonable doubt, that the victim was less
15 than eleven years of age at the time of the sexual
16 battery. Consent or willingness or indifference or
17 ignorance on the part of the minor, if any, as to what was
18 taking place does not in anyway affect the charge of
19 criminal sexual conduct with a minor, because a child of
20 this age cannot legally consent to sexual intercourse.
21 That's the charge of first degree criminal sexual conduct
22 with a minor.

23 There's also a charge of lewd act on a minor. To
24 prove this charge, the state must prove, again beyond a
25 reasonable doubt, that the defendant was over the age of

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1 fourteen. Next, the state must prove that the defendant
2 wilfully and lewdly committed or attempted to commit a
3 lewd or lascivious act on or with the body or its part of
4 a child under the age of sixteen years with the intent to
5 arouse, appeal to or gratify the lust and passions or
6 sexual desires of the defendant or of the child. Wilfully
7 means voluntarily and intentionally, with the specific
8 intent to do something the law forbids. Lewd means
9 obscene or lustful, indecent or lecherous. Lascivious
10 means tending to incite lust or lewd, indecent, obscene,
11 or tending to deprave the morals in respect to sexual
12 relations. That's the law of the offense of committing a
13 lewd act upon a minor.

14 I hope these instructions help you. I'll be glad to
15 give you other instructions on the law as you feel
16 necessary. I'll ask, if you would now, to please go back
17 and continue your deliberations.

18 (WHEREUPON, the jury exited the open court at
19 approximately 11:32 a.m.)

20 THE COURT: Any exceptions to the charge from
21 the state?

22 MS. HINTON: No, Your Honor.

23 THE COURT: From the defense?

24 MS. JOHNSON: No, Your Honor.

25 THE COURT: All right. Again, we'll be at ease

1 until we hear from our jury.

2 (WHEREUPON, the court stood at recess awaiting the
3 verdict of the jury.)

4 THE COURT: All right. I understand the jury
5 has reached a verdict in the case. Are there any matters
6 we need to take care of before we have the jury come back
7 with their verdict? From the state?

8 MS. HINTON: Not from the state, Your Honor.

9 MS. JOHNSON: No, Your Honor.

10 THE COURT: All right. Let's me just mention
11 that obviously this is a very emotional case, a very
12 serious case. I'm sure there's strong feelings on both
13 sides. I don't know what the jury verdict may be.
14 Whatever the verdict is, it's more than likely going to
15 bring pleasure to some and displeasure to others.
16 Whatever that verdict is, we're going to respect the
17 verdict. Whatever the jury -- they've deliberated on
18 this. Whatever they decide, we're going to respect them
19 and respect the decorum of the courtroom. If any of you
20 feel like you cannot control your emotions; I'm talking
21 about the staff, the attorneys, the defendant, family,
22 friends, law enforcement, anybody that feels like you just
23 can't control your emotion when the verdict is read, I'd
24 suggest that perhaps you just step outside and you'll be
25 able to come back in to find out what the verdict is soon.

State of South Carolina -vs- Gary Clifton Hamilton (2012-GS-39-01527 and 2014-GS-39-01485)
Charge

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1 But I want to make sure that everyone understands that
2 this court is going to require proper decorum by everyone
3 and we're going to respect whatever the jury has to say.
4 Once the jury is discharged, you certainly will have an
5 opportunity for your emotions to come out, but we're not
6 -- I'll give you the opportunity now to excuse yourself if
7 you wish to. Otherwise, I will expect proper decorum
8 without any outcries or clapping or anything of that
9 nature, whatever the verdict may be. Anybody who needs to
10 leave, now is the time. Okay. Everybody understands the
11 instruction then.

12 If our jury is ready you can have them come in, Mr.
13 Evans.

14 (WHEREUPON, the jury entered the open court at
15 approximately 12:26 p.m.)

16 THE COURT: Madam Forelady, I understand the
17 jury has reached a verdict. Is that correct?

18 MADAM FORELADY: Yes, sir.

19 THE COURT: Is it a unanimous verdict as to both
20 charges?

21 MADAM FORELADY: Yes, sir.

22 THE COURT: If you would, please hand the
23 verdict forms to the bailiff.

24 Mr. Clerk, you may publish the verdicts.

25 THE CLERK: Yes, sir. This is indictment number

1 2012-GS-39-1527 and 2014-GS-39-1485, the State versus Gary
2 Clifton Hamilton. We, the jury, unanimously find the
3 defendant, Gary Clifton Hamilton, as to the charge of
4 criminal sexual conduct with a minor first degree, guilty.

5 As to the charge of lewd act upon a minor, guilty.

6 Is this your verdict and still your verdict so say
7 you all by raising your right hand.

8 (WHEREUPON, all jurors raised their right hands.)

9 THE CLERK: Thank you very much.

10 THE COURT: Thank you. Is there any matters we
11 need to take care of with this jury before they're
12 discharged in the case? From the state?

13 MS. HINTON: No, Your Honor.

14 THE COURT: From the defense?

15 MS. JOHNSON: No, Your Honor.

16 THE COURT: Ladies and gentlemen, thank you very
17 much for your service. It's been an honor for me to get
18 to work with you in this case. You've been a
19 conscientious group. You've been attentive and I
20 appreciate it so much.

21 We have some of your fellow jurors outside now
22 waiting to come in. We're ready to start another trial.
23 You will be excluded from that panel. You need to call
24 back tonight after six o'clock. We still have some trials
25 on the docket for disposition tomorrow. Don't know

Charge

1 whether you'll be needed or not. But after six o'clock
2 there will be a message for you as to when you need to
3 either call back in tomorrow or report back in.

4 You've done a valuable service for your community by
5 serving on this jury. It's not everyday you may have --
6 you may never have jury service again, but I want you to
7 know that, as I told you on Monday, I think it's a very
8 high calling to be a juror. You directly participated in
9 your government. You may remember from your civics
10 lessons of long ago that there's three branches of
11 government. Unless you are fortunate enough one day to be
12 elected a congressman or a county council members or on
13 your city council, you get to pass laws and legislate and
14 decide what the laws ought to be enacted, you can't do
15 anything about the laws. You can write your United States
16 senator or your city council members, but you can't change
17 the law. You can hope they do if you feel like it needs
18 to be changed. The same with our executive branch of
19 government. We have mayors in place, the president of the
20 United States and a governor that execute those laws and
21 see that they're carried out and the things that the
22 legislature passes are properly executed, but we can't --
23 we can petition those people, but we can't directly do
24 that unless you get elected mayor of your town one day or
25 maybe governor of South Carolina.

1 The judicial branch is not just composed of judges
2 such as I, but it's composed of jurors such as you, who
3 have fulfilled the task of being a judge and being a fact
4 finder, and you certainly deserve a pat on the back for
5 that. I hope you realize the importance of your service.
6 I hope that the next time you get called -- you'll
7 remember the exemptions from Monday that you cannot serve,
8 you can excuse yourself for the next two years, but I hope
9 you'll waive that exemption if you do get called again and
10 participate. I'm confident that if you find yourself
11 sitting at one of these tables in criminal court or in
12 civil court with a contract dispute or an automobile
13 accident or some other matter, you'll want good, solid
14 jurors such as yourself deciding what the facts are about
15 your case.

16 Thank you for your service, ladies and gentlemen.
17 You're free to go at this time. If you would, please call
18 back tonight after six o'clock. There'll be a message for
19 you on the machine. If you'll go with Mr. Evans now,
20 he'll escort you out.

21 THE BAILIFF: Does the foreperson need to stay
22 here for a few minutes or ---

23 THE COURT: Right. Thank you very much.
24 There's an additional paper I need you to sign, Madam
25 Forelady, if you'll just wait out in the hallway. Mr.

1 Welborn will bring those papers to you.

2 Thank you, Mr. Evans.

3 (WHEREUPON, the jury exited the open court at
4 approximately 12:31 p.m.)

5 THE COURT: All right. Any matters we need to
6 take care of before the sentence is imposed?

7 MS. HINTON: Not from the state, Your Honor.

8 THE COURT: From the defense? Be glad to hear
9 from you, Ms. Johnson, your client and certainly any other
10 folks that would like to address me.

11 MS. JOHNSON: May it please the court.

12 THE COURT: Yes, ma'am.

13 MS. JOHNSON: Your Honor, to preserve my
14 client's record for appeal, I have instructed him not to
15 say anything. He is fifty-six, almost fifty-seven years
16 old. Anything -- any sentence he gets today will most
17 probably be a life sentence. He did want me to point out
18 that he's been either in jail or on home incarceration
19 since April 26th of 2012, and I would just ask that he get
20 credit for that. I don't have the exact days he was in
21 jail, but I believe he's entitled to the time he's done on
22 electronic monitoring.

23 His only family, he has a brother who has been here
24 with him throughout the trial who's present today; Mr.
25 Eddie Hamilton, and his sister, who was here with him two

1 -- excuse me, with him yesterday. The rest of his family,
2 as you know, has deserted him. But I would simply ask the
3 court for the minimal sentence in this case. As you heard
4 yesterday, the man has a limited record. He worked hard
5 all his life until he became disabled. We would simply
6 ask for mercy, Your Honor.

