VOLUME I of II

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

RICHARD BURTON BEEKMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001012

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, PLAINTIFF, -VS- RICHARD B. BEEKMAN, DEFENDANT.	2009-GS-39-01404 and 01405 JULY 25-28, 2011 TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

JENNY BARWICK, ESQUIRE
ATTORNEYS FOR THE STATE

JOHN DEJONG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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JURY VOIR DIRE

Juror #	Name	Race	Sex	Strikes Court	Strikes Plaintiff	Strikes Def.	Accept
71	McJunkin, Fredrick S	W	M				x
20	Clardy, William M III	W	M				x
92	Radich, Andrew J	W	M				x
9	Bearden, Elizabeth G	W	F			x	
66	Mayorga, Maria E	W	F				x
80	O'Neal, Randall R	W	M				x
75	Moses, Joshua J	W	M			x	
54	Kaine, Thomas C	W	M		x		
52	Jackson, Stephanie M	W	F				x
73	Moody, Bonnie J	W	F			x	
41	Gillespie,Tammy L	W	F			x	
127	Williams, Todd T	B	M				x
126	Wilkerson, James M	W	M				x
97	Rhome, Jennifer M	B	F				x
86	Perry, Carolyn M	W	F			x	
76	Munson, Malcolm E	W	M		x		
100	Riggins, Lynn B	W	F			x	
59	Loftis, Mary C	W	F			x	
39	Frazier, Joshua A	W	M				x
101	Schallhorn, John A	W	M			x	
51	Ingle, Aaron K	W	M				x
24	Corn, Dianne H	W	F				x
90	Pruitt, Stephen S	W	M				x
69	McCollum, Zachery M	W	M				x
	7/26/11 - Alternate Jury Selection						

69	McCollum, Zachery M	W	M			x	
4	Ashes, Larry L	W	M				x
110	Stone, Loretta L	W	F				x

July 25, 2011

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

(WHEREUPON, State Exhibit Numbers 1 through 5 were marked for identification.)

THE COURT: Ladies and gentlemen, we're now ready to select a jury for the trial of the first case that we have. The State of South Carolina has brought a case against Mr. Richard Burton Beekman. That case involves child sexual abuse. He's entered a plea of not guilty. That places the burden on the State of South Carolina to prove his guilt beyond a reasonable doubt. Every person that's accused of a criminal offense in South Carolina is presumed innocent until such proof satisfies a jury of his guilt beyond a reasonable doubt.

Now, you and I are going to be judges in this case. I'm going to judge the law, decide what the law is that's applicable. We need to find twelve fair and impartial jurors to be judges of the facts in this case.

First of all, I need to ask you some questions to determine your eligibility to serve on this particular case. You've already been qualified to serve as a juror this week. But first of all, ladies and gentlemen, I need to know if of you have any prior knowledge about this particular accusation against Mr. Beekman. The allegations relate to a

time frame back in the summer of 2008 or somewhere before that. If you have prior knowledge about this through living in the neighborhood, hearing about it at the coffee shop or reading something in the newspaper or watching it on television or hearing it on the radio, if you have any prior knowledge from whatever source, would you please stand?

(No response.)

THE COURT: Thank you. There is no response.

Is there any member of the jury panel related by blood or marriage to Mr. Richard Burton Beekman? If so, would you please stand?

(No response.)

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

(No response.)

THE COURT: Several witnesses may be called upon to testify in this case. I'm going to read you the names of those witnesses, after which, I'll have some follow-up questions to ask you, ladies and gentlemen.

Among the witnesses who may be called to testify would be Dr. Nancy Henderson, Shauna Galloway-Williams, Deputy Cynthia Teddi Palis, Savannah Mauldin, Deputy Cory Baker, Ted Wheeler, Tina Aiken, Victim 2 [redacted], Victim 1 [redacted], Angie Gilstrap, Susan Nalley, Mike Lark, Susan Hendricks. Is

there any member of the jury panel related by blood or marriage to any of these potential witnesses? If so, would you please stand?

(No response.)

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

THE JUROR: Roger Brown. Officer Palis is the resource officer at Edwards Middle School.

THE COURT: And you work there?

THE JUROR: I'm a teacher.

THE COURT: All right. The fact that you see this Officer while you're working at the school, if this particular person does testify, would that create a conflict in your own mind as far as believability? Could you listen to all the evidence that you are presented with, could you decide the case on all the evidence, the law that I give you and that alone or do you believe that it would put you in a untoward position seeing the officer back at school or otherwise if you were the juror that served on this particular case? Do you believe you could you could be fair to both sides?

THE JUROR: Yes, sir.

THE COURT: You could be fair to the State and you

could be fair to the Defendant if you were called upon to serve?

THE JUROR: Yes, sir.

THE COURT: Thank you. You may be seated, sir.

Is there any member of the jury panel who is a contributing member of any organization whose primary concern is the promotion of law enforcement or of victim's rights, such as the Sheriff's Association or MADD, SADD, CAVE, or PARR, any organizations that deal with victim's rights or with law enforcement? If you're a contributor, would you please stand?

(No response.)

THE COURT: Thank you. There is no response.

Is there any member of the jury panel or a member of your immediate family who is involved in law enforcement in any way? If so, would you please stand? Yes, sir, your name, please?

THE JUROR: Joe Dukeshier.

THE COURT: And what relative do you have in law enforcement?

THE JUROR: I have a brother who's in the FBI.

THE COURT: Okay. Where is he assigned?

THE JUROR: Seattle, Washington.

THE COURT: Do you have any other relatives?

THE JUROR: Not in law enforcement.

THE COURT: Just him? The fact that you have a brother that works in law enforcement, if you're called upon to serve as a juror, would that relationship affect your ability to be a fair juror? The State of South Carolina and the Defendant in this case, they desire to have fair jurors who can make a decision based on the evidence that takes place in this courtroom, the law that I give you and that alone. If you believe you could not be a fair juror because of this relationship with your brother, then we have other jurors who can serve. Do you believe you could be fair to both sides?

THE JUROR: Yes, sir.

THE COURT: Thank you, sir. You may be seated.

Is there any member of the jury panel related by blood or marriage to any person employed in the Office of the Solicitor in the Thirteenth Circuit in Greenville or Pickens County? If you have a relative in the Solicitor's Office, would you please stand? Thank you. Yes, sir.

THE JUROR: Robert Nealy.

THE COURT: Yes, sir. Your Name, please?

THE JUROR: Josh Moses.

THE COURT: And what relationship?

THE JUROR: He's my uncle.

THE COURT: He's your uncle? All right. The fact that you have an uncle who works in the Solicitor's Office,

would that affect your ability to be a fair juror?

THE JUROR: No, sir.

THE COURT: You could be fair to the State and you could be fair to the Defense and render a verdict that would speak the truth?

THE JUROR: Yes, sir.

THE COURT: All right. Thank you, sir.

Is there any member of the jury panel or a member of your immediate family who has worked in the last five years for the South Carolina or the Pickens County Department of Social Services? If you or a member of your immediate family have worked for the DSS in Pickens County in the last five years, would you please stand?

(No response.)

THE COURT: Thank you. There is no response.

Does any member of the jury panel or a member of your immediate family work for the South Carolina Guardian Ad Litem program? If you or a member of your immediate family work in that program, would you please stand?

(No response.)

THE COURT: Thank you. There is no response.

Is there any member of the jury panel who has have been accused or charged with a crime against a child, a sexual assault or any type of an assault or is there any member of the jury panel who has ever been the victim of any such

offense, either you or a member of your immediate family. If you have been accused of a sexual assault or any type of assault or a crime against a child or if you've been the victim thereof or a member of your family, would you stand, please? Yes, ma'am. Your name, please?

THE JUROR: Ashley Phillips.

THE COURT: Was it a member of your family or you that was either the victim or accused?

THE JUROR: I was a victim.

THE COURT: You were a victim? When you were a child or as an adult?

THE JUROR: As a child.

THE COURT: Would the fact that you have had this in your past, would that affect your ability to be a fair juror in this case?

THE JUROR: I think so.

THE COURT: You believe it would? Thank you. I'll excuse you from this case. If you'd just be seated right now. Thank you, ma'am.

Your name, please?

THE JUROR: Deborah Limbaugh.

THE COURT: Okay. Was it you or a family member?

THE JUROR: Siblings.

THE COURT: Two of your siblings?

THE JUROR: That's correct.

THE COURT: As children?

THE JUROR: As children.

THE COURT: All right. The fact that they were assaulted, would that affect your ability to be a fair juror?

THE JUROR: It really would.

THE COURT: Thank you, ma'am. You may be seated. Your name, please, ma'am, again?

THE JUROR: Deborah Limbaugh.

THE COURT: Thank you, ma'am. Yes, ma'am, your name, please?

THE JUROR: Louise Barbrey.

THE COURT: And was it you or a member of your family who was the victim?

THE JUROR: Yes.

THE COURT: Would that affect your ability to be a fair juror?

THE JUROR: I'm afraid it would.

THE COURT: All right. Your name, please?

THE JUROR: Mary Loftis.

THE COURT: Excuse me. Your name, please?

THE JUROR: Louise Barbrey.

THE COURT: Thank you, ma'am. You may be seated. I'll excuse you from this case. Yes, ma'am.

THE JUROR: I apologize. I'm sorry. Mary Loftis.

THE COURT: All right. Were you the victim or were you accused?

THE JUROR: I was the victim.

THE COURT: All right. Would that affect your ability to be a fair juror?

THE JUROR: No, sir, it wouldn't.

THE COURT: How long ago did this occur?

THE JUROR: When I was a child.

THE COURT: Okay. So if you were selected as a juror, you could be fair to both sides and listen to the evidence and make a decision on these facts and this law and set aside anything that happened to you in the past. Is that correct?

THE JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Again, your name, please?

THE JUROR: Mary Loftis.

THE COURT: All right. Thank you. You may be seated. You're qualified.

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

(No response.)

THE COURT: Is there any member of the jury panel aware of any bias or prejudice that would interfere with

your ability to be a fair juror in this case if you were selected? If so, would you please stand?

(No response.)

THE COURT: At this time, I'll ask the attorneys if you would please stand, introduce yourself to the jury. Ms Barwick.

MS. BARWICK: Good morning. My name is Jenny Barwick and I represent the State of South Carolina and I work for the Thirteenth Circuit Solicitor's Office.

THE COURT: Mr. DeJong.

MR. DEJONG: May it please the Court. I'm John DeJong. I practice law here in Pickens County. I have the pleasure of representing Mr. Beekman today. Also seated at counsel table with me is Mr. Johnny Duncan. He is my investigator.

THE COURT: Is there any member of the jury panel related by blood or marriage to either of these attorneys? If so, would you please stand?

(No response.)

THE COURT: Is there any member of the panel have a close business, a social or a personal relationship with either of these attorneys? If so, would you please stand?

(No response.)

THE COURT: Is there any member of the jury panel ever been involved in any litigation in which either of

these attorneys either represented you or represented the opposing side? If so, would you please stand?