7 THE COURT: Thank you. Are there any other
8 family members who want to say anything?

9 MS. JOHNSON: Your Honor, this is Eddie
10 Hamilton.

11 THE COURT: All right. If you would state your
12 name for the record, Mr. Hamilton. Be glad to hear from
13 you.

14 EDDIE HAMILTON: Eddie Hamilton.

15 THE COURT: Yes, sir.

16 EDDIE HAMILTON: I would just thank you for the
17 opportunity to address the court, sir. I would like to
18 ask for mercy for my brother.

19 THE COURT: All right, sir. Thank you.

20 MS. JOHNSON: Judge, we certainly respect the
21 verdict from the jury. While we may disagree with it, we
22 certainly respect it.

23 THE COURT: All right. Thank you.
24 Solicitor.

25 MS. HINTON: Your Honor, and I apologize. I

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Charge

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1 think I misunderstood your question before. The victim's
2 mother is present and she would like to briefly address
3 the court. In addition, I do have sentencing sheets.
4 They're not signed by Mr. Hamilton. I'm not sure if that
5 was intentional or not, but I'm happy to pass them up.

6 MS. JOHNSON: I didn't know he had to sign them

7 ---

8 MS. HINTON: I'll just pass them up, Your Honor.

9 THE COURT: All right. Be glad to hear from the
10 victim's mother.

11 CHRISTINE WILSON: My name is Christine Wilson.

12 THE COURT: If you would speak up so the court
13 reporter can hear you, ma'am.

14 CHRISTINE WILSON: My name is Christine Wilson.

15 I'm the mother of Minor. Your Honor, the pain that
16 this has caused and will continue to cause my child, and
17 the constant fear of her safety, I plead and ask that you
18 please give maximum sentence to this man. This is
19 something that will affect her -- continuously affect her
20 for the rest of her life. Her innocence has been taken.
21 And I feel that all of his freedoms should be, as well.

22 THE COURT: Thank you, ma'am.

23 This is case 2012-GS-39-1527, the sentence of the
24 court is the defendant be committed to the State
25 Department of Corrections for a period of thirty-two

1 years. Given credit for the time served.

2 Case 2014-1485, a fifteen year sentence to be
3 concurrent to that previously imposed. Given credit for
4 time served.

5 MS. JOHNSON: Thank you, Your Honor.

6 THE COURT: I certainly hope the best for all
7 parties involved.

8 MS. HINTON: Thank you, Your Honor.

9 THE COURT: All right. We'll be at ease in this
10 case.

11

12 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 28th day of July, 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 November 10, 2014

16

17

18

19



Circuit Court Reporter

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of PICKENS)2016-CP-39- 1079JARY CLIFTON HAMILTON,)Full name and prison number, if any, of applicant)
#360860)

v.)

STATE OF SOUTH CAROLINA)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
SEP 16 PM 3 24INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution 7th Wiscoby Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Pickens County Court of General Sessions; Pickens, South Carolina
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2012 JS-39-01527; Criminal Sexual Conduct with a Minor
 - (b) Lewd Act upon a Child; 2014 JS-39-01485
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 30, 2014; Twenty-two (22) years
 - (b) July 30, 2014; Fifteen (15) years
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

Yes, I did.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. *South Carolina Court of Appeals*
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. *Affirmed*
 ii. _____
 iii. _____

(c) the date of each such result:

- i. *July 27, 2016*
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. *Unpublished Opinion No. 2016-UP-00371*
 ii. _____
 iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) *N/A*
 (b) _____
 (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) *Denial of Effective Assistance of Trial Counsel;*
 (b) *Denial of Effective Assistance of Appellate Counsel;*
 (c) *Judicial Misconduct while behind the Bench.*

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Counsel failed to investigate the facts of the case; Counsel failed to challenge testimony given by witness Jellousky-Williams
- (b) Counsel failed to file Notice of Intent to Appeal the Court of Appeals decision
- (c) Honorable Judge Welniather utilized bias and personal emotions during the course of Trial.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?

No.

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No.

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No.

- (d) any other petitions, motions or applications in this or any other Court?

No.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i.

N/A

ii.

iii.

iv.

- (b) the name and location of the Court in which each was filed:

i.

N/A

ii.

iii.

iv.

- (c) the disposition thereof:

i.

N/A

ii.

iii.

iv.

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No, they have not

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) (9)(a); First Collateral Attack;
- (b) (9)(b); First Collateral Attack;
- (c) (9)(c); First Collateral Attack.

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes, I was.
- (c) your sentencing? Yes, I was.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes, I was.
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Leah Johnson,
- ii. Sean B. Hackett, P.O. Box 11589, Columbia, SC 29211
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Sentencing
- ii. South Carolina Court of Appeals
- iii. _____

18. State clearly the relief you seek in filing this application.

Based on the above, Sentence Vacated, Conviction
Reversed and Remanded for a New Trial.

19. Are you now under sentence from any other court that you have not challenged?

No, I am not.

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

VERIFICATION

I, GARY CLIFTON HAMILTON, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Gary Clifton Hamilton

Sworn to and subscribed before me

This 7 day of Sept, 2016.

Debra Eastledge L.S.

Notary Public for South Carolina

My Commission Expires 3/3/2024

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2016 SEP 16 PM 3 24

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, GARY CLIFTON HAMILTON, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Gary Clifton Hamilton
Applicant

Sworn to and subscribed before me

This 7 day of Sept, 2016.

Debra Eastledge L.S.

Notary Public for South Carolina

My Commission Expires: 3/3/2024

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Gary Hamilton , #360860,

2016-CP-39-1079

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on September 16, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. Applicant was indicted by the September 2012 term of the Pickens County Grand Jury for one (1) count of criminal sexual conduct with a minor first degree (2012-GS-39-1527) and the July 2014 term of the Pickens County Grand Jury for one (1) count of lewd act upon a minor (2014-GS-39-1485)

Applicant was represented by Teal Johnson, Esquire during a trial which occurred in July of 2014 which resulted in the Applicant being found guilty. Applicant was sentenced on July 30, 2014, by the Honorable G. Edward Welmaker to 32 years for criminal sexual conduct with a minor first degree pursuant to § 16-3-655(A)(1), and 15 years for lewd act upon a minor pursuant to § 16-15-140, to be served concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's convictions on in an unpublished opinion filed July 27, 2016. State v. Hamilton, Op. No. 2016-UP-379 (S.C. Ct. App. 2016). The Remittitur was returned on August 12, 2016.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. "Counsel failed to investigate the facts of the case."
 - b. "Counsel failed to challenge testimony given by witness Galloway-Williams"
2. Ineffective Assistance of Appellate Counsel
 - a. "Counsel failed to file Notice of Intent to Appeal the Court of Appeals Decision."
3. Judicial Misconduct while behind the Bench
 - a. "Honorable Judge Welmaker utilized bias and personal emotions during the course of Trial."

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant alleges ineffective assistance of counsel in his application. The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground

for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges ineffective assistance of appellate counsel in his application. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate counsel rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation.

V.

Applicant alleges judicial misconduct in his application. Applicant alleges that the Honorable Judge Welmaker "utilized bias and personal emotions during the course of Trial." Respondents interpret Applicant's allegation as a Due Process of Law violation. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing that his due process and other constitutional rights were violated, the Respondent would submit that this allegation should be summarily dismissed for failing to specifically set forth the grounds upon which the application is based.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VIII.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

XI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

[Signature block to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN II. MITCHELL
Assistant Attorney General

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

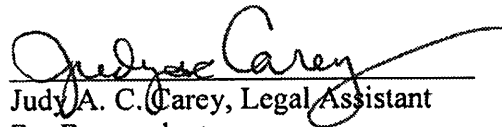
May 26, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2016-CP-39-1079
	)	
GARY HAMILTON, 360860	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street; Suite 11
Greenville SC 29601

DATED this 26th day of May, 2017.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No(s) .:2016CP3901079
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Gary Cliffton Hamilton	)	
	)	
Respondent.	)	

October 25, 2017
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

R. MILLS ARIAIL, Esquire
Attorney for the Applicant

DESHAWN MITCHELL, Esquire
Attorney for the Respondent

Teresa B. Johnson, CVR-M-CM,
Circuit Court Reporter
P.O. Box 2812
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Gary Hamilton

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Certificate of Reporter 32

EXHIBITS PAGENO.DESCRIPTIONID EV**APPLICANT EXHIBITS**

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(Proceedings begin on the 25th day of October
2017 at approximately 11:04 a.m.)

THE COURT: Mr. Hamilton, where are you
from?

MR. HAMILTON: Pickens County.

THE COURT: Pickens County?

MR. HAMILTON: That's me.

THE COURT: You've got relatives over in
Oconee?

MR. HAMILTON: Yeah, Diane, my sister.

THE COURT: I don't think I'm related to
her. I was a Hamilton before I got married, so
I was just -- I was just wondering.

MR. HAMILTON: What's your name?

THE COURT: My dad's name was Harry
Hamilton -- is Harry Hamilton.

MR. HAMILTON: We're probably kin
somewhere down the line.

THE COURT: Somewhere down the line.
That's right. That's right.

MR. HAMILTON: We're all -- we're all
brothers or sisters, in Christ.

THE COURT: There you go. There you go.
All right.

1 Yes, sir.

2 **MR. MITCHELL:** May it please the Court,
3 Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. MITCHELL:** This is 2016-CP-39-1079,
6 Gary Hamilton versus the State of South
7 Carolina. The applicant is incarcerated in the
8 South Carolina Department of Corrections
9 pursuant to Pickens County Clerk of Court
10 orders of commitment. After, he was indicted by
11 the September 2012 term of the Pickens County
12 Grand Jury for one count of criminal sexual
13 conduct with a minor first degree and, at the
14 July 14th term of Pickens County Grand Jury,
15 for one count of lewd act upon a minor.

16 The applicant was represented by Teal
17 Johnson during a trial that occurred in July of
18 2014 and resulted in the applicant being found
19 guilty. He was sentenced on July 30th by the
20 Honorable G. Edward Welmaker to 32 years for
21 criminal sexual conduct with a minor first
22 degree and 15 years for lewd act upon a minor.

23 Applicant filed a timely notice of appeal.
24 The South Carolina Court of Appeals affirmed
25 Applicant's convictions in an unpublished

1 opinion filed July 27th, 2016. The remittitur
2 was returned on August 12th, 2016.

3 Just for the record's sake, Your Honor, the
4 applicant, in his allocation -- application,
5 alleges ineffective assistance of trial
6 counsel, ineffective assistance of appellate
7 counsel, and judicial misconduct. He is present
8 in the courtroom today represented by
9 Mr. Ariail.

10 **THE COURT:** All right. Mr. Ariail?

11 **MR. ARIAIL:** Yes, Your Honor. We're ready
12 to proceed. I don't know how you want to do
13 this. Mr. Hamilton is in a wheelchair.

14 **THE COURT:** Teresa, are you okay if we do
15 it right there?

16 **COURT REPORTER:** That's fine.

17 **THE COURT:** Okay. Mr. Hamilton, if you
18 will just speak up, then let's just let you
19 stay right there. Okay. Best as you -- what's
20 that? Okay. Good. There we go. There we go. All
21 right.

22 Will you --

23 **THE CLERK:** Mr. Hamilton, will you raise
24 your right hand please.

25 **GARY HAMILTON**

1 having first been duly sworn, testifies as follows:

2 **THE CLERK:** Thank you. Please state your
3 full name for the record.

4 **THE WITNESS:** My name is Gary Hamilton.

5 **THE CLERK:** Thank you.

6 **DIRECT EXAMINATION**

7 **BY MR. ARIAIL:**

8 **Q** Mr. Hamilton, I'm going to ask you some
9 questions in regards to your representation by
10 Ms. Teal Johnson in regards to this matter. Now, I
11 know, we've discussed this in detail, me and you, and
12 gone back and forth, and I've looked at all of your
13 information. You have a hard time remembering what
14 happened; is that correct?

15 **A** I do.

16 **Q** Okay. And we've gone through it, and a lot
17 of the things we have discussed are that you didn't
18 really understand the whole process that was going on
19 at the time; is that correct?

20 **A** That's correct.

21 **Q** Okay. In part of this, you were represented
22 by Ms. Johnson. Do you remember that?

23 **A** Yes.

24 **Q** Okay. Do you remember discussing with her
25 any of the discovery or evidence or anything that was

1 going to be used against you at trial?

2 **A** Not really, I don't.

3 **Q** Okay. Do you remember her telling you what
4 people can testify to or what they could say at trial
5 to, I guess, use against you?

6 **A** Yeah.

7 **Q** You remember some of that?

8 **A** Some of that.

9 **Q** Do you remember discussing with her some of
10 the statements you made about this?

11 **A** No. I remember telling her I didn't do it.

12 **Q** Okay.

13 **THE COURT:** Okay. Can you pull the
14 microphone -- lean it forward. It won't go any
15 further? Don't worry about it. Don't worry about
16 it. I just want you to try to speak into the
17 microphone, best as you can. I appreciate it.
18 Thank you.

19 **MR. ARIAIL:** I'll try to come here, so you
20 can talk to me this way, instead of to the side.

21 **THE COURT:** There we go.

22 **MR. ARIAIL:** That might be a little bit
23 easier.

24 **BY MR. ARIAIL:**

25 **Q** Okay. Now, did you go over with her -- do

1 you recall talking with her about several statements
2 you made to -- I think, it was to the Easley Police,
3 Central Police, and some investigators that were
4 involved in this case?

5 **A** They sent me to -- the first I knowed about
6 this -- the first time I found out about it -- my
7 best friend work at Waffle House, and he's the one
8 that told me about it. I didn't know nothing about
9 that.

10 **Q** Okay. Do you remember discussing with her,
11 I guess, any of the statements that could be made by
12 the victim in the case?

13 **A** I guess I did, but I don't remember it.

14 **Q** Okay --

15 **THE COURT:** Can I get you to you move -- I
16 know I'm bothering you. Can I get you to move
17 your hand so it's -- the reason -- let me just
18 say to you, Mr. Hampton, this lady right here is
19 taking down what you say, and she does that, not
20 only by listening to you, but by looking at you.

21 **THE WITNESS:** Okay.

22 **THE COURT:** All right. Good.

23 **BY MR. ARIAIL:**

24 **Q** All right. I know we have gone through and
25 a lot of this that we have discussed has kind of come

1 out from your appellate counsel; is that correct?

2 **A** Yes.

3 **Q** And that was Susan Hackett; is that
4 correct?

5 **A** Yes.

6 **Q** Now, I just asked you -- and I just want to
7 make sure -- you've alleged some things in your PCR
8 application in regards to appellate counsel. We
9 discussed this. We're not proceeding under anything
10 the appellate counsel did wrong in this case; is that
11 correct?

12 **A** Yeah.

13 **Q** What we're concentrating on is what you
14 believe Ms. Johnson -- I guess, how she handled your
15 case; is that correct?

16 **A** Yeah.

17 **Q** Now, you -- you say in here, and I want to
18 make sure I understand it, is that she didn't
19 investigate the facts of the case. What do you
20 remember about that?

21 **A** That's what Susan told me.

22 **Q** Okay.

23 **A** I mean, I don't know what went on. That's
24 what Susan told me.

25 **Q** Okay. When you say Susan, you're saying

1 Susan Hackett with Appellate Defense?

2 **A** Yeah.

3 **Q** Okay. Do you -- do you know any specifics
4 as to what she's saying, about not investigating what
5 facts and information?

6 **A** No.

7 **Q** Do you remember any conversations you had
8 with Ms. Johnson about the investigation she did?

9 **A** I know that she done her job, but I don't
10 know. I can't remember half of this stuff.

11 **Q** Maybe I can answer it this way, did she
12 come and talk to you and explain to you what she was
13 doing in your case?

14 **A** Well, when we went to the office, she told
15 me that they could give me to 25 years and stuff like
16 that.

17 **Q** All right. Did y'all talk about what she
18 had done to go out and maybe meet with witnesses, for
19 instance, like, your wife and your daughter, or
20 anybody at the church where this allegation allegedly
21 happened?

22 **A** No, I don't think -- I don't know about
23 that.

24 **Q** Do you believe -- I know you had an
25 evaluation for competency. They found you competent

1 to be able to stand trial. You remember that?

2 **A** I remember that.

3 **Q** Do you have any questions or did you have
4 any discussion with Ms. Johnson about that and
5 whether, you know, you wanted to have a different
6 evaluation?

7 **A** I can't read and write.

8 **Q** You can't read and write?

9 **A** I can't read and write.

10 **Q** Okay. Did you understand --

11 **A** The only thing I can do is write my name,
12 and that's it.

13 **Q** Okay. Did you understand what was going on
14 at the time of trial?

15 **A** Not really.

16 **Q** Okay. Now, as part as this, you have
17 indicated to -- and I know you want to get into some
18 stuff that your appellate counsel said -- but failure
19 to challenge the testimony given by witness Shauna
20 Galloway-Williams?

21 **A** Yes.

22 **Q** Is that what Ms. Hackett told you to say?

23 **A** Yes.

24 **Q** Okay. I'll get into that with Ms. Johnson
25 in regards to that. What I'm trying to understand is

1 exactly the items that you want to concentrate on and
2 what you're saying she was ineffective. Is there
3 anything else that you've got -- I'll go into some
4 stuff with her -- that you want me to bring up?

5 **A** They said they couldn't find no evidence.

6 **Q** You said there's no evidence?

7 **A** No DNA or nothing.

8 **Q** Okay. Did you discuss with Ms. Johnson that
9 even though there was no DNA or no medical evidence,
10 that they still could rely on the statement of the
11 child to find you guilty? You didn't understand that
12 when you were going into trial?

13 **A** No.

14 **Q** Okay. That even though the doctor might say
15 there was no medical evidence showing that any type
16 of abuse had taken place, the jury could base their
17 decision off of what the child said?

18 **A** I don't know what all was said.

19 **Q** All right. Tell me, is there anything else
20 you want me to bring up or anything else that you can
21 remember that we need to discuss here? because this
22 is your day to be able to tell the judge about...

23 **A** I ain't guilty of it, because I didn't do
24 nothing.

25 **Q** Okay.

1 **MR. ARIAIL:** Your Honor, I have no further
2 questions.