(No response.)

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

The State of South Carolina and Mr. Richard Burton Beekman are the parties in this case. Each of them desire to have fair and impartial jurors to hear this case. They deserve to have fair and impartial jurors to hear this case. Is there any member of the jury panel aware of any reason whatsoever that you believe you could not be fair in this particular case, to listen to the evidence that's presented, to relate the evidence to the law that I give you, make a decision that would speak the truth on the law and the evidence and that alone. If for any reason you believe you could not be a fair juror in this case, would you please stand? Thank you. There's no response.

Any other questions from the State?

MS. BARWICK: No, sir, Your Honor.

THE COURT: From the Defense?

MR. DEJONG: Your Honor, may we approach?

THE COURT: Yes, sir.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the Bar.)

MR. DEJONG: Nothing further on behalf of Mr. Beekman, Your Honor.

THE COURT: All right. Ladies and gentlemen, let me explain to you what's going to happen now. Some of the jurors have been excused from jury service. We're going to randomly have our computer select an order in which the jurors will be selected now. The Clerk will explain to you the process. When your name is called, the law allows each side to have strikes or eliminations to select a jury that they feel would be the best ones to serve on this particular case. So with that in mind, we will now select our jury.

THE CLERK: As I call your name if you would, please, come and stand right in front of me and face the attorneys. And at that time, I'll be asking you what the State wants to do, if they want to strike you or select you and then I'll go to the Defense.

So we'll go ahead and get started with juror number 71, Fredrick S. McJunkin. Come right here, sir. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Okay, sir. If you would, have a seat in the jury box over here.

Juror number 20, William M. Clardy, III. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Sir, if you'd have a seat in the jury box.

Juror number 92, Andrew J. Radick. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box, please, sir.

Juror number 9, Elizabeth G. Bearden. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: If you will return to your seat, ma'am. Juror number 66, Maria E. Mayorga. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Ma'am, if you would, have a seat in the jury box.

Juror number 80, Randall R. O'Neal. What says the State?

MS. BARWICK: Please present the juror.

MR. DEJONG: What's the number again, please, Mr. Clerk?

THE CLERK: 80.

MR. DEJONG: 80?

THE CLERK: 8-0.

MR. DEJONG: Thank you, sir.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Sir, if you would, have a seat in the jury box.

Juror number 75, Joshua J. Moses. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat, sir.

Juror number 54, Thomas C. Kaine. What says the State?

MS. BARWICK: Please excuse this juror.

THE CLERK: You can return to your seat, sir.

Juror number 52, Stephanie M. Jackson. What says the State?

MS. BARWICK: Please present this juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Okay. If you would, have a seat in the jury box.

Juror number 73, Bonnie J. Moody. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat.

Juror number 41, Tammy L. Gillespie. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat.

Juror number 127, Todd T. Williams.

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box. Thank you.

Juror number 126, James M. Wilkerson. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box.

Juror number 97, Jennifer M. Rhome. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box.

Juror number 86, Carolyn M. Perry. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

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

Juror number 76, Malcolm E. Munson. What says the State?

MS. BARWICK: Please excuse the juror from the trial of this case.

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

please, sir.

Juror number 100, Lynn B. Riggins. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat, ma'am.

Juror number 59, Mary C. Loftis. What says the State?

MS. BARWICK: Please present this juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat, ma'am.

Juror number 39, Joshua A. Frazier. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Sir, if you would, have a seat in the jury box.

Juror number 101, John A. Schallhorn. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: You may return to your seat, sir.

Juror number 51, Aaron K. Ingle. What says the State?

MS. BARWICK: Please present this juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box.

Juror number 24, Dianne H. Corn. 24. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box, please, ma'am. This will be for the first alternate.

Juror number 90, Stephen S. Pruitt. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box. This is for alternate number two.

Juror number 69, Zachery M. McCollum. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: If you would, have a seat in the jury box.

THE COURT: Any matters we need to take care of as far as the selection of the jury in this case? From the State?

MS. BARWICK: No, sir, Your Honor.

THE COURT: From the Defense?

MR. DEJONG: None on behalf of Mr. Beekman, Your Honor.

THE COURT: Ladies and gentlemen who were not selected for the trial of this case, I can excuse you for the day. Please call back tonight after six o'clock. You have been furnished a number to call. There will be a message on that answering machine for you as to when you need to either report back or call back in. Thank you for your patience with us today. You're excused at this time. Everyone else, please remain seated while the jury departs.

(WHEREUPON, the jury panel exited the open court at approximately 11:21 a.m.)

THE COURT: Ladies and gentlemen, you've seen the process by which you were selected by these attorneys. I look forward to working with you. I, again, realize the

sacrifice that you're here -- that you're making to be here. We're going to try to utilize your time wisely and not have you sitting around when you don't need to be. Sometimes that will happen and I'll try to explain to you what we're doing so you're well informed as to what is taking place.

You're going to be judges in this case. You're going to be judges of the facts. I'll be wearing the black robe, but you're going to be every bit as much judges as I am. You may have a little bit of concern about this title I've bestowed upon you. You may have some concern about where you find yourself now seated. You answered your summons to jury service. You may never have served as a juror before. You assembled with everyone else, and now you find yourself sitting in a jury box being titled a judge, and you may be thinking to yourself, well, I'm not qualified to be a judge. I don't have any background whatsoever in the law. I've never served as a juror. I've never been a party to a case. I've never signed a contract even, and I certainly never have taken any law ed courses or anything of that nature. I assure you, ladies and gentlemen, that every skill you need to be a judge of the facts, you bring into this courtroom. Because into this courtroom you're bringing the everyday experiences that you enjoy in the workforce and the home, in social activities and other things that you do with your life. You're bringing into this courtroom the good common

sense with which you've been blessed. That's going to be utilized by you as you listen to witnesses, as you examine any evidence that's presented, decide the truthfulness thereof and you're going to be well qualified to be judges of the facts. You've committed to these parties to be fair and impartial, and to render a verdict that will speak the truth.

Now, I'm going to be the judge of the law. I'll explain the law to you when the case is over and concluded. And with that law and the facts that you have been presented, you'll be able to reach a good solid decision, I'm confident.

Part of my job as the judge of the law is to conduct the trial of the case. We'll take periodic breaks as the case develops. Normally, when a witness is called to testify we would break every hour, hour and a half at the most. Obviously, you're going to be charged with being a good listener. Your comfort is vitally important because if you're not able to listen because of uncomfort in anyway, then you're not going to be able to fulfill your job. So if at any time we haven't taken a break and you need a break, please get my attention. Let me know. If you can't get my attention, we have these bailiffs here to serve you. To your right is Mr. Smith. He's at the door. He'll certainly be able to help you in anyway that he can. We have Mr.

Lewis behind me. Mr. Teal over to your left. They'll certainly be able to assist you in any way that they can. You've had a chance already to meet our fine Clerk of Court, Mr. Pat Welborn. He'll be in and out of the courtroom, taking care of other matters, I'm sure. If he's not here, his able assistant, Ms. Garrett, will be here. The young lady seated directly in front of me is Ms. Danette Hanks. She's the court reporter. She's going to take down everything that's said, everything that's done during the trial of this case. She'll keep a record. She'll mark any exhibits that may be offered into evidence and so forth. She's a valuable asset. She'll certainly help you in any way she can, along with the young man seated behind me, is Lindsay Builder, a recent law school graduate. He's my law clerk and he'll be able to help you anyway that he can. If you need to get my attention to whatever your need may be.

Normally, we'll start about nine o'clock in the morning and we'll take a morning break and break for lunch. Start back and then have an afternoon break and hopefully finish up by five, five-thirty. Sometimes it may run a little long if there's a witness testifying, but we will certainly try to keep you informed of those schedules.

Trials take place in stages. Normally, the attorneys will want to make an opening statement to you. They'll give you an overview of what they feel is important about the

case, the principals and evidentiary matters that you need to be alerted to. After that, there will be witnesses who will come and testify under oath. They'll be sworn in. They'll be examined and cross-examined by the attorneys. Sometimes in the course of the evidence, a document, a statement, a question, there may be an objection made by one attorney or the other. They've been trained, of course, in legal procedures and evidentiary rules and otherwise, and part of my job is to rule upon those objections that are made. I can frequently just rule from the bench, sustained or overruled, and we can move on to the next question or the next exhibit. Sometimes, as you've already seen already today, I may call the attorneys up to the bench here. We can whisper and hopefully resolve an objection or a dispute or do some planning that we might need to do as far as utilizing your time wisely. Sometimes there may be an objection made, there may be a point in the trial at which we have a legal matter that needs to be taken care of. When those events take place that I need to rule upon, it might be necessary for you to leave the courtroom, go back to your jury room. Sometimes when we have legal matters that are before me, I have to get a law book out and study it or hear some testimony that wouldn't even be normally presented to a jury. I may need to hear the argument of the counsel. I want to make the very best decision I possibly can being the

judge of the law. I want to listen to what I need to listen to and make that decision that I hope is wise and under the law.

You want to do the same thing as your fact-finder duty. You're going to ultimately decide the facts after all the evidence is in. You're a judge like I am, but when you're back in your jury room deliberating, I'm not going to be back there with you giving you my ideas of the facts. Because I don't have an idea about the facts. The law of South Carolina prohibits me. The Trial Judge can't state anything about the facts. I have no opinion at all about the facts. That's why we have jurors to decide the facts. So while I won't be back there with you in your deliberations, sometimes when I'm discussing those matters, you won't be with me. I hope you understand that.

After all the evidence is in, the attorneys will again have a chance to address you in their closing. After that, I'll instruct you on the law and the case will be yours to decide. I don't know how long this case may take. I'm confident it won't take beyond this week, if that much. We have two alternates who have been selected just in case if some emergency were to come up or an illness befall one of your jurors, the first twelve that were selected, these alternates can step right into your shoes. They'll be every bit as much a part of the trial as anyone else. They're

going to be able to help us so that we wouldn't have to start the trial all over again if we were to lose one of the first twelve that were picked. So they'll occupy those seats in the alternate chairs throughout the trial.

It's very important that you not discuss the case with anyone while the case is going on, even with each other. It's not proper for you to be back in your jury room speculating on, well, wonder who the next witness is going to be or what did you think of that testimony so far? That would be against the oath that you will take because your job is to decide the evidence after all the evidence is in. So while the trial is going on, it would be improper for you to talk to each other, to talk to anyone else about this case. We'll take a lunch break soon and while you're out and about at lunch, you may have lunch with your fellow jurors, you may get with some business associates or family members and have lunch, and obviously, those folks are going to be curious. They know you have jury service this week. They're going to want to know, well, did you get picked? And what's the case about, those kind of things. Well, let me tell you what I have heard about this or what I know about that. That would be improper. You need to maintain the purity of the process. You've made a commitment already to these parties in their selection that you're going to be fair and impartial and you're going to make a decision on

what takes place in this courtroom and not at the restaurant or at your home or talking to family or friends or business associates. If someone talks to you or tries to talk with you, then you just tell them, I'm a juror. I can't talk about the case. You'll have a chance, ladies and gentlemen, when this case is over and completed to share your experiences with loved ones and friends, but while the case is going on, you need to make sure that you don't have any influence from anyone.

I don't know that there'll be any press coverage or things in the newspaper and so forth, you should refrain from listening to any TV reports or radio or read anything in the newspaper. By the same token I'll explain to you, furthermore, you should not be doing any kind of independent research. Often, we're curious by nature and while you're out on breaks or overnight, you want to check out the library or do some archives or get on the internet and check, that would be improper and against the oath that you've taken. Our Chief Justice has issued an order that all Trial Judges will tell jurors that that's against the law for you to do that. You are committing to the State of South Carolina and to the Defendant in this case to well and truly try a case based on the law and the evidence and that alone, and that's what takes place in this courtroom. So I don't say that to tempt you in anyway, but I say that to

emphasize the importance of what commitment you've made, that you're going to decide this case not on riding by the scene or checking something out or looking up a word that you weren't quite sure of in the dictionary or otherwise, that would be improper for you to do during the course of this trial.

As we come and go and you have lunch breaks and otherwise, you may see the attorneys in the hallway or get in the elevator with them. These attorneys are friendly by nature, but their training leads them to make sure they don't show any appearance of any impropriety, talking with a juror, even though it may be harmless and innocent discussion about the weather or otherwise, if they are seen talking to a juror then that might be interpreted wrongly, so they're going to perhaps avoid you. Don't think they're high-hatting you or trying to be uppity in anyway, they're not -- that's not they're nature. They want to make sure, however, that the process does not have any infringements whatsoever during the course of the trial.

Only after all the evidence is in, as I've stated, will you then have a chance to talk about the case, one with another.

I understand from the attorneys that there's some legal matters I need to work out before we actually start the testimony in this case. Hopefully, this will allow us to

expedite the trial so that we don't have to take -- sometimes it happens and we have to take little law breaks as it were, but hopefully in the next couple of hours we're going to be able to get those things ironed out so that when we start the case with the opening statements and the first witness, it'll run smoothly. So I'm going to give you an extended lunch break, ladies and gentlemen. We're going to be ready to start back at two o'clock. We've got some matters we need to take care as far as perhaps marking some exhibits and otherwise that we're going to do. And then we're going to have a bite to eat as well. But we'll be ready to start the actual trial of the case at two o'clock. I'm going to ask you if you would go with Mr. Teal now. He'll explain to you where you are to report back when you come back at two and where your jury room is located and how to get into the courthouse. Have a good lunch, ladies and gentlemen. I'll see you back at two o'clock.

(WHEREUPON, the jury exited the open court at approximately 11:37 a.m.)

THE BAILIFF: The door's closed, Your Honor.

THE COURT: All right. Let's take about a ten-minute break and we'll be ready to start with whatever we ---

MR. DEJONG: Your Honor, may we go ahead and address -- well, you haven't sworn the jury. I'm sorry.

THE COURT: Yeah.

MR. DEJONG: My error.

THE COURT: Yeah. I did that purposefully. We'll swear them when they come back.

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

THE COURT: If I could see the attorneys over here by the court reporter, just for a moment. One of the jurors has got a problem. I don't know what it is. If you would have the juror come out.

(WHEREUPON, the juror entered the open court.)

THE JUROR: Yes, sir.

THE COURT: I understand you have a problem?

THE JUROR: Yes, sir. And I probably should have spoke up when you asked if this type situation had happened to you or a sibling or something like that. I figured it would matter.

THE COURT: It did happen?

THE JUROR: Yes, sir.

THE COURT: But you didn't tell me?

THE JUROR: Yes, sir. And I do apologize for that. Like I said, I didn't think it was going to weigh that hard on me.

THE COURT: What if we didn't have an alternate, what are we going to do then? You can't be a fair juror in

this case then?

THE JUROR: I don't believe so, no, sir. I do apologize sincerely for that.

THE COURT: You've just got to let folks know now. Okay. What's your name?

THE JUROR: James Wilkerson.

THE COURT: Okay. Thank you. Just go back to the jury room just for a minute. Okay? Then we'll let you know what we're going to do then. Thank you.

MS. BARWICK: He was probably a little embarrassed to say something like that too.

THE COURT: I guess so.

MR. DEJONG: I can't quite figure out if he had been a victim or a sibling had.

THE COURT: A sibling had. We'll just excuse me. I'm confident he didn't talk to any of the other jurors, because they all got dismissed and we sequestered him.

MR. DEJONG: I'm not going to raise an issue over that because I don't think he's had any time to talk to any of the jurors. He hung back.

MS. BARWICK: So we'll get one of the alternates.

THE COURT: We'll have one alternate. So by consent we're striking him.

THE COURT: All right. Before we get into the motions that we have, it was on the record, one of the

jurors has been excused. Is there any objection from either side, that if the Clerk or the Assistant Clerk selects randomly one of the alternates. I understand the law would be that they're selected by ballot under 14-7-1340. Any opposition to the Clerk picking one of those randomly?

MS. BARWICK: Not from the State.

MR. DEJONG: Nothing on behalf of Mr. Beekman, Your Honor.

THE COURT: All right. If the Clerk would just either by computer or by a ballot, put two names in a cup and pick one out and we'll need to know which one is going to be serving as a juror now and which will be the alternate.

All right. How many motions do we have and what do we need to -- I guess, the motion -- I understood from the bench we have a motion to severe.

MR. DEJONG: Your Honor, that would be the Defendant's first motion. I see Ms. Hamaker rising to her feet. I'm not sure what's going on now.

MS. BARWICK: Your Honor, Ms. Galloway-Williams, I'd like to get her testimony out as far as the admissibility of Victim 2 [redacted]'s forensic interview tape so that she could be on with her day.

MR. DEJONG: Well, I -- Your Honor, I will concede that at the time that interview was done he was under twelve

years of age. Obviously, for them to get it in, the alleged victim has to testify. My objection to the video doesn't go so much as to the video because -- not that I like it, but that both the Court of Appeals and the Supreme Court have both ruled on that numerous issues about the forensic video coming in. The problem I've got with the ...

Well, let me back up just a moment. Let me take care of one housekeeping matter. Obviously, Your Honor has not heard the motion to severe yet, but I don't know that this particularly hinges on that. There are two charges, that being indictment 2009-GS-39-1404, I believe that charges Mr. Richard Burton Beekman with lewd act on a child. That child, at the time, both at the alleged offense and of the forensic interview, was twelve years of age, Your Honor. It is my understanding, according to the State statutory law, that that tape cannot come in period. I think Ms. Barwick agrees with that, but for the record I would like that to be perfectly clear, Your Honor.

THE COURT: Agreed?

MS. BARWICK: I do agree that her video does not get to come in.

THE COURT: Okay. So we're only talking about the young man's video?

MS. BARWICK: Yes, sir, Your Honor.

THE COURT: All right. That's ...

MR. DEJONG: And now I have to back up and say if -- I'm not conceding these two -- well let me back up.

2009-GS-39-1405 charges Richard Burton Beekman with criminal sexual conduct with a minor in the first degree. That is the allegations that arose from the eight-year-old. The problem I have, Your Honor, with the forensic video is, during the course of that video, the eight-year-old alludes to inappropriate touching or bad acts that were done or alleged to have been done towards his sister. As I understand the discovery in this case, and I'm sure Ms. Barwick will correct me if I'm wrong, but as I understand the discovery in this case, the eight-year-old, the alleged victim under the CSC first with minor, had no independent knowledge of the allegations of the twelve-year-old girl until after the fact. So there was no -- as I understand it, no independent knowledge of what the allegations were as to what Mr. Beekman did -- allegedly did to the twelve-year-old. Those statements, Your Honor, at best, could only be based on hearsay, what the eight-year-old heard after the fact, number one. Number two, and again, I'm not sure if we're trying both of them or not. But if we are trying either way, separately or apart, that is a means of bolstering the testimony, in my opinion, of the twelve-year-old female child. And I would submit to the Court that is impermissible bolstering.

As to the forensic interview, and again, not that I agree with it, but nonetheless, it has been ruled on, but the forensic interview as to what occurred to the eight-year-old to my understanding that would be admissible. With the exception -- well, two exceptions, actually. But the first exception, the one I'm arguing now is that there should not be any allegations by the eight-year-old in the forensic video as to what transpired between Mr. Beekman and the twelve-year-old victim. Because as I indicate, number one, my understanding, there is no independent knowledge. And number two, it could only be based on hearsay. And, as a result, it would certainly be bolstering, in my opinion, Your Honor.

THE COURT: All right. Solicitor, I'll be glad to hear from you in response to that objection.

MS. BARWICK: Your Honor, I just want to make sure I'm straight on this. You're not objecting to [redacted]'s video. You're objecting to portions of his video?

MR. DEJONG: That is correct.

MS. BARWICK: Okay. To address Mr. DeJong's concerns, Your Honor, [redacted] makes mention, I believe it's twice in the video, when Ms. Galloway-Williams says, do you know why you're here? [redacted] said, because of what Rick did to me and my sister. And the second mention of it is when Ms. Shauna Galloway-Williams asked [redacted] well, what

made this stop? He said, he did it -- Rick did it to my sister and my sister told. So as far as hearsay, it's not, it's not for the truth of the matter asserted, Your Honor. Victim 2 said those things to explain why he was there to give the interview, and he said that to explain what made the Defendant stop doing this to him.

THE COURT: Is that the only two references that you're aware of, Mr. DeJong?

MR. DEJONG: I believe that is accurate, Your Honor. I've watched the tape twice. I tried to watch it over the weekend, but the copy I got wouldn't play on my -- well, it would play but the sound was less than sterling, shall we say. And I couldn't really hear it yesterday, Your Honor.

THE COURT: All right. Did you have another objection?

MR. DEJONG: I do, Your Honor.

THE COURT: What's that?

MR. DEJONG: The other objection I have, we did a 404(b). There are allegations that arise on the tape as to what I would say would be 404(b). The allegations of the criminal sexual conduct first degree with a minor are allegations of anal -- of basically anal intercourse, certainly anal penetration. There were allegations, I believe, on the tape of two or three other times where the

eight-year-old alleges that Mr. Beekman either touched the eight-year-old's penis, pulled on his penis or his scrotum. That's not particularly clear. Another time where Mr. Beekman had, according to the alleged victim, the eight-year-old, had him touch Mr. Beekman's penis. And I think Ms. Galloway-Williams asked him how it felt. He said, gushy, was his quote. I would submit, Your Honor, that those should not come in either on the tape or by independent testimony under 404(b). Basically, 404(b) is common scheme or plan, motive, mistake and I don't know that I've named all of them. I'm going off of the top of my head. The only remote thing that they could use that for would be common scheme or plan, in my opinion, but I don't see even under 404(b), the cases that come out of 404(b) and the grandpa of 404(b), *Lyle*, that that would indicate any common scheme or plan. They are merely allegations that something happened.