3 **MR. MITCHELL:** Thank you, Your Honor. Just
4 very briefly.

5 **THE COURT:** Yes.

6 **CROSS-EXAMINATION**

7 **BY MR. MITCHELL:**

8 **Q** Good morning, Mr. Hamilton. How are you?

9 **A** I'm doing fine. How are you?

10 **Q** Good. Do you recall making statements to
11 law enforcement, where you said that you committed
12 these acts?

13 **A** Do what?

14 **Q** Can you hear me?

15 **A** I can hear you a little bit.

16 **Q** Do you recall giving statements to law
17 enforcement about these acts?

18 **A** The only thing I can remember telling law
19 -- the officer is that I didn't do it. And he wrote
20 out a statement. They wrote it out. I didn't write it
21 out. My understanding is they was supposed to record
22 everything I said. They didn't record it.

23 **Q** So you don't remember?

24 **A** I remember -- they didn't use a recorder or
25 nothing.

1 Q So they didn't --

2 A They didn't record it.

3 Q Okay. So does that mean it didn't happen?

4 A As far as I know, it didn't, cause I didn't
5 do nothing.

6 Q Let me ask you about, how many times did
7 you meet with Ms. Johnson prior to going to trial? Do
8 you recall at all?

9 A About four, six. I met with her until we
10 went to court.

11 Q You met with her a number of times prior to
12 going to trial?

13 A Yes.

14 Q Did you talk with her about the evidence in
15 the case that they had against you?

16 A I don't remember that. She -- the only
17 thing we discussed, she said I could get up to 25
18 years. I remember that.

19 Q Did she talk to you about any type of
20 defenses that you had?

21 A I don't remember.

22 Q I know you said that you don't remember it.

23 A I don't remember much of nothing. I mean,
24 my mind, I can't -- it ain't that good.

25 Q Are you on any type of medication, at all?

1 **A** No.

2 **Q** No?

3 **A** I mean, I am a diabetic. I take insulin.
4 That's all I take.

5 **Q** Okay. Do you recall if you told your
6 attorney about any witnesses that you wanted her to
7 call your behalf or anybody that you wanted --

8 **A** There weren't no witnesses, because I
9 didn't do nothing. That's what I'm saying. I mean, I
10 can't understand it -- what went on because I didn't
11 do nothing. I didn't find out about this until my
12 best friend, told me from the Waffle House. She came
13 in complaining about this. Her mama come in
14 complaining about it. My best friend come and told me
15 -- or told my daughter, and my daughter told me.

16 **MR. MITCHELL:** Judge, that's all the
17 questions I have.

18 **THE COURT:** All right. Anything else?

19 **MR. ARIAIL:** No, Your Honor.

20 **THE COURT:** All right. Anything -- any
21 other witnesses?

22 **MR. ARIAIL:** I do have another one. I call
23 Ms. Johnson to the stand.

24 **THE COURT:** All right.

25 **THE CLERK:** Mr. Johnson, please place your

1 left hand on the Bible and raise your right
2 hand.

3 **TEAL JOHNSON**

4 having first been duly sworn, testifies as follows:

5 **THE CLERK:** Please state your full name
6 for the record.

7 **THE WITNESS:** It's Teal Elise Johnson.

8 **DIRECT EXAMINATION**

9 **BY MR. ARIAIL:**

10 **Q** Ms. Johnson, how are you doing today?

11 **A** I'm doing well.

12 **Q** Good. You represented Mr. Hamilton in
13 regards to this charge; is that correct?

14 **A** I did.

15 **Q** Actually, it was two charges, the CSC with
16 a minor first degree, and then lewd act charges; is
17 that correct?

18 **A** Yes, I think the solicitor put the lewd act
19 on us, kind of, at the last minute.

20 **Q** Right.

21 **A** Yes.

22 **Q** You argued about that, as to whether or not
23 you had proper notice of that?

24 **A** I did.

25 **Q** And you went forward to trial on this. And

1 before that, did you have any discussions with -- how
2 many times did you meet with Mr. Hamilton to discuss
3 his case?

4 **A** I looked back in my file, and I met with
5 Mr. Hamilton, I think I counted 13 times, at the
6 jail. And then we got him on bond, and I met with
7 him, again, six times, on bond. He always bought his
8 brother with him.

9 **Q** Okay.

10 **A** But we went over his case many times.

11 **Q** Okay. And as I understand it, the facts of
12 the case were pretty much that he had given a
13 statement of some type of abuse of a minor child and
14 the child was going to testify at trial about that
15 abuse also; is that --

16 **A** That's correct. I think the child was two
17 years old at the time of this -- the allegations.
18 Mr. Hamilton gave, I think, two or three confessions,
19 which both are very suspicious to me, that I have
20 somebody that confessed to a sex crime and I have a
21 two-year-old victim who could -- she -- if I remember
22 correctly, she waited a week to report.

23 **Q** Right.

24 **A** So I -- I just -- I don't have children,
25 but I was a child. I don't remember what I did when I

1 was two years old. If I could remember what I ate
2 that day, I certainly couldn't remember a week later.
3 So I just had problems with this case, from day one.

4 Q And you did -- and you went to trial on
5 this. Before that, did you have any plea offers or
6 anything that was given to you?

7 A I did. I think I had a plea offer for 12.
8 I'm not sure. I definitely relayed it to
9 Mr. Hamilton, and he, you know, maintained his
10 innocence.

11 Q Okay. And it wasn't about "get me less
12 time", it was "he wasn't innocent -- he was
13 innocent"?

14 A Correct. You know, he said, "I did not
15 touch that little girl. I did not do this."

16 Q Okay. So he was aware that he'd get a
17 substantial amount of more time if he went to trial
18 on this?

19 A Correct.

20 Q And in fact, he did get that?

21 A He did, unfortunately.

22 Q Now, one of the main questions that's come
23 up is his competency to stand trial. How did you
24 handle that during this case?

25 A I -- immediately, when I met with

1 Mr. Hamilton, I had questions about his competency.
2 He told me that he went through the 11th grade, but
3 had a special education or received special
4 education. He cannot read and write. So I sent him to
5 get evaluated by the Department of Disabilities and
6 Special Needs, and he came back competent.

7 And, you know, I will say on record, I
8 regret not hiring a private psychologist in this
9 case, and I also regret not going to the evaluation.

10 Q Okay.

11 A I think this was a major teaching moment
12 for me because I will go to my grave not thinking
13 Mr. Hamilton was competent.

14 Q Okay. I guess, getting into that a little
15 bit, when you say he wasn't competent, were there
16 things that came up during your representation of him
17 that caused you concern about whether he knew right
18 from wrong?

19 A Well, it wasn't about right from wrong.

20 Q Okay.

21 A It was just about whether he could
22 understand. I mean, sometimes, he can say the right
23 thing, but do I really think he understands what he's
24 saying or comprehending what is actually going on?
25 No, I don't.

1 **Q** Okay. So you believe, in looking back at --
2 you would have liked to have gotten a private type of
3 evaluation for him?

4 **A** Right, and then probably requested a Blair
5 hearing.

6 **Q** Okay.

7 **A** Yeah.

8 **Q** Were there other things that, I guess,
9 raised issues with you, during your representation,
10 that caused you concern about his competency or his
11 understanding what was going on?

12 **A** He just wasn't like my normal client, you
13 know. He would just say to me, "I didn't touch this
14 little girl." I mean, that's, basically, the extent
15 of our -- my representation. I mean...

16 **Q** Did he go into, I guess, whether or not he
17 understood what he was doing when he gave these
18 statements?

19 **A** Yeah, I mean, I tried to elicit, like,
20 facts from him ---

21 **Q** Okay.

22 **A** --- you know, like, how this investigator,
23 you know, was toward him? how this investigator
24 treated him? what -- you know, the size of the room?
25 the environment? was he -- was -- alone or not? you

1 know, where his wife was? And I -- I think I did a
2 lot of it through the discovery.

3 Q Right.

4 A I know this whole thing was not videotaped.
5 I made a huge deal about that, you know, at trial,
6 the fact that I've got, you know, somebody that's in
7 special ed, you know, with Mr. Hamilton's abilities
8 or disabilities and, you know, they didn't videotape
9 this -- these so-called confessions. You know, I had
10 a huge problem with that.

11 Q Right.

12 A I tried to make a big deal about that to
13 the judge and jury. I didn't get anywhere.

14 Q Okay. I'm going back. And I do remember --
15 did you call him during the motion to, I guess,
16 suppress the statements?

17 A I did.

18 Q Okay.

19 A I do remember calling him for the Jackson
20 v. Denno hearing.

21 Q Okay. And I guess, during the Jackson v.
22 Denno hearing, was there any type of discussion then,
23 if I'm -- I guess what I'm getting at, did you make
24 any type of motion or try to tell the judge he didn't
25 understand or wasn't competent during the statements

1 to be able to give them or to be able to understand
2 what he was doing, during that time?

3 **A** I don't think I could argue that he wasn't
4 competent because I didn't have a finding that he
5 wasn't competent. I basically said, you know, he's
6 intellectually deficient and that I felt like the
7 statement was not a voluntary statement given, under
8 the circumstances. I'm sure I made, you know, another
9 -- host of other arguments, but I didn't get
10 anywhere.