There was certainly no indication, as I understand it, that any of those allegations, be it two or three, that there was any attempt of any penetration of any kind. I don't see how you make the quantum leap from allegations of touching to allegations of anal intercourse. I don't see any similarities there. The only similarities I would see, if that's the basis we are using -- and the Court of Appeals and the Supreme Court sometimes talk about similarities

under 404(b) and *Lyle*. Sometimes they talk about other things. But even if we wanted to talk about similarities, the only similarity, as I see it, Your Honor, would be that the allegations occurred between the same victim and the same Defendant. Certainly nothing beyond that to show any kind of common scheme or plan.

The times and places of those -- as I recall, there is no time element whatsoever, other than the allegation that it occurred while the eight-year-old was eight years of age. I believe he turned eight in November of 2007, and that he made these allegations in July of 2008. So as to common scheme or plan, there's no time frame. The only -- well, there's no time frame at all, other than the alleged victim says he was eight at the time. The only other thing, he said it happened at Rick's house where the alleged victim, Rick and the alleged victim's mother lived at that point in time. So I would move that that not come in either under the video or by independent testimony, Your Honor.

THE COURT: Solicitor, I'll be glad to hear from you on the objection of -- I guess the thrust of the objection is it's too great a leap to go from touching to anal intercourse.

MS. BARWICK: I guess what Mr. DeJong's arguing is that he does not want the admission of prior bad acts into evidence through the forensic video tape. Your Honor, I

apologize that the State didn't hand up its memo to you until this morning, but the State did write Your Honor a memo, and Mr. DeJong does have a copy, talking about it's entitled to evidence of Defendant's prior bad acts. Your Honor, in that memo the State lists seven similarities between the incidents of the Defendant touching the victim or forcing the victim to touch him, and then the actual penetration.

Well, similar number one is the Defendant touched Victim 2 twice on Victim 2's genitals by using his hands and placing it under Victim 2's clothing. The Defendant forced Victim 2 to touch the Defendant's genitalia. The final act of abuse occurred when the Defendant inserted his penis into Victim 2's anus. All incidents of abuse occurred in the Defendant's bedroom and on the Defendant's bed. At least two of the incidents of abuse occurred while the news was on the TV in the bedroom. Victim 2 was prepubescent during all of the incidents and he was eight, according to the forensic interview, during all of the incidents. And the incidents all occurred when the victim's mother and sister were not in the home and the Defendant was left to be alone with him.

Your Honor, in *State versus Clasby*, my memo further talks about each of the incidents establishes a pattern of escalating abuse, which ultimately culminated in digital penetration. That's the *Clasby* case, Your Honor. And the

citation for that is 385 SC 148. That's basically what happened here. All the incidents were leading up to the actual penetration. In the *Clasby* case if you go through the factors, Your Honor, their factors of similarities are much smaller than the manner of similarities we have in this case.

THE COURT: How do you distinguish *Clasby* from the present case, Mr. DeJong? I think you're familiar with the *Clasby* case.

MR. DEJONG: I'm sorry. I didn't get the cite, Your Honor.

THE COURT: The cite is ---

MR. DEJONG: Is that *Clasby*?

MS. BARWICK: Yes.

THE COURT: 385 148.

MR. DEJONG: I'm very familiar with the *Clasby* case, Your Honor.

THE COURT: All right. I knew you were. So how does that -- how do you distinguish that case from this case?

MR. DEJONG: Well, I think -- the part I have, you know, they say escalating. We have a seven or eight month span in here where we don't know what time element we're talking about. I don't remember if *Clasby* really talked about a time element or not. I know that there was

certainly allegations of touching and Clasby was ultimately convicted of a lewd act, not on the CSC. But that case -- can I see that case for just a moment, please? I apologize, Your Honor, I'm not ganging on Ms. Barwick with -- well, not necessarily distinguishing with -- but the Solicitor asserts that these incidents established an escalating pattern of abuse that eventually culminated in criminal sexual conduct in the first degree. I would make my same argument here that apparently I made in *Clasby*. I don't see anything in *Lyle* that says they can use *Lyle* -- excuse me -- 404(b) to say escalating -- what they call an escalating pattern. I don't see anything in 404(b) that says you can use it for an escalating pattern. Now, apparently, the Court of Appeals or Supreme Court -- who did this one?

MS. BARWICK: The Supreme Court.

MR. DEJONG: The Supreme Court did do that. ... agree with me in this case, but again, I just do not see where you can use that. Now, they really didn't -- I'm glancing through this case very hurriedly, and I thank Ms. Barwick for highlighting it for me. They get into a footnote there that said, where there's a close degree of similarity between a crime charged and a prior bad acts, both this Court and the Court of Appeals have held prior bad acts are admissible. Well, you've got to say what it is. Why are you trying to introduce it?

Again, I still submit, Your Honor, that escalating pattern, what something happened and it's going to escalate that finally may or may not culminate in anything else, 404(b) does not address that. 404(b) says common scheme or plan, and if you go back and read *Lyle*, which we're not going to go through all the litany of cases on 404(b) and *Lyle*, because they are impossible to reconcile. But if you go back to that, the common scheme or plan is more along the lines, if I steal a car in Greenville and I use that car and I go to Georgia and rob a bank, that's part of the common scheme or plan.

But in this case, I don't see where there are allegations of prior touching that that has anything to do with the prior scheme or plan where you have touching in incident or more than one incident, and then it goes to allegations of anal intercourse. I don't see the common scheme or plan. I don't even see the similarities. You might, you know, under some grand great umbrella you can say, well, it's all of a sexual nature. Yes, you could, and certainly they would be if you took all of those allegations as being true. But nonetheless, I don't see that you can say a touching leads to anal intercourse and I don't think it's appropriate under 404(b).

THE COURT: If the analogy was that the perpetrator stole change out of the piggy bank, ultimately

leading to withdrawing money from the savings account at the bank, would that be a bad analogy?

MR. DEJONG: Well, I'll accept Your Honor's analogy, but it would be the same thing. As a kid, I shoplift bubble gum and then I go -- well, let's not make it a kid. Let's say I'm seventeen, I shoplift bubble gum and then I go rob a bank, are we saying that because I steal bubble gum when I was seventeen years old and go rob a bank when I'm twenty-four years old, that's a common scheme or plan? Now, that's a bigger time frame in there, but certainly I don't see that it's a common ---

THE COURT: But isn't the allegation that the bubble gum was being stolen from seventeen to twenty-four?

MR. DEJONG: Well, I ---

THE COURT: Rather than at seventeen and then at twenty-four. It was just a continuous process of stealing and that then became the ultimate theft?

MR. DEJONG: Even at that then, Your Honor, any time we try a grand larceny, let's say there have not been convictions but every time there has been a larceny, be it change from a piggy bank, from whatever, Your Honor, we're going to say we can *Lyle* all of that in under common scheme or plan or because it's an escalating pattern? I don't think escalating pattern and common scheme or plan are the same thing.

THE COURT: But doesn't the case law in these cases, particularly, talk about the escalating plan? And, again, I guess you're saying that I need to rule against precedent that maybe you think *Clasby* was not decided under *Lyle*, under the standard that *Lyle* should have been under 404.

MR. DEJONG: Even if you look at all 404(b) cases, Your Honor, you cannot in anyway possibly reconcile all those decisions. Some of them would say -- I think what I hear Your Honor saying that there precedent stands for this particular principal that the State is arguing others do not. So, I don't know. But, again, just getting to the similarities, I mean, he wore the same color shirt. Is that a sufficient similarity?

THE COURT: Right. Well, and I know it's a continuum that the Court has asked us to evaluate those factors. Any other motions from the Defense?

MR. DEJONG: Yes, Your Honor.

THE COURT: All right. Anything else relating to the videotape now?

MR. DEJONG: Nothing else related to the videotape, Your Honor.

THE COURT: And, again, on this second objection, that was relating to what the child said about the anal intercourse?

MR. DEJONG: It would be a two-pronged. It would go to the video and it would be basically a motion in limine on the testimony that that would be the -- that portion of the tape, not as to the anal intercourse but as to this alleged inappropriate touching that occurred, I don't know when, prior to the anal intercourse.

THE COURT: Well, let's just -- before I hear your other motions, focusing on the tape, I understand under the statute that I've got to make a decision before the tape is admissible, not only on your objections but otherwise, as to the factors that were followed there by the interviewer. Do you see any -- I can look at the videotape during lunch. Is there any need for testimony from the forensic interviewer that you believe would -- that I need to evaluate going through the other factors?

MR. DEJONG: I think you can evaluate that on the tape itself, Your Honor.

THE COURT: Okay.

MR. DEJONG: And I think that's what it would have to be evaluated on, not testimony of the interviewer at this point in time.

THE COURT: Okay. So as far as Ms. Galloway-Williams being available now, she might not -- I will look at the tape. I think I'm almost required to, to determine whether there was leading questions and so forth before it's

admissible, to at least look that over myself. So if we don't need her testimony then perhaps she could be excused if she's waiting for us. I don't know when she might need to be back this afternoon, but I know, Ms. Barwick, you had some concerns about her delay.

MS. BARWICK: Yes, sir, Your Honor. If you feel that by watching the video alone you'll be able to make the determinations under the statute.

THE COURT: Well, I gather from Mr. DeJong that he was not questioning her expertise in other ways or her training. If he does have those arguments then we can hear those after I look at the videotape. I don't see any need for testimony unless the Defense feels like I need to hear her testimony before viewing the tape?

MR. DEJONG: I think you can watch the tape. If the expertise is an issue, then you can certainly withhold your ruling on that until we get to that.

THE COURT: Right. Okay.

MR. DEJONG: I don't think, prior to Your Honor watching the tape, there's any need for her to testify.

THE COURT: Okay. All right. What other motions do you have, Mr. DeJong?

MR. DEJONG: Your Honor, I would move to sever these two indictments. They are on the trial docket to be tried together. Ms. Barwick has given me a copy of a

memorandum. I would use that to address it. But, again, on so much of this -- of course, as I understand the case law says, number one, it is certainly discretionary with Your Honor as to whether or not cases are severed. Secondly, whether some substantive right of the Defendant would be prejudiced.

I certainly submit, Your Honor, that substantive right would be prejudiced in that he is -- it's prejudicial to try these two cases together. Obviously, they are both allegations of sexual abuse, albeit different, different victims, different times. By times I mean specific dates and that is hard to address because we don't know that. I don't know, I gather Your Honor has a copy of Ms. Barwick's memorandum, but starting out the chain of circumstances, she states, I believe, this is coming out of *State versus Simmons*, in large part where the indictments arise out of a single chain of circumstances. I couldn't disagree more that these indictments arise out of the same chain of circumstances. They are two totally unrelated chain of circumstances if there is indeed a chain.

Chain of circumstances, I'm not saying that I'm abandoning my argument on the 404(b), but if you would look at a chain of circumstances, that might be more of a chain of circumstance than what you have allegations of anal intercourse with one victim, lewd act on another,

inappropriate touching, different times. Again, if we're going to talk about similarities, about the only similarity we can talk about there is the same Defendant, how it happened allegedly at the same place.