11 **Q** Right. And the other -- I guess there were
12 numerous ones that you tried. You made numerous
13 motions. You had the Jackson v. Denno hearing, the
14 forensic interview with Shauna Galloway-Williams --
15 in that, do you remember making -- I guess you
16 objected to her testimony, at some point in time; is
17 that correct?

18 **A** Yeah, I made a global objection to her
19 coming on the stand, testifying against my client.
20 Obviously, that was overruled.

21 **Q** Do you remember -- I guess my question is,
22 under the State v. Chavis case, do you remember
23 making an objection to her, based upon her
24 reliability and, I guess, whether or not her work
25 product had been peer-reviewed? Do you remember that?

1 **A** I don't.

2 **Q** Okay.

3 **A** I'm assuming I didn't or failed to do that.

4 **Q** Okay. I guess, looking back and reading it,
5 do you think that would've been something that could
6 have excluded her testimony? cause I know she
7 testified about grooming and sexual abuse disclosure
8 and all of those items. Do you think that was
9 something that could have been used to exclude her
10 testimony?

11 **A** Not in its entirety.

12 **Q** Okay. Okay. Were there other witnesses that
13 you filed in this case which potentially could have
14 helped, I guess, to combat or to try to cut into what
15 the State was saying?

16 **A** Well, I certainly tried to pursue other
17 witnesses. I went to the church where these
18 allegations took place and told them -- let me get my
19 notes -- on July 16th, 2014, so roughly two weeks
20 before the trial, I went to the Central Church of God
21 and I talked to Roger Nix, the pastor. I wanted to
22 see if I could maybe get a video or, you know, maybe
23 talk to him about, "Hey. Look, we never saw Gary here
24 with this child," but that was not the impression or
25 the information I got. He actually confirmed that

1 Gary bought this child to the church by himself, and
2 they would arrive early. So I didn't get anywhere
3 with pursue -- you know, I -- he just wasn't helpful
4 to me, but I did talk to him.

5 I also talked to his wife and daughter.
6 There was some -- there was some confusion about
7 where these allegations took place. Mr. Hamilton
8 lived in Anderson County. His family lived in
9 Anderson County. We went out to Anderson County. At
10 this point, his whole family, except this brother,
11 was against him, and they -- they were not helpful.

12 Q Okay.

13 A But we did go out -- I actually bought --
14 our law clerk, Mr. Daniel, came to Central with me --
15 or Anderson County, to go talk with the family. They
16 did not give us any helpful information. So we did
17 not call them.

18 MR. ARIAIL: Okay. Your Honor, I have no
19 further questions.

20 THE COURT: All right.

21 Any questions for this witness?

22 MR. MITCHELL: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MITCHELL:

25 Q Good morning, Ms. Johnson.

1 **A** Hey.

2 **Q** How are you?

3 **A** Doing well.

4 **Q** How long have you been licensed to practice
5 law here in South Carolina?

6 **A** I have been licensed for -- it will be
7 eight years in November.

8 **Q** And how long -- or much of that time has
9 been dedicated to criminal law?

10 **A** Seven years.

11 **Q** Seven?

12 **A** Over seven years, yes.

13 **Q** Essentially, your entire practice?

14 **A** Yes.

15 **Q** Okay. And I know we touched on it briefly,
16 but could you give me the facts of the case or the
17 allegations, I should say?

18 **A** The facts of the case -- or the allegations
19 were that Mr. Hamilton touched a two-year-old child
20 in the parking lot of the Central Church of God.

21 **Q** Okay. And after -- well, you were appointed
22 to this case; weren't you?

23 **A** I was.

24 **Q** After being appointed, how many times did
25 you meet with him again?

1 **A** I met with him, I think I said 13 times at
2 the jail and then I have six times where they came to
3 my office.

4 **Q** Okay. During those meetings with him, did
5 you discuss with him the charges and the sentences
6 that he potentially could be facing?

7 **A** I did.

8 **Q** Okay. All right. I know there's some
9 contention. Did he understand those?

10 **A** I mean, you would have to ask him whether
11 he understood those. I -- you know, he could parrot
12 things back to me, but do I think he really
13 comprehended what I was saying? Probably not.

14 **Q** Mr. Hamilton had an evaluation done,
15 correct?

16 **A** He did.

17 **Q** Am I correct in saying that the evaluation
18 came back that he was competent and did not suffer
19 from any intellectual abilities?

20 **A** That is correct.

21 **Q** And is it also fair to say, during the
22 trial, that you made a motion to have an independent
23 psychologist evaluate Mr. Hamilton?

24 **A** I think I waited too late. But I do
25 remember voicing my concerns about his competency at

1 the outset of the trial. I don't remember how those
2 were addressed. Obviously, we're here today, so they
3 -- it -- it was denied.

4 Q Fair enough.

5 MR. MITCHELL: I would just note for the
6 record, Your Honor, on Page 65 of the
7 transcript, Ms. Johnson does make a motion for
8 an independent examiner to evaluate
9 Mr. Hamilton.

10 THE COURT: All right. So noted.

11 BY MR. MITCHELL:

12 Q During the course of the trial, or prior to
13 the trial, there was a Jackson v. Denno hearing
14 concerning statements Mr. Hamilton made, correct?

15 A Yes.

16 Q You had a full opportunity to cross-examine
17 any officers or any investigators who he gave
18 statements to, right?

19 A I did.

20 Q The judge, ultimately, found that those
21 statements were given voluntarily, correct?

22 A Exactly, yes.

23 Q While you may not agree with those --

24 A Right.

25 Q Okay. Fair enough.

1 **A** I definitely didn't agree with that, but I
2 don't wear the black robe.

3 **Q** In regards to testimony by
4 Ms. Galloway-Williams, is it fair to say that you
5 cross-examined her very extensively?

6 **A** I do remember cross-examining her. I mean,
7 I actually wanted to keep her off the stand, but she
8 was allowed to testify.

9 **Q** I guess for -- what was your theory of the
10 case? What was your defense going into trial?

11 **A** My theory of the case was, you know, a
12 two-year-old can't remember one day from the next.
13 But actually, my theory, really, was that this child
14 had an accident in her pants and that my client, who
15 could barely -- I mean, Mr. Hamilton's lost about 100
16 pounds, it looks like. But when I had him, he was a
17 very big man on a cane. He could not maneuver -- was
18 that he did not touch this child inappropriately. If
19 he touched this child at all, it was, you know, in
20 the effort to clean her up.

21 **Q** During the course of the trial, you had
22 ample opportunity to cross-examine all the State's
23 witnesses, correct?

24 **A** I did.

25 **Q** Is it fair to say that you spent a lot of

1 time on this case and put a lot of resources into it?

2 **A** I spent countless hours on this case
3 because, like I said, I felt like the confessions
4 were obtained wrongfully. I felt like -- I felt like
5 there were problems with the child witness.

6 I went back there in my file, and I know we
7 made a chart of how many times the child wavered or
8 waffled. I don't remember. I mean, I can pull it out,
9 if you'd like. I just remember there just being so
10 many problems with this case. Of course, they bring
11 the child witness in, who is older, at this point,
12 six years old. Of course, she's in a better position
13 to try to remember to be more -- I don't want to say
14 credible, but that she knew what was going on. I
15 mean, but yeah, I spent countless hours on this case.

16 **MR. MITCHELL:** That's all the questions I
17 have, Judge. Thank you.

18 **THE COURT:** Any other questions for this
19 witness?

20 **MR. ARIAIL:** No, Your Honor. Thank you.

21 **THE COURT:** You may step down.

22 **MR. MITCHELL:** Thank you.

23 **THE COURT:** Thank you.

24 **MR. ARIAIL:** That is our case, Your Honor.

25 **THE COURT:** All right. Well, Mr. Hamilton,

1 I'm going to take this matter under advisement.
2 I'm going to think about it and issue a
3 decision, probably within the next couple of
4 weeks, about it. But I need to read the
5 transcript of the whole trial.

6 (Proceedings are concluded at approximately
7 11:38 a.m.)

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STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

Gary Hamilton , #360860)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2016-CP-39-1079

ORDER OF DISMISSAL

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2018 MAY 21 A 8 34

This matter comes before the Court by way of an application for post-conviction relief filed on September 16, 2016 by Gary Hamilton (Applicant). Respondent made its Return on or about May 26, 2017. An evidentiary hearing into the matter was convened on October 25, 2017, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by R. Mills Ariail, Jr, Esquire. Respondent was represented by DeShawn H. Mitchell, Esquire of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Applicant's Trial Counsel Teal Johnson, Esquire also testified. This Court had before it a copy of the records of the Pickens County Clerk of Court regarding the Applicant's convictions, the transcript from Applicant's trial, the PCR application, Respondent's Return, Applicant's records from the Department of Corrections and Applicant's appellate records. After reviewing the record and everything presented, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to post-conviction relief and denies this application.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. Applicant was indicted by the

September 2012 term of the Pickens County Grand Jury for one count of criminal sexual conduct with a minor first degree (2012-GS-39-1527) and the July 2014 term of the Pickens County Grand Jury for one count of lewd act upon a minor (2014-GS-39-1485). Applicant was represented by Teal Johnson, Esquire. On July 28, 2014, Applicant proceeded to a trial before the Honorable G. Edward Welmaker and a jury. The jury found Applicant guilty. Judge Welmaker sentenced Applicant to thirty-two years imprisonment for criminal sexual conduct with a minor first degree pursuant to § 16-3-655(A)(1), and fifteen years imprisonment for lewd act upon a minor pursuant to § 16-15-140, to be served concurrently.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion filed July 27, 2016. State v. Hamilton, Op. No. 2016-UP-379 (S.C. Ct. App. 2016). The Remittitur was returned on August 12, 2016.