Same evidence. Again, Your Honor, I wholeheartedly disagree with that. The evidence is not the same. The evidence with regard to the lewd act is a different time, a whole different set of circumstances, whole different set of allegations from that which is alleged on the criminal sexual conduct in the first degree. Some of the witnesses would overlap. Certainly, in the lewd act, and that, Your Honor, a forensic video was done. It was not admissible by agreement and by statute. But that is going to get very tricky, in my opinion, if we try these two things together both from the two alleged victims, their testimony and Ms. Galloway-Williams. I suspect Ms. Galloway-Williams can probably handle it. Whether or not these two young people can handle that or not, and certainly I would say if anything about the forensic interview of the twelve-year-old came in, I would suggest I will probably be on my feet asking for a mistrial, Your Honor. I don't know that I'd get one, but I would certainly ask for one.

The same general nature, again, the only thing you can say about the same general nature of the indictment is that they both include sexual offenses. But, again, different

victims, different times, and I submit different witnesses. The facts of one case do not so overlap the facts of the other case -- I think what the State's going on there is that on July the 7th -- well, excuse me. The alleged offense date with regard to a lewd act is July the 7th of 2008. Yes. The allegations arose on July the 14th of 2008 with regard to the lewd act indictment. The allegation on the criminal sexual conduct case did not arise until July the 21st. The State seems to be hanging their hat on trying these cases together, that the allegations were -- I hate to use the word disclosed, but that's the only word I can come up with -- that the allegations were disclosed within a short time frame. I don't think that goes either to chain of circumstances or the same general nature.

The next one that the Solicitor has in there, the Defendant is not prejudiced. I can only chuckle about that. Obviously, the Defendant is prejudiced where you're trying two sexual charges against separate victims. There could be nothing but prejudice in that instance, Your Honor. Ms. Barwick may be firmly convinced of that, but I would submit that that is highly prejudicial.

And then we get back into the common scheme or plan. I guess that is part of her memo for consolidating. And I would just make my same argument on common scheme or plan that I've already made with regard to my severance motion,

Your Honor.

THE COURT: All right. Solicitor, anything in response?

MS. BARWICK: Your Honor, I'll try to answer it in an organized fashion. Your Honor, as far as consolidation of the charges go, as Your Honor can see in the memo, that the standard is a single chain of circumstances, proof by the same evidence or the same general nature and no real right to the Defendant has been prejudiced.

Your Honor, to prove a chain of circumstances, the Court in *State versus Tate* said that a single chain of circumstances means a single course of conduct or connected transactions. Your Honor, these two cases are integrally -- I can't pronounce the word -- connected because if Victim 1 Victim 1 had never disclosed to Victim 2, Victim 2 might not have ever come out and disclosed himself. So Victim 2 did not disclose Victim 1 disclosed to Victim 2 what had happened to her.

In *State versus Grace*, and I quote, the court said, moreover, the lewd act charge is integrally connected to the prior charges because it was a vehicle through which the other charges were discovered. Victim 1 disclosing to Victim 2 what happened to her was a vehicle for which led Victim 2 to disclose as well. The same evidence, Your Honor, Victim 1 Victim 1 will testify that she did see some of the things that Victim 2 was doing to protect himself, like sleeping in

the closet, not wanting to sleep alone. When Victim 2 disclosed, she can testify how he disclosed, what his behaviors were. Same general nature, Your Honor, if Your Honor -- if I can address that when I discuss common scheme or plan.

The Defendant not being prejudiced, Your Honor, even if Your Honor were to divide these trials, what happened to Victim 1 would still come in to the trial through common or plan or through res gestae. If we try Victim 1's trial by itself, Mr. Beekman has said that he was just looking for the remote. So his defense is almost definitely going to be mistake or accident for the touching of Victim 1 Victim 1 If the State can prove to the jury that he'd also touched Victim 2 that seems to nullify any kind of accident or mistake. It proves his intent as well.

As far as common scheme or plan, Your Honor, the State in its memo listed several likenesses between the two. Victim 2 and Victim 1 were both prepubescent at the time of the abuse. Victim 2 and Victim 1 are biological siblings. The Defendant was Victim 2's and Victim 1's step-father who lived in the house. The Defendant's sexual abuse of Victim 1 and Victim 2 occurred in the family home. The Defendant began his molestation of Victim 2 by simply touching underneath the clothing, touching Victim 2's private parts under Victim 2's clothing, and it eventually led up to the Defendant

penetrating Victim 2 in his anus with his penis. The Defendant also began the abuse on Victim 1 in the same exact manner, by placing his hands underneath her clothing, on her genitalia.

And the State did quote from *State versus Wallace*. It's a Supreme Court, South Carolina Supreme Court decision. The fact that the victim's abuse was interrupted before it could culminate intercourse does not diminish the similarity between the progression the abuse took in each case. Another similarity, when the Defendant sexually abused both Victim 2 and Victim 1, he never undressed them. He just moved their clothing down so he could have access to them to commit the sexual abuse. And, Your Honor, also, when at least two of the incidents happened with Victim 2, the news was on the TV. When the incident happened with Victim 1 the news was also on the TV. And that's his MO, Your Honor. He doesn't take their clothing off all the way in case somebody walks in. And he has the news on to explain what they're doing in there together. That's how he operates and that's how he operated in these cases. And if Victim 1 hadn't told, who knows how far the Defendant would have gone with her like he did with Victim 2.

As far as res gestae, if the jury can't hear how Victim 2 Victim 2 disclosed, they're missing a big chunk. That's all the evidence the State has in this case is each of the children's disclosing. We don't have any physical evidence.

All we have is their evidence. That's the only direct evidence the State has. If you were to take out how the disclosure came about, the jury would miss half the case. And Shauna Galloway-Williams, she can testify that asking about the disclosure is critical to, you know, decide things -- if their disclosure is compelling, if there's any kind of coaching, those sort of things. Also, Ms. Shauna Galloway-Williams can testify that the late disclosure is oftentimes caused because of fear of the perpetrator. And that taking the victim away from the perpetrator can help ease that fear and can help in the disclosure. The jury is going to hear that the victim was taken out of the house, that Victim 2 Victim 2 was taken out of the house and, you know, started feeling a little bit more comfortable and he told. The jury's going to want to know why were they taken out of the house? Was it because the mother and the step-father were fighting? And that could lead to doubting the credibility of the victims.

THE COURT: All right. Any other motions?

MR. DEJONG: A couple of points, if I may, Your Honor?

THE COURT: Yes, sir.

MR. DEJONG: I may be missing something here, I don't know. When did disclosure and the circumstances surrounding the disclosure become an element of proof in a

case, a CSC case? That's not an element. What the State has to prove is that there was a sexual battery, that he did it, and that's the victim. And in this case, age. What's disclosure got to do with that? Why do they need to prove disclosure? They want to prove this disclosure business because they want to prejudice Mr. Beekman. That's what that's all about. That disclosure, how it was disclosed, all of that nonsense has nothing to do with this case, has nothing to do with the State's proof of this case. By their own admission now, all they have is basically the similarities and the times of the disclosure. And as I've already argued, that's highly prejudicial and that is exactly what the State wants to do, because they know they've got to prejudice Mr. Beekman in the eyes of this jury to prove their case, by their own statement. And that is wrong. You can't bring that in under 404(b), under the elements of the crime, or anything else. It's pure-T we want to prejudice Mr. Beekman with this jury because we want a conviction. We can't prove it. That, Your Honor, is not the way our judicial system works. And it's wrong. If they've got the proof, put it up. Motive is not an element in this crime. Disclosure is not an element in this crime. They know what the elements are and now they have said we really can't prove them. So we've got to have all of this disclosure nonsense, how this twelve-year-old discloses and

then the eight-year-old discloses and somehow that is proof beyond a reasonable doubt? They shouldn't even get to the jury, in my opinion, Your Honor. It's ludicrous. And I submit that they should be severed and that should not come in.

THE COURT: What other motions is there from the Defense?

MR. DEJONG: I believe, Your Honor, unless I think of any over lunch, that's it.

MS. BARWICK: Your Honor?

THE COURT: Yes.

MS. BARWICK: If you do decide -- I guess my next statement depends on how you decide on his motion to severe, or in the alternative of the State being allowed to bring up what happened to [redacted] as common scheme or plan or res gestae, this jury is going to be left wondering, [redacted] had a forensic interview but [redacted] did not. The State won't seek to introduce [redacted]'s forensic videotape. The State just wishes, if the Court would, to just tell them that -- we'll say that a forensic interview was done ON her. I'll get that out through testimony if Your Honor could tell them that the law does not permit the introduction of that video into evidence.

THE COURT: And why does that need to be brought out, that she had a forensic interview?

MS. BARWICK: Well, Your Honor, Mr. DeJong is a fine Defense attorney and anytime, through my experience with him, the State doesn't bring in something that they have, normally he makes mention of it. Well, why wasn't one done? We didn't hear about one being done? Why wasn't one being done? And the State just wants some kind of protection.

THE COURT: Well, maybe you could make a motion then for a legal instruction as to what the law says about that if that were to come up.

MS. BARWICK: Okay. Thank you.

THE COURT: But I don't know that we need to -- is there any reason to bring up that she had a forensic interview?

MS. BARWICK: The State doesn't want the jury to be left wondering why it was done on one and not the other.

THE COURT: Well, ...

MR. DEJONG: And very briefly on that, Your Honor, if you bring it up and it doesn't come out and [redacted]'s does come out, it just leads to all sorts of speculation and conjecture on the part of the jury, especially after Ms. Galloway-Williams testifies.

THE COURT: It may be more of a reason why it wasn't shown if it came up then. Any other matters from the State?

MS. BARWICK: Not at this time, Your Honor.

THE COURT: All right. I probably need to look at the video. As I understand, we've got three motions. Basically, two on the video and one on the severance and I'll ---

MS. BARWICK: And the prior bad acts, Your Honor.

THE COURT: And the prior bad acts. I guess that ---

MS. BARWICK: That goes with the videotape.

THE COURT: --- sort of goes with the video there. All right. Is the video on a disk that I can look at in my office or do I need to ---

MS. BARWICK: Yes, sir.

THE COURT: I'll be glad to watch it out here. I sure don't want to mess up your disk. You've got a backup, don't you, in case I scratch it or whatever?

MR. DEJONG: I've got a backup. You just can't hear it, Your Honor.

THE COURT: Okay. All right. I'll review that at lunch.

MS. BARWICK: I'll hand it up.

THE COURT: We'll try to be back about ten minutes to two, okay? That gives you a little more than an hour and I'll make my ruling, so we don't hold the jury up.

The Clerk selected as a juror, Steven Pruitt, the first

alternate. So he'll be in the first twelve. And the second alternate will be the official alternate, now. All right. Let's take a lunch break.

MR. DEJONG: You want us back before two?

THE COURT: Yeah. About ten till, if you would.

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

THE COURT: Could I see the lawyers here just for a minutes, please?

I understand from the Clerk that a juror has indicated to him as he came back from lunch that he has a problem. I have no idea what the problem is. He doesn't know his name, but he can walk in the back and have him come out and talk to him.

MR. DEJONG: Did you ask the question, is there any juror that doesn't read, write, speak or understand the English language?

MS. BARWICK: I think the problem is that they're embarrassed about talking about it in front of everyone.

THE COURT: Maybe I should have them come up or something. I don't know what it is here, but I'm going to get the Clerk to go on to the back and get him so he can come out a moment. Y'all can just stay right here.

MR. DEJONG: Do you want us up here when you do that?

THE COURT: Yeah.

MR. DEJONG: Okay.

THE COURT: I just don't know -- if you would go back there and get him and bring him out here, please.

Yes, sir.

THE JUROR: I didn't know what this case was about, but I thought I ought to tell y'all this. I've actually got one against somebody against my daughter right now. That wouldn't affect my judgment in anyway, but I didn't want to mess either one of y'all's cases up by ---

THE COURT: Okay. So it's against your daughter, the ---

THE JUROR: Well, I filed charges against a fellow, kind of the same stuff.

THE COURT: And you believe that would not affect your ability whatsoever?

THE JUROR: No. I mean ...

THE COURT: That's that and this is this?

THE JUROR: Right. I just wanted to -- like I said, I didn't want it to affect their case.

THE COURT: Okay. Thank you for sharing that with us. You can go back ---

COURT REPORTER: What's his name?

THE COURT: Your name, please, sir?

THE JUROR: Zachary McCollum.

THE COURT: Thank you, Mr. McCollum.

MR. DEJONG: Do you want to do it on the record or do you want to do it -- I mean, we are on the record, but do you want ---

THE COURT: Well, what about -- he's an alternate. I'm inclined to leave him on until he's needed. Then if you want to bring up your issue then. Do you have any issues now that you want to put on that he should not even be an alternate? We might not need him.

MR. DEJONG: The problem is, if I don't raise the issue now and he's needed, then I'm sunk.

THE COURT: Well, let's get back to our seats.

For the record, we just called out -- I think I stated on the record earlier, I don't know if it was or not, that when the Clerk selected an alternate, the first alternate happened to be the one that was selected randomly, Mr. Steve Pruitt, leaving the alternate to be Mr. Zachary McCollum. When he came back from lunch, he indicated to the Clerk that there may be a problem with something that he did not divulge earlier. We can put that on the record now. I didn't know, and the Clerk didn't know what it was. The record will reflect what his issues were. Is there any matters that we need to take care of as far as this juror, from the State or from the Defense?

MR. DEJONG: Your Honor, excuse me. For the

record, I'm not going to get into what the juror said. But as a tag line, you asked the juror in light of what he divulged could he be fair and impartial and he said he could. And as I understand, you were leaving him on.

My problem is this. He is an alternate, but we've already -- while we struck two alternates, we've already used one of those alternates now. I don't know how long this case is going to last, but looking at the witness list, it's going to be a while. So there certainly is some, if not probability, a very good possibility that this particular juror would end up sitting in the decision-making process in this case. Had I known the information that he divulged, I had not used all my strikes on an alternate and I assure you, I would have used a strike on this case. Now, I'm behind the eight-ball. I have a disclosure. I can't strike and by leaving him on, I'm stuck with him on a disclosure that should have been made during voir dire, which was not, for whatever reason. I'm not trying to ding on the juror. But it certainly leaves me, and more importantly, leaves Mr. Beekman, in my opinion, in a very precarious situation. And I would ask you to remove him from the panel, Your Honor.

THE COURT: All right. What's the State's position?

MS. BARWICK: Your Honor, the State doesn't take

one on this.

THE COURT: All right. Well, I don't think there's any question that -- in fact, he even offered that he could be fair before I asked the question, although I reaffirmed it. I am concerned about the Defendant's ability to exercise his strikes because he didn't strike either of the alternates, didn't use any of his strikes there.

You both agreed, again, I don't know how long the case is going to take, that you might need two alternates. Certainly, we don't want to have to retry the case, but I guess the alternative would be to start all over again tomorrow and get two -- a new jury with two more alternates, and I'm not inclined to do that. I'm going to excuse Mr. McCollum from the call of this case. Not because of his impartiality of being questioned, but because of the fact that I believe the Defendant's right to exercise his strikes have been impaired. So we will -- the jury has not been sworn yet. We will go with the twelve unless the State wishes to start again tomorrow without an alternate.

MS. BARWICK: Your Honor, can the State have five minutes to discuss this?

THE COURT: Yes, ma'am.

MS. BARWICK: Right now, Your Honor?

THE COURT: Right now.

MS. BARWICK: Thank you.

(WHEREUPON, the Court stood at recess for a short recess.)

THE COURT: All right. Has the State made a decision?

MS. BARWICK: Yes, sir, Your Honor, the State would like to start in the morning with a new jury.

THE COURT: All right. Mr. DeJong, I believe at the bench you indicated that you felt we probably need two alternates yourself. Is that correct?

MR. DEJONG: It is, Your Honor, due to the ---

THE COURT: All right.

MR. DEJONG: --- as I see the potential length of the case.

THE COURT: All right.

MR. DEJONG: Obviously, we never know what's going to happen.

THE COURT: That's right. Maybe we should get three. All right. Let me see the attorneys here just for a minute, please?

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the Bar.)

THE COURT: All right. If you could have the jury come in, Mr. Teal.

(WHEREUPON, the jury entered the open court at approximately 2:35 p.m.)

THE COURT: Ladies and gentlemen, I told you earlier that part of my job is to not cause undue delay on your part, and I apologize. I've kept you waiting thirty minutes now, but sometimes we have some legal matters that come up that take longer than I thought, and I've been working during lunch myself to try to expedite this.

I told you earlier there were several stages in a trial. And, of course, the very first stage is pretty much selection of the jury to hear a case, and I've told you how you were selected. Sometimes in the course of that standing and coming forward and asking questions and responses and so forth, there are legal matters that create a concern for the Court, so to err on the side of the caution, I think, is the wise thing to do. We haven't started this trial yet. You haven't been sworn in to try this case, but you've been sworn in to answer truthfully and I appreciate that so much.

I've determined that, based upon the matters that I've heard during the time that you've been out and over the lunch, with the legal issues that I've heard and I've been studying, that we need to select you or others of your fellow jurors again to make sure that there is no errors in anyway in the record, as I told you earlier, Ms. Hanks will be keeping. So we're going to start the process again at nine o'clock tomorrow. I need you to be back with your fellow jurors. They're going to be calling in tonight after

six. They're going to be back as well. And we're going to select another jury panel. It might very well be all of you. It might be some of you, don't know that. But we need to get that done to make sure that we start off on a sound footing as far as the legal procedures in this particular case.

Thank you for bearing with us. This doesn't often happen, but when it does, it's wonderful that it happens from the very beginning so that we can correct any errors that I may have made, or otherwise have been made, before the case is a day or so old.

Let me again remind you not to -- you've heard a little bit about this case, no more than anyone else, but you shouldn't be discussing this particular matter with anyone. You may be one of those sitting back in the jury box again tomorrow. But if you'll be back at nine o'clock, all of you, the thirteen of you, one of the jurors had to be excused already because of some matters that came up. So we want to make sure that we get a fair jury for the State of South Carolina and for the Defendant in this case. So the thirteen of you don't need to worry about calling in tonight. If you want to, there'll be a message to tell you to be back at nine o'clock in the morning, but you are hearing it now from me. If you'll be back at nine o'clock sitting out there, we'll be ready to select a jury.

Thank you very much for bearing with us today, ladies and gentlemen, you're free to go at this time.

(WHEREUPON, the jury exited the open court at approximately 2:40 p.m.)

THE COURT: All right. While we're still on the jury issue, let me just reaffirm, and we can finalize this in the morning, what we talked about at the bench as far as a qualification of the jury tomorrow. I want the record to reflect that all jurors will be coming back tomorrow, or they'll at least be notified to be back tomorrow, with the exception of the four jurors who were excused from the trial of this case. They will be individually called by the Clerk's office to instruct them not to come back in the morning, but to call back later in the day. Alternate juror number one who was discharged before -- or the sitting juror who was discharged before lunch today, who indicated that he had siblings who were sexually abused but did not bring it to the Court's attention, and he was dismissed from this case, he will also be notified not to be back tomorrow. The other jurors will be notified to be back tomorrow. We'll ask, rather than going through the entire process of the voir dire, I will ask three or four pertinent questions, including the question of whether or not any member of the panel or family member have ever been the victim or accused of sexual assault or a crime against a child or any other

type of assault. I'll ask about their affiliation with the law enforcement organizations or victim's right organizations and any bias or prejudice they may have, or have they formed or expressed any facts about the case from what they've heard.

The process that we'll use is I'll ask those questions, explain to them that we're -- similar to what I explained to this panel, that we're starting again, and ask any of those to please stand and if -- once they stand, I'll have them come forward with any of those issues that they may have.

If either of you have any suggestions about that to the contrary, or any objections, please let me know this afternoon or first thing in the morning before we start that qualification process again.

During lunch I had a chance to review the videotape in its entirety of the young man in this matter. In reviewing the statute, section 17-23-175, I've not, in this case, gone over any training of the interviewer conducting the evaluation. Certainly, I'll give the defense the opportunity to examine Ms. Galloway-Williams as far as her qualifications. But as far as a review of the videotape as to whether or not any statements were elicited by leading questions or whether the statement represented a detailed account of the offense that's been alleged, the internal coherence of the discussion, I find that the statute has

been met under the totality of the circumstances surrounding making the statement and that the statement, subject to any opposition the Defense may have as to the qualifications of the forensic interviewer, would be admissible into evidence.

As far as the notations made by the Defense as to the hearsay as to -- the only ones I heard that were presented to the Court was referring to me and my sister, that I'm here because of abuse to me and my sister, and that the Defendant stopped his abuse of the interviewee when the sister reported it. I find that those are not adversely prejudicial, that whether or not they meet the hearsay standard as far as the truth of the matter asserted, I'm not convinced that they are, in fact, hearsay. So your exception to those, Mr. DeJong, is overruled, as well as to those statements that were set forth before I watched the video.

I've also tried, during the extended lunch hour that we've had, to review some of the case law that I'm sure both of you are familiar with, along with the briefs that have been submitted. As far as the motion to sever, I find that the indictments do arise out of the same chain of circumstances. It's doesn't -- the criteria is not that they're the exact circumstances, but apparently from the case law and the evidence that I've seen that it would be a chain of circumstances that would warrant a joint trial. I

think there's certainly a great overlap of evidence that will be presented between the two case that are certainly of the same general nature, as far as the sexual abuse of children, be it a lewd act or a criminal sexual conduct. While anytime that multiple charges are brought against a Defendant, there is a natural tendency of there being a prejudice to that Defendant. I don't think that overrides the *Tucker* criterion and also what's set for in *State v. Williams* and *State v. Smith*, so I will deny your motion to severe the cases, Mr. DeJong.