FACTUAL HISTORY

Victim was six years old at the time of trial. She was three years old when Hamilton sexually assaulted her. Victim testified that Hamilton would take her to the store and to church. Victim testified about a particular occasion Hamilton took her to church. While parked at the church, Hamilton pulled Victim's tights and panties halfway down. Hamilton put his finger in her "butt" and told her that if she kept moving, it would hurt worse.¹ Victim testified Hamilton pulled his pants down and "screamed" while he pulled his "weiner." Tr. pp. 190-192. Afterwards, Hamilton and Victim went to the church service. Victim said she felt sad and missed her mom during the service. Tr. p. 193. Victim later told her mother about the abuse while Victim was taking a bath. Tr. pp. 193-194. Victim explained she disclosed the abuse to her mother because "if I choose the truth, I know that it would be safer and she would protect

¹ Victim explained on cross-examination that she never told anyone before about Hamilton's advice not to move. She testified, "I've never said that in my life." Tr. p. 198, lines 9-16.

me.” Tr. p. 194, lines 7-8. Victim testified on redirect that no one told her what to say on the witness stand. Tr. p. 201.

Victim’s mother (Mother) testified she was friends with Hamilton’s daughter, which was how she met Hamilton. Mother admitted Hamilton’s family helped her out while she was going through difficult times. For a couple of weeks, Mother did not have a place for her daughters to stay, and Hamilton let Victim and her sister stay at his house. Mother confirmed that Hamilton took Victim to church. She described Hamilton as a grandfather figure to Victim. Mother was able to secure a new home and about a month after they were in the new home, Mother was giving Victim a bath. Victim looked depressed and after Mother inquired, Victim disclosed she was sexually assaulted at church when no one else was around. Mother testified that at first, she did not want to believe Victim, but Victim later restated that she was abused, and Mother decided to call the Pickens County Sheriff’s Office. Tr. pp. 209-213.

Mother testified that before August 2011, Victim “was so happy.” Tr. p. 213, lines 16-22. Ever since then, Victim has struggled. She has night terrors and wets the bed. She has received counseling. Tr. pp. 213-214. Mother described the ordeal as “literally watching the innocence of my child be stripped away. And the constant fear and worry of somebody coming to attack her or get her.” Tr. p. 213, lines 19-22.

Hamilton’s counsel asked Mother if she had bragged about getting Hamilton in trouble. Mother explained that she talked about the situation at work and explained as follows:

[B]ecause I had to take time off for bond hearings. I had to take time off for different things. You know, I wouldn’t say I bragged about it. But because it’s not really something to brag about. It’s caused a lot of pain, a lot of heartache in my family.

Tr. p. 226, lines 4-8.

Mary Jane Bryant is friends with Mother. She testified that in October 2011, Victim

disclosed that she was abused in a church parking lot. When Victim told Bryant, Mother walked out of the room. Bryant testified that Victim was sad when she disclosed the abuse. Tr. pp. 229-231.

Investigator Michele Hendrix from the Anderson County Sheriff's Office testified she received the case from the Pickens County Sheriff's Office in November 2011. She interviewed Hamilton on April 5, 2012. Hamilton appeared to have no problem understanding what was going on. Investigator Hendrix was unaware that Hamilton had a "special education." Tr. pp. 235-236. Hamilton denied the allegations. He admitted he took Victim to church but claimed his wife always accompanied them. Tr. pp. 234-237.

Investigator James Collins accompanied Investigator Hendrix to the first interview on April 5, 2012. Investigator Collins then met with Hamilton on April 19, 2012. Investigator Collins gave Hamilton his Miranda warnings while Hamilton's daughter was present. Tr. pp. 244-247. The first thing Hamilton said was he barely touched Victim. He claimed his finger barely went inside Victim's vagina. Tr. p. 249.

Hamilton tried out several explanations. His first explanation was that he tried to pick up Victim from the car seat by her waist. Hamilton explained his finger might have accidentally touched Victim's vagina. Tr. p. 249, lines 11-15. Naturally, this explanation made little sense to Investigator Collins.² Investigator Collins testified he told Hamilton he "didn't quite understand how [Hamilton] picked her up by the waist and . . . that she had on a dress, he picked her up by the waist, how his hand accidentally went under her dress, moved her panties out of the way and his finger went inside of her at that point." Tr. p. 249, lines 15-23.

Instead of offering clarification, Hamilton made up a second story. Hamilton claimed he

² The prosecutor noted during closing argument that you would not pick up a child from a car seat by the waist. Instead the child would be picked up from underneath their armpits. Tr. p. 395, lines 20-25.

was picking Victim up by the waist, she almost fell, and when Hamilton went to catch her, that's when his finger might have accidentally touched her vagina. Tr. p. 249, line 23 – p. 250, line 2. Investigator Collins found the explanation odd because Hamilton's hands were injured and he was "very immobile;" Hamilton was using a cane. Investigator Collins questioned whether Hamilton would have been able to pick up Victim by the waist. Further, Investigator Collins understood that Victim was able to walk, so it would seem unnecessary for Hamilton to pick Victim up. Tr. p. 250.

Rather than provide any clarification in response to Investigator Collins' valid observations, Hamilton provided a third story. Now Hamilton claimed Victim was sitting in the backseat and soiled herself. Hamilton surmised he must have touched her vagina while cleaning her. He first said he did not have anything on his hand. Then Hamilton said he used a wipe, and his finger might have accidentally touched her vagina at that point. Tr. p. 250, line 21 – p. 251, line 4.

Noting this story was much different from the first two stories, Investigator Collins challenged Hamilton on these inconsistencies. Hamilton became frustrated so he resorted to telling the truth: Hamilton yelled "I did it." Then Hamilton provided his confession. Tr. p. 251. Investigator Collins testified that Hamilton's "special education" did not affect his ability to give a statement. Tr. p. 253.

In his statement, Hamilton explained he took Victim to church after dropping off his son at another church. No one else was there yet. While waiting, Hamilton went to the back of the car where Victim was sitting and rubbed his hand between Victim's legs and rubbed her vagina underneath her panties. Hamilton claimed to rub Victim's vagina but he did not put his finger inside Victim. Hamilton admitted rubbing Victim's vagina for a few minutes. Hamilton claimed

he stopped of his own accord and waited on the steps of the church with Victim for another thirty to forty minutes before somebody else arrived. Tr. pp. 255. Investigator Collins noted that notwithstanding Hamilton's typed statement, Hamilton orally admitted to inserting his finger in Victim's vagina. Tr. pp. 255-256. Investigator Collins estimated the interview lasted only thirty minutes. Tr. p. 261.

Julie Anne Hamilton is Hamilton's daughter, and she testified for the State. She testified she was friends with Mother until the assault. It was Mother's choice to end the friendship, but Julie understood why Mother ended it and she did not blame Mother. Julie lived with her parents. She verified that Victim stayed with them. Julie testified that her mother, Hamilton's wife, had infections that kept her from going to church. Julie and her mother went with Hamilton to the police station when he was interviewed by Investigator Collins. Julie was present when Hamilton was read his rights, and he did not have trouble understanding them. On the way home from the station, Hamilton handed Julie the confession and said "please don't hate me." Tr. pp. 267-272.

The case was transferred to the Central Police Department because the church was in Central which is not in Anderson County. Police Chief Khristy Justice was an investigator at the time she interviewed Hamilton. She went through Hamilton's rights with Hamilton. She testified she did not see any competency issues with Hamilton. At first, Hamilton claimed that he only accidentally touched Victim's vagina. But then he admitted he rubbed Victim's vagina for two minutes. Hamilton demonstrated to Chief Justice how he rubbed Victim. Hamilton admitted he knew what he did was wrong. Tr. pp. 281-288. Hamilton claimed his "dick don't even work no more" when Chief Justice asked him if he masturbated in front of Victim. Tr. p. 298, lines 22-24.

Hamilton dictated another statement to Chief Justice consistent with the statement he provided Investigator Collins. However, Hamilton further claimed in this statement the following: "I don't know why I did this to [Victim], but it wasn't for sexual reasons. My dick don't even get hard. I don't know why." Tr. p. 301, lines 19-21. Hamilton was calm and he did not seem intimidated. Tr. p. 302.

The State's case against Hamilton was strong, the defense was weak. Desperation apparently prompted Hamilton's counsel to attack Chief Justice's supposed lack of investigation. Hamilton's attorney asked Chief Justice the following question: "You never confirmed that he was ever there?" and Chief Justice replied: "Well that came out of your client's mouth that he was there." Tr. p. 309, lines 6-8.

Frederick Durham was an officer at the time of the statement, and he was present when Chief Justice interviewed Hamilton. Durham confirmed that Chief Justice provided warnings to Hamilton. Hamilton did not appear to have any trouble understanding what was going on, and he was not forced to give his statement to Chief Justice. When Chief Justice read Hamilton his statement back to him, Hamilton had no objections. Tr. pp. 316-318.