Now, as far as the *Lyle* issue and whether or not the evidence of the prior bad acts against the younger victim should be allowed, even though there's been no conviction of those, I'm certainly aware of the standards that our Court has set under the *Curtain* case, the *Clasby* case, the *Wallace* case and others that have been cited, *Tutton*, others that look at this part issue of proof of a common scheme or plan. And obviously the first step that I've got to take is whether it's relevant evidence under Rule 401. Because if it's not relevant evidence then we don't have to reach the other criterion and I find that the evidence is relevant to the case. 404(b), as Mr. DeJong has eloquently pointed out, goes with the *Lyle* case and there seems to be some different areas of view on that and how it applies. But under *Lyle*, obviously the State has put forth that this would be

presented under a common scheme and plan. For me to allow this evidence, I've got to weigh the similarities and dissimilarities between the crime and the charges made, the different factors that -- of course, the State puts forth seven issues that the Defense may disagree with as far as the interpretation thereof, but -- and every case is different, as both of you well know, as to what the factors are.

But particularly in light of the video that I've watch, that I haven't heard any testimony, but I think that certainly is sufficient for me to decide that evidence establishing these prior acts would be shown by clear and convincing evidence. The connection is there for the factors set forth. Even finding that there is clear and convincing evidence and the similarity of the events and the common scheme and plan, must also weigh the important criterion of whether or not the Rule 403 is violated with the prejudicial effect to the Defendant in this case. I find that there's not an undue prejudice that substantially outweighed -- that the evidence does not substantially outweigh the danger of unfair prejudice to the Defendant. I believe that under 401, 404(b), and 403 that the evidence would be allowed. Cases have -- most all the cases that have talked about the trend or the -- while *Lyle* is not to be differentiated, the *Lyle* criteria, there does seem to be

a trend to apply the *Lyle* exceptions differently in sex abuse cases. And as our Court as said, those are unique cases and perhaps the conflict that Defense seemed to point out in his own mind and in the cases, may go toward that with *Clasby* and *Wallace* and the other cases that have come that way. Even a more recent case, I had a chance to review of *Fonseca* out of 2009. These are always difficult decisions, but I believe that weighing the case law and the criterion that our Court has set forth under the rules, I find that this evidence would be permissible under the rules of evidence that I've cited.

All right. Anything else before we break for the day?

MS. BARWICK: Not from the State, Your Honor.

MR. DEJONG: Your Honor, not arguing with your ruling, just a point of clarification. As I understood on the video, which goes in part to -- well, it does go to 404(b), that your finding based on your view of the video, that there is clear and convincing evidence. Is that correct?

THE COURT: Right. Under *Lyle*, I've got to -- that evidence of prior bad acts doesn't come in unless it's clear and convincing.

MR. DEJONG: Yes, sir.

THE COURT: And that's -- I haven't heard any testimony yet. I guess if the State desired, they could

call any of the witnesses to the stand, I guess that particular victim, but I'm relying it on that and maybe -- I may hear something differently from the stand that I may revisit this, but ---

MR. DEJONG: Well, I wasn't trying to argue with Your Honor's ruling.

THE COURT: Yes, sir.

MR. DEJONG: I was just trying to get clarification.

THE COURT: But I've got to have some clear and convincing evidence. The only way I know to do that is through the evidence that I reviewed at lunchtime or either through testimony that I understand is not being offered at this time. But if I find that there is no -- that the standard is not met at anytime during the course of the trial, then certainly I'll need to revisit that. That's my gate-keeping duty, to make sure that there is that evidence there. And I really don't know how else -- since that standard is required, I don't know how you can rule on this without having the testimony offered earlier. And if the State wishes to do that, either this afternoon or in the morning, I'll be glad to hear the testimony of either of the victim.

MS. BARWICK: Your Honor, just so I'm clear, you need clear and convincing evidence of the prior bad acts on

the boy?

THE COURT: Correct.

MS. BARWICK: Okay.

THE COURT: Under 404(b).

MS. BARWICK: Yes, sir. I just wanted to make sure that you weren't asking that for Victim 1 as well.

As far as Victim 2 [redacted], the State could proffer some testimony tomorrow morning if you would like. Just to -- the State doesn't want to do it now because the State kind of doesn't want to put the boy through it twice. And maybe we could do that -- I don't know how Your Honor would like to go about doing that.

THE COURT: Well, I -- I've had an hour's worth of seeing him interact with the forensic. I understand that's perhaps not under the technical rules of Court for an eight-year-old child at the time, but I believe there was clear and convincing evidence of the prior bad acts. Again, for the purpose of allowing the testimony. The jury is going to ultimately decide that issue.

MS. BARWICK: So does Your Honor want me to proffer testimony in the morning or are you going to base the clear and convincing evidence based on what you saw on the tape?

THE COURT: Well, ---

MS. BARWICK: Sorry.

THE COURT: --- since the State has decided they want more alternate jurors, I'll leave that up to the State. I'm just telling you that if the testimony of the individual does not substantiate what I have seen, then there might not be a clear and convincing evidence that it's there for my ruling, so ---

MS. BARWICK: Yes, sir. I understand what you're saying.

THE COURT: --- obviously then we're going to have to take steps in the middle of the trial, so ...

MS. BARWICK: Yes, sir. Because the State's confident that the child will testify the same way that the child spoke on the forensic tape, the State would like to just, in one fell swoop in front of the jury, say what happened. And then if Your Honor determines that there wasn't clear and convincing evidence, we'll deal with it at that point.

THE COURT: Okay. We'll have to have the ...

MR. DEJONG: I'm thoroughly confused on that one. Hopefully, the fog will lift overnight. The Solicitor piqued my interest on something she just said. There are no allegations of prior bad acts on the young woman, is there?

MS. BARWICK: No, sir.

MR. DEJONG: Okay. I just wanted to make sure that was the case.

THE COURT: Right.

MR. DEJONG: Okay.

THE COURT: Yeah. All right. We'll be at ease until nine o'clock in the morning.

(WHEREUPON, the court stood at recess in this case for the day.)

JULY 26, 2011

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

(WHEREUPON, the jury panel entered the open court at approximately 9:15 a.m.)

THE COURT: Thank you very much. Please be seated, ladies and gentlemen.

Good morning, ladies and gentlemen. As I call your name, would you please stand? Fredrick McJunkin, William Clardy, Andrew Radick, Maria Mayorga, Randall O'Neal, Stephanie Jackson. Stephanie Jackson.

THE CLERK: She's seated over there.

THE COURT: Okay. I'm sorry. I couldn't see you. Thank you. Todd Williams, Jennifer Rhome, Joshua Frazier, Aaron Ingle, Dianne Corn, Stephen Pruitt. If I could have you all come back and sit in the jury box just for a moment. If you'll just -- those of you standing, if you'd come over and just have a seat in the jury box.

Ladies and gentlemen who are still out here, I'm going

to ask if you would, just briefly, I'll explain to you in a few moments what we're doing, but for just a few moments if you would step outside, we'll call you back in about five minutes.

(WHEREUPON, the jury panel exited the open court at approximately 9:15 a.m.)

THE COURT: Ladies and gentlemen, I explained to you briefly yesterday about legal processes, questions that I must ask and the answers that you must give, and we need to make sure that when we have justice on the line, I want to make sure I do the things in a proper order and ask the questions appropriately. I ask -- not only the questions I ask, but the commitment that you're making, I want to make sure that we have no communication problem. I asked you several questions yesterday as a full panel. I just need to reiterate some of those today. Those that I asked yesterday are still pertinent, of course, and I'm confident that you remember those. But if you recall I asked you about any of you having any financial support of organizations that contribute to law enforcement promotion or victim's rights, such as MADD and the sheriff's association and so forth. I asked you other questions concerning any bias or prejudice you may have in regard to this case or any facts that you had already formulated in your mind, any opinions that you had made concerning these facts.

I mentioned to you yesterday as you left that, you know, even though we were starting over today that you shouldn't be talking with anyone or let anyone talk with you about the case or if you've been influenced in anyway by anyone about the case, fellow jurors or family members or otherwise, that's important information that I need to know. I also asked if you or a family member had ever been accused falsely or otherwise of an act involving sexual abuse or violence or any crime against a child. I also asked if you or a family member had ever been victims of any such assaults or acts.

I need to make sure that the record is clear on that and if any of those matters I've just talked about, several areas, if any of you have an inability to respond to those publicly, I'd just ask if you would, please, stand right now. We can take care of that outside the presence of others. But if any of you -- I certainly don't want to embarrass anyone, but if any of you have a prejudice that you feel you could not handle this case at all or if you have things in the past with family members or yourself that you need to share, I would ask, ladies and gentlemen, if any of those affect you in anyway as far as folks talking with you about the case, or otherwise the things I've just discussed, would you please just stand?

(No response.)

THE COURT: Thank you. There is no response. Any other matters from either of the attorneys that they need to approach me on, on this aspect?

MS. BARWICK: Not from the State, Your Honor.

MR. DEJONG: None on behalf of Mr. Beekman, Your Honor.

THE COURT: Thank you. We've -- what I'm going to do, ladies and gentlemen, we -- you're well aware. We had two alternates. This case is not going to last until Saturday, I'm confident, but it's probably going to take longer than a day. We want to make sure, as I explained to all of you yesterday, that if something happened we don't have to start all over again, even though we lost a few hours yesterday, we're going to be able to continue with the process.

So what we're going to do is select two new alternates. Mr. Pruitt was one of the alternates and now he's part of this jury. So what I'm going to ask you to do, ladies and gentlemen, just go back in the jury room and wait just a few moments. I'm going to ask similar questions to this panel and we're going to get two more to sit there as alternates and when we do that, then we'll be ready to have the opening statements in this case. Don't discuss it again. I urge you never to do that. But go back to the jury room. Get to know one another. We'll call you back in just a few

moments.

(WHEREUPON, the jury exited the open court at approximately 9:22 a.m.)

THE COURT: All right. Let me put on the record before we bring the remaining panel in. This morning we did have a conference with the attorneys -- and y'all please listen carefully and make sure that I don't misstate any of this -- the attorneys agreed that when we left yesterday we were of the view that we would select an entire new panel. With some research and reflection, I approached the attorneys today about just through this voir dire that we've just done with the twelve who are now selected, and let the record note that yesterday before lunch we lost one of our jurors because of a conflict. The Clerk selected an alternate who then became one of the jurors. And then after lunch, the remaining alternate was also discharged because of a conflict, leaving the twelve. Those have been re-voir dired and the attorneys agreed that based on that, that if the jury was still qualified that they would be willing to just select two additional alternates to proceed with the trial, which we're going to go through the same process that I just did with the twelve on the -- in the box.

Is there anything I missed or is there anything I misstated, Solicitor?

MS. BARWICK: You stated it correctly, Your Honor.

MR. DEJONG: No, Your Honor. And just so the record is clear, I did discuss this with my client and he is in agreement with it as well, Your Honor.