Brenda Hamilton, Hamilton's wife, testified Hamilton was disabled from a fall while working at a Duke Power dam. Brenda stopped going to church due to a debilitating staph infection. Brenda confirmed that Hamilton would take Victim to church alone. Brenda also testified she was unaware of any medical diagnosis that prevented Hamilton from having an erection. Tr. p. 320-323; p. 327.

Shauna Galloway-Williams was the State's penultimate witness. She was amply qualified as Hamilton's trial attorney surely recognized when she stated she did not object to Galloway-Williams' qualifications, explaining to the trial court: "No, I don't have any issue

about her qualifications; just what her testimony would be, Your Honor.” Tr. p. 335, lines 18-20. Hamilton’s attorney declined voir dire concerning Galloway-Williams’ qualifications.

Galloway-Williams is the Executive Director of the Julie Valentine Center, a child abuse and sexual assault recovery center serving Greenville and Pickens Counties. The Center provides services for children and families impacted by child abuse and sexual assault. The Center also provides education and prevention services. Tr. pp. 348-349.

Galloway-Williams earned a bachelor’s degree in psychology and a master’s degree in counseling. She is a licensed professional counselor in South Carolina. She has worked in the field of mental health for seventeen years and has worked with children and families impacted by abuse and neglect for thirteen years. Tr. p. 349.

Galloway-Williams was the immediate past board president of the South Carolina Network of Children’s Advocacy Centers. She is also a former board member for the South Carolina Professional Society on the Abuse of Children. She is Co-Chair of the Silent Tears Task Force. Tr. p. 350.

Galloway-Williams received over 140 hours of skills-based training directly related to working with children who may have been abused or neglected. Galloway-Williams is an adjunct faculty member of the Child Advocacy Studies Program at University of South Carolina Upstate. Galloway-Williams conducts training related to recognizing and responding to child sexual abuse. Tr. pp. 350-351.

Galloway-Williams testified she never met Victim or observed Victim provide any statement. Galloway-Williams did not know anything about Hamilton. Tr. p. 352, line 24 – p. 353, line 7.

Galloway-Williams discussed grooming: She discussed how a perpetrator develops a

trusting relationship with a child and the child's family by giving special attention to the child and the child's family. A perpetrator may also test the waters with the child by innocuous touching to see how the child reacts. Tr. p. 353.

Galloway-Williams noted "most children are abused by someone that's known, loved and trusted to the child and to the family." Tr. p. 353, lines 3-4. Galloway-Williams explained, "And that a lot of times is why children have a hard time telling someone or letting someone know that this has happened to them." Tr. p. 354, lines 7-8.

Galloway-Williams explained how a child's disclosure is affected if the perpetrator is someone the child knows, explaining the following:

That's really one of the main reasons why children don't tell, is because they know, love and trust the person that has done this to them. A lot of times they fear what's going to happen to them or to the person that's done this. A lot of times children have a very – have a lot of really good characteristics so there's a lot of good things about the relationship with the person in addition to the abuse. This may be the one person that gives them the most attention, that they like to play with. This may be the one person that they feel closest to. This may be the one person that the other family members are closest to. Knowing those things and experiencing those things makes it really hard for children to tell that something's happened.

Tr. p. 354, line 13 – p. 355, line 1. Galloway-Williams further explained:

In most cases that we see at the Julie Valentine Center and in my experience and in what the research tells us, most children don't tell right away. And in fact, many adults live into their adult lives without having ever told anyone that this has happened to them. So from my experience and training and education, it's very common that children don't disclose or that they delay their disclosure.

Tr. p. 355, lines 4-11.

Galloway-Williams discussed factors affecting delayed disclosure:

[O]ne of the strongest factors or one of the biggest influences is

that relationship that the child has with the perpetrator; it being a loving, trusting relationship with them or a relationship with the family. Children may fear the consequences of what's going to happen to them or the perpetrator if they tell. They may have been threatened that something's going to happen. Children may know, without anyone even telling them, they may know that there are things that will happen if they tell. That they or something's going to have to move. That someone's not going to be able to take care of them or the household. Children are very aware of some of the consequences that may happen if they tell.

Tr. p. 355, line 19 – p. 356, line 6. Galloway-Williams explained the difference between partial and full disclosure, noting that “disclosure is a process.” Tr. p. 356, lines 9 – 14. Galloway-Williams advised the jury, “Children don't always know exactly what we want to know.” Tr. p. 356, lines 21-22.

Galloway-Williams explained children “may not have the same knowledge and understanding of sexuality and how to articulate what it is that's happened. So the way that children communicate is different than the way that adults communicate.” Tr. p. 357, lines 15-19.

Galloway-Williams discussed factors affecting the risk to a child of sexual abuse:

What we know is that there are certain things that put children and their families at higher risk for abuse. You know, one of the highest risk factors is substance abuse by a care giver. That puts a child and a family at risk for abuse and makes them more vulnerable. Single parent households make children more vulnerable to abuse. And again, none of these things are to indicate that parents . . . are at fault for this happening. These are just risk factors that often offenders will take advantage of. . . . Just by virtue of being much younger, children are more vulnerable. The less verbal a child is, the less likely they are to be able to talk or tell that something's happened. And often if children have some sort of disability, if children have had behavior problems, if they've been known to get in trouble, those kind of things set children up at higher risk and can often make them targets for offenders.

Tr. p. 357, line 23 – p. 358, line 16.

On cross-examination, Galloway-Williams explained: "Just because a child delays reporting or delays a disclosure, that doesn't really indicate that it didn't happen. Because what we know is that most times children delay disclosure and don't tell right away." Tr. p. 359, lines 2-5. She explained: "it's not really my job as an interviewer or as a therapist or in any of those roles to really determine whether the child has told the truth or not. That's not really my job." Tr. p. 359, lines 16-20. Galloway-Williams explained that she was speaking in general terms but that her testimony was "based on research and training and experience." Tr. p. 360, lines 3-4.

Dr. Mary Fran Croswell examined Victim and the exam was normal. This was consistent with 85% of the cases of reported child abuse. Victim told Dr. Croswell she was abused on the way to church. Tr. pp. 369-371.

The record fails to disclose any existing animus between Mother and Hamilton, or Victim and Hamilton.

ALLEGATIONS

1. Ineffective Assistance of Trial Counsel
 - a. "Counsel failed to investigate the facts of the case."
 - b. "Counsel failed to challenge testimony given by witness Galloway-Williams"
2. Ineffective Assistance of Appellate Counsel
 - a. "Counsel failed to file Notice of Intent to Appeal the Court of Appeals Decision."
3. Judicial Misconduct while behind the Bench
 - a. "Honorable Judge Welmaker utilized bias and personal emotions during the course of Trial."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he had a hard time remembering what happened in this case. He testified he did not understand the process when he was charged. He testified he was represented by Teal Johnson. Applicant testified he did not remember reviewing discovery in his case but he

remembered telling Trial Counsel he did not commit the crimes. He testified the first time he found out about these allegations was from a friend who worked at Waffle House. Applicant testified Susan B. Hackett, Esquire represented him on appeal but that he wanted to drop the allegations regarding Ms. Hackett and only focus on the allegations regarding Trial Counsel. He testified he did not think Trial Counsel investigated the facts of his case. He testified he could not remember half of the things from his case. Applicant testified he met with Trial Counsel at her office and she told him he could get up to twenty five years in prison. He testified Trial Counsel did not discuss potential witnesses with him. Applicant testified he was evaluated to see if he was competent to stand trial and he was found competent. However, he testified he could not read or write. Applicant testified Trial Counsel failed to challenge Shauna Galloway-Williams's testimony. He testified there was no DNA or medical evidence only the minor's statement. Applicant testified Trial Counsel did not discuss with him that he could be convicted based solely on victim's statement.

On cross-examination, Applicant testified he told law enforcement he did not do it and then they wrote it down but that he did not remember confessing to the crime. He testified he met with Trial Counsel about four to six times before trial. He testified he did not remember discussing evidence with Trial Counsel and the only thing he remember from their conversations was that he could get twenty-five years in jail. Applicant testified he was not on any types of medications other than ones for his diabetes. He testified there were no witnesses because he did not do anything.

Trial Counsel's Testimony

Trial Counsel testified Applicant was charged with a lewd act and first degree criminal sexual conduct with a minor. She testified the lewd act charge was sprung on Applicant at the

last minute and she objected to the charge. Trial Counsel testified she met with Applicant thirteen times while he was incarcerated and six times while he was out on bond. She testified Applicant had given a statement to law enforcement. Trial Counsel testified there was a plea offer of twelve years but Applicant rejected it because he was firm in his innocence. Trial Counsel testified based on her interactions with Applicant she immediately had him evaluated and also because he could not read or write and had been in special education classes. She testified Applicant was found competent to stand trial. Trial Counsel testified she regretted not having Applicant privately evaluated because she will "go to her grave" thinking Applicant was not competent to stand trial. She testified Applicant would just repeatedly tell her he did not touch the victim. She testified she tried to elicit facts from Applicant but he was not able to produce much. Trial Counsel testified she made a huge deal in front of the judge and jury that the interrogation of Applicant was not videotaped. She testified she called Applicant during the Jackson v. Denno³ hearing. She testified she could not argue Applicant was not competent because she did not have that finding. Trial Counsel testified she made a global objection to the forensic interview with Shauna Galloway-Williams. She testified she did not remember if she made an objection based on State v. Chavis but she did not think that Mrs. Galloway-Williams' testimony would have been excluded in its entirety. Trial Counsel testified as part of her investigation she tried to pursue witnesses and visited the church where the crime took place. She testified on July 16, 2014 she talked to the pastor of the church but that the pastor said Applicant brought the victim to church alone and would arrive early. She testified she also talked to Applicant's wife and daughter about where the allegations took place. She testified Applicant's whole family was against him other than his brother.