THE COURT: All right. Thank you, sir. Okay. And we'll have the panel come back. I'll asks the same generalized questions again of this panel and let them know that we need to get two alternates.

You can have them come back in, Mr. Teal.

(WHEREUPON, the jury panel entered the open court at approximately 9:24 a.m.)

THE COURT: Thank you for bearing with me, ladies and gentlemen. Yesterday I asked you several questions to determine your qualifications to serve as a juror in this case. Generally, I asked you about any relatives you may have in law enforcement. I went over the witness lists. I asked if you knew any of the witnesses or if you'd heard anything about this case.

Sometimes, under the law -- we had some legal sessions yesterday outside of the jury's presence. I want to make sure I do the things in the proper way as far as asking questions that are needed to be asked of the jury to make sure they're qualified. I also want to make sure that the commitment that jurors make is solid and that they understand the commitment. We have a jury empaneled. We picked two alternates yesterday, but unfortunately, we

weren't able to continue with the alternates. Both parties agree that this is a case that we need some alternates just in case it -- might be an illness or whatever may happen, we need to have alternates available. Otherwise, we're going to have to start the trial all over again.

I understand the trial may take a day or two. I don't think in anyway it's going to go into the weekend or anything like that. But I need to reaffirm with you and make sure I ask the questions in the proper manner to make sure that the protection of the parties is made and that justice prevails.

Among the questions I asked you also were about any affiliation any of you had with organizations, financial or otherwise, that contributed to law enforcement or protection of victim's rights, such as -- there's, you know, organizations known as CAVE and PARR and MADD and SADD, and I asked you about that. I also asked you about any discussions with others or any knowledge about the allegations in this case. I asked you about any bias or prejudice that you would have relating to this particular case or any opinions that you had already formed about that.

Among the questions I asked was whether you or a family member had ever been a victim of an assault of any kind or a sexual assault or any child abuse. I asked the same question about any allegations, falsely or otherwise, that

had been made against you or a family member about a crime against a child or an assault or a sexual assault of any kind. I just want to reaffirm those questions with you. And if any of those apply to any of you, I'll ask if you would just stand at this time without any other questions of me. I just want you to stand if any of those apply to you, would you please stand?

(No response.)

THE COURT: All right. Any others. Okay.

All right. What I want to do is to have each of you, if you would just line up there, I want to put on the record -- if you'd come forward and we'll put this on the record for the Clerk here with the attorneys.

Yes, sir. Just state your name for the record?

THE JUROR: I'm Zack McCollum.

THE COURT: He shared with us yesterday. Do we need to go through it again?

MR. DEJONG: No, sir.

THE COURT: So you can just be seated then. Thank you very much, Mr. McCollum.

Yes, ma'am, did you have ---

THE JUROR: Yeah. I was -- when I was ten years old my step-dad beat me and sexually touched me in inappropriate manners.

THE COURT: I think you acknowledge that

yesterday.

THE JUROR: Yes, sir.

THE COURT: And you also said you could be fair to both sides?

THE JUROR: Yes, sir, I could.

THE COURT: You could set that aside?

THE JUROR: Yes, sir, I could.

THE COURT: Well, thank you for sharing that with us. Thank you.

THE JUROR: You're welcome.

THE COURT: And what's your name?

THE JUROR: Mary Loftis.

THE COURT: Thank you, ma'am. You may be seated.

THE JUROR: Anything else? Y'all need me?

THE COURT: Yes, sir.

THE JUROR: Joey Brookshire. I have a brother in law enforcement.

THE COURT: Right. We talked about that yesterday. But as far as any violence you've nothing?

THE JUROR: No. No, I didn't know if you meant for everything you were talking about.

THE COURT: You shared that with me yesterday. Thank you. An FBI agent in the west, right?

THE JUROR: Yes, sir.

THE COURT: Anything else y'all need from him?

Could I see the attorneys here just for a minute.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the Bar.)

THE COURT: All right. We're going to select two alternates, as we did yesterday. Mr. Clerk.

THE CLERK: Okay. Just like yesterday if you would as I call your name come down front, right here in front of me.

And the first one is juror number 69, Zachary M. McCollum. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

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

THE CLERK: Okay. Thank you, sir.

Juror number 4, Larry L. Ashes. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Sir, if you would, have a seat in the jury box.

Juror number 110, Loretta L. Stone. What says the State?

MS. BARWICK: Please present the juror.

THE CLERK: And the Defense?

MR. DEJONG: Please swear the juror.

THE CLERK: Thank you. If you would, have a seat in the jury box.

THE COURT: Any matters we need to take care of as far as the selection of the alternates, from either attorney?

MS. BARWICK: No, sir, Your Honor.

MR. DEJONG: None on behalf of Mr. Beekman, Your Honor.

THE COURT: Ladies and gentlemen, thank you very much for being here today. You need to call back tonight after six o'clock. You're free for the rest of the day. Thank you very much for your attention today. You may be excused at this time. Everyone else please remain seated.

(WHEREUPON, the jury panel exited the open court at approximately 9:40 a.m.)

THE COURT: The bailiff has told you the seats that you will be occupying. You're every bit as much a part of this jury as anyone else because if we were to have an emergency to happen to one of these first twelve or illness befall them during the course of the trial, you're going to be stepping into their shoes. So those will be your seats that you'll always occupy. It doesn't matter which one you sit in, but the rest of the jury will sit there. At this time, I'm going to just ask you if you would, go back and

join your other jurors. Obviously, don't discuss the case at this time. We'll be ready to start it in just a few moments. If you'll just go back and join the other twelve.

(WHEREUPON, the alternate jurors exited the open court at approximately 9:45 a.m.)

THE BAILIFF: The door's closed, Your Honor.

THE COURT: Are y'all ready to proceed with the opening statements? Do you need a short break or ...

MR. DEJONG: If I could just run down the hallway, Your Honor.

THE COURT: All right. One quick run down the hallway break.

MR. DEJONG: Thank you.

THE COURT: And then we'll be ready for opening statements.

(WHEREUPON, the Court stood at recess for a short break.)

THE COURT: Let's see if our jury's ready. If they're ready, we'll have them come in. Anything we need to take care of before the jury comes in?

MS. BARWICK: No, sir, Your Honor.

MR. DEJONG: Nothing on behalf of Mr. Beekman, Your Honor.

THE COURT: If they're ready, we'll have them come in.

(WHEREUPON, the jury entered the open court at approximately 9:48 a.m.)

THE COURT: Thank you very much for bearing with us, Ladies and gentlemen. We're now ready to start with the trial of the case. I explained to you yesterday the different stages. In a moment or two the attorneys will have an opportunity to make their opening statements to you. They'll give you an overview, a roadmap if you will, of what to expect in the trial and important matters to be alerted to.

I urge you to listen carefully as the attorneys address you. I remind you, however, that this is not evidence, what they say to you. The evidence is going to come from testimony under oath, from any exhibits that may be offered and otherwise. We're here to try the case. I have indictments before me and, of course, these indictments are not evidence either. The State has the burden of proof beyond a reasonable doubt on those indictments. So you'll be good listeners, I'm sure. I introduced you to the Court staff and other personnel yesterday. We have Mr. Evans, Mr. Jack Evans, is the bailiff to your left today. As I introduced yesterday and told you these bailiffs are there to help you in anyway they can. And you just call upon any of them at any time that you need them.

Before the attorneys make their opening statement, I'm

going to have the Clerk administer an oath to you. I hope you'll listen carefully as you take this oath. It's a time-honored oath. It's been in existence well before the foundation of our country, that you will well and truly try the case on the law and the evidence and that alone. And that's a high duty you have. I'm sure you can fulfill that duty.

Mr. Clerk, you may administer the oath to the jury.

THE CLERK: If you would, please stand. And again, answer by saying, I will, after the oath is administered. Raise your right hand.

You shall well and truly try the issue joined in this case of the State versus Richard Beekman, and a true verdict render according to the law and evidence, so help you God?

(WHEREUPON, the jury was duly sworn.)

THE COURT: Solicitor, you may address the jury in your opening.

OPENING STATEMENT

BY MS. BARWICK:

Good morning. I'm glad we're all hear today and ready to go. I saw some of you were more anxious than others to go ahead and get out here and get this thing going.

My name is Jenny Barwick. I've already introduced myself. I work with the Solicitor's Office. A lot of people don't understand what the Solicitor's Office does.

In other states, they call us the DA or they'll call us the Prosecutor. We prosecute people for the State of South Carolina. So our client is the State of South Carolina and we just represent the people in Pickens County in the prosecution of criminals.

The Defendant has been charged with two crimes, and it's gone to the Grand Jury. He's been indicted on those. The first one is criminal sexual conduct with a minor, first degree. We like to abbreviate that a lot of times and just call it CSC because it's just such a mouthful. And he's also been indicted for lewd act on a minor.

Throughout this trial, you're going to hear a lot of terminology, and I'm going to apologize in advance. A lot of it is not going to be pleasant to hear. It's going to make you sick to your stomach and I just hope we can get through this together and y'all be patient with it. I'm just going to apologize for some of the things you're going to hear.

I'm going to walk you through what these indictments mean. Criminal sexual conduct means that a person, the Defendant, committed a sexual battery on the person of another. What is a sexual battery? It's the intrusion, however slight, into the person of -- or the body of another person. You have first degree, second degree, third degree. First degree means the victim was under the age of eleven.

That's what we have here. Second degree is eleven to fourteen and third degree is some other things, but we're not going to get into that because that has nothing to do with why we're here today.

Lewd act on a minor simply means that somebody over the age of fourteen touched somebody under the age of sixteen in a manner that would arise either that person's sexual desires or meant to arouse the sexual desires of the victim.

The Judge has already told you that my burden is beyond a reasonable doubt. That's the State's burden. I welcome that burden. That means that in order for you to convict him, you have to be firmly convinced that he is guilty of the crime. Firmly convinced, I know these are weird words for you. What it means is that it has to leave you firmly convinced to the point where you wouldn't hesitate to act in the commission of your own affairs. The State is confident at the end of this trial you are going to find him guilty beyond a reasonable doubt.

The Judge told you a little bit that he's the judge of the law. You're the judge of the facts. Well, he determines what comes into evidence and what doesn't, what you get to hear and what you don't get to hear. A lot of times you'll hear one of us say, objection. Kind of like on a TV. It's not as glamorous or as interesting, but we'll say objection and the Judge will say overruled, which means

I'm not going to grant your objection. I'm going to let him continue. Or he's going to say sustained, which means I grant your objection and we're not going to continue on this line of questioning. And that's just basically that.

The Judge also said that you're the judges of the facts. What that means is that y'all have something that none of us, you know, can do. You have twelve people who have to decide together on a verdict. You get to bring in your common everyday experiences, you know, you look at somebody in the eyes a lot of the times when they tell you something. You're, like, that person's lying or you say, that person's telling the truth. That's why we need you here today, because you can choose to believe all of your witnesses, none of your witnesses or some of your witnesses. And all the witnesses will testify from up here on the stand.

Without getting too much into the fact pattern of what you're going to hear, because obviously