On cross-examination, Trial Counsel testified she had practiced law for eight years. She

³ Jackson v. Denno 378 U.S 368, 84 S.Ct. 1774 (1964)

testified the allegations where that Applicant had touched a two year old girl in a parking lot at Central Church of God. Trial Counsel testified she met with Applicant thirteen times while he was in jail and six times at her office. She testified Applicant could “parrot” things back but she did not think Applicant understood. Trial Counsel testified Applicant’s evaluation came back that he was competent to stand trial and that he did not have any intellectual disabilities. She testified they had a Jackson v. Denno concerning Applicant’s statements to law enforcement. She testified she cross-examined Shauna Galloway-Williams. Trial Counsel testified her theory of the case was this victim was two years old when she made these allegations and she could not remember one day from the next and made it up. She testified Applicant was not physically able to commit the crime as he was obese and on a cane or if Applicant did touch her it was in an effort to clean her up or change her. Trial Counsel testified the victim was six years old at the time of trial and was more credible then.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and can weigh their testimony and credibility accordingly. These credibility findings have been applied to the Court’s findings and conclusions set forth below. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the

adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 at 688). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Ineffective Assistance of Counsel

Failure to Investigate

Applicant alleges Trial Counsel was ineffective in failing to investigate facts and adequately prepare for trial. Applicant failed to present any evidence in support of this allegation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) (“Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue

had counsel more fully prepared for the trial.”). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation. Even so, Counsel testified credibly that she reviewed all of the discovery with Applicant and met with Applicant almost twenty times. Trial Counsel testified as part of her investigation she tried to pursue witnesses and visited the church where the crime took place. She testified on July 16, 2014 she talked to the pastor of the church but that the pastor said Applicant brought the victim to church alone and would arrive early. She testified she also talked to Applicant’s wife and daughter about where the allegations took place. She testified Applicant’s whole family was against him other than his brother. This Court finds Trial Counsel’s investigation was beyond reasonable as was her preparation. Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel’s performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Failure to Challenge Testimony

Applicant alleges Trial Counsel was ineffective in failing to challenge testimony given by expert witness Shauna Galloway-Williams. This Court finds Applicant’s allegation that Trial

Counsel was ineffective for failing to properly cross-examine or challenge Ms. Galloway-Williams' testimony meritless. This Court finds Trial Counsel's representation was well within reasonable professional norms.

Here, Trial Counsel's cross-examination and argument that she advanced at trial fully set forth enough information so that the jury could properly assess the witness' credibility and counsel could demonstrate the supposed lack of it. See, e.g., Fugate v. Head, 261 F.3d 1206, 1219 (11th Cir. 2001) ("The decision as to whether to cross-examine a witness is a tactical one well within the discretion of a defense attorney.... Absent a showing of a single specific instance where cross-examination arguably could have affected the outcome of either the guilt or sentencing phase of the trial, a[n] [applicant] is unable to show prejudice necessary to satisfy the second prong of *Strickland*") (citations and internal quotation marks omitted); Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (per curiam) ("the Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish") (emphasis in original); Mills v. Singletary, 161 F.3d 1273, 1288 (11th Cir. 1998) (defendant's Sixth Amendment right to confront witnesses is satisfied where the cross-examination permitted exposes the jury to facts sufficient to evaluate the witness' credibility and "enables defense counsel to establish a record from which he can properly argue why the witness is less than reliable").

Trial Counsel thoroughly cross-examined Ms. Galloway-Williams. This Court finds that Trial Counsel's strategic decisions of how to cross-examine witnesses were proper and reasonable. Furthermore, Applicant has failed to show exactly what information should have been elicited if the witness was properly cross-examined or challenged. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the

applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). This Court cannot speculate as to what testimony could have been elicited upon a different strategy of cross-examination, and thus Applicant cannot meet his burden of proving prejudice.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present compelling evidence that Counsel committed either errors or omissions in his representation of Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. The allegation is denied and dismissed.

Applicant's Competency to Stand Trial

While not raised in his application, during the evidentiary hearing issues related to Applicant's competency were brought up. Out of an abundance of caution, this Court addresses this issue. Trial Counsel testified based on her interactions with Applicant she immediately had him evaluated and also because he could not read or write and had been in special education classes. She testified Applicant was found competent to stand trial. This Court finds based on a review of the record that Applicant was competent to stand trial. This Court finds Applicant was not evaluated as part of this PCR proceeding nor did he introduce any records to establish that he currently or previously lacked sufficient competency to stand trial. Therefore, this Court dismisses this allegation with prejudice.

Ineffective Assistance of Appellate Counsel

Applicant alleged Appellate Counsel was ineffective for failing to file a Notice of Intent

to Appeal the Court of Appeals Decision. Applicant testified Susan B. Hackett, Esquire, of the Office of Indigent Defense, Division of Appellate Defense represented him on appeal. Applicant testified he wanted to abandon this claim. This Court finds this claim was expressly waived by Applicant. Therefore, this allegation is denied and dismissed with prejudice.

Judicial Misconduct

Applicant alleged judicial misconduct by Judge Welmaker in that he utilized bias and personal emotions during the course of his trial. Applicant did not present any evidence on this allegation at the PCR hearing. Accordingly, this Court finds Applicant failed to prove there was any evidence of this allegation. Accordingly, this Court denies and dismisses this allegation.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any violations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 15 day of May, 2018.



LETITIA H. VERDIN
Presiding Judge
Thirteenth Judicial Circuit

Greenville South Carolina

CLERK OF COURT
SOUTH CAROLINA

2018 MAY 21 A 8 34

WITNESSES

Khristy Crawford

Central Police Department

4/26/2012

ARREST WARRANT NUMBER

J466254

ACTION OF GRAND JURY

TRUE BILL

0000

SEP 11 2012

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 7/30/14

DOCKET NO. 2012-GS-39-1527
BMB

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

SEP 11 2012 TERM 2012

THE STATE

vs.

GARY CLIFFTON HAMILTON

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on
County present upon their oath:

SEP 11 2012 the Grand Jurors of Pickens

That GARY CLIFFTON HAMILTON did in Pickens County, between the dates of August 1, 2011 and August 31, 2011, commit a sexual battery on Minor [REDACTED], who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Bianca Batson
SOLICITOR

WITNESSES

Khristy Crawford

CENTRAL POLICE DEPT

4/26/2012

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

DOB: [REDACTED] 1957

SS# [REDACTED]

ACTION OF GRAND JURY

REC- [REDACTED]

Date

JUL 22 2014

[Signature]
Foreperson of Grand Jury

VERDICT

Guilty

Lynne Newton
Foreperson of Petit Jury

Date: 7/30/14

DOCKET NO. 2014-GS-39-^{BBH}

1485

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 22 2014

TERM 2014

THE STATE

vs.

GARY CLIFFTON HAMILTON

Indictment for

2468

LEWD ACT UPON A MINOR

VIOLATION § 16-15-140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on
County present upon their oath:

JUL 22 2014

the Grand Jurors of Pickens

That GARY CLIFFTON HAMILTON did in Pickens County, between the dates of August 1, 2011 and August 31, 2011, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of Minor [REDACTED], a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Brenda Hunter
SOLICITOR BAR # 77844

STATE OF SOUTH CAROLINA

COUNTY OF

Pickens

STATE

VS.

Gary Clifton Hamilton

AKA:

Race: WHITE Sex: M Age: 56

DOB: 1957 SS#: [REDACTED]

Address:

City, State, Zip: LIBERTY, SC 29657

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brandi Batson

77844

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 32 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS3901527

A/W#: J466254

Date of Offense: 8/1/2011

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

25-LIFE

☒ CONVICTED OF or ☐ PLEADS

Brandi Batson

77844

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 32 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

2 1 3 2

7 / 22 / 14

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

513

COUNTY OF
STATE

Pickens

VS.

Gary Clifton Hamilton

AKA:

Race: WHITE Sex: M Age: 56

DOB: -1957 SS#:

Address:

City, State, Zip: Liberty, SC 29657

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Hinton, Brandi Batson

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012 GS 39-1527
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2014GS3901485

A/W#: 2014GS3901485

Date of Offense: 8/1/2011

S.C. Code § : 16-15-140

CDR Code #: 2468

SENTENCE SHEET

0-15

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Hinton, Brandi Batson

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2012 GS 39-1527
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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§ 14-1-213 (Drug Court Surcharge)	\$150	\$
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§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2 1 3 7

Sentence Date: 7/30/2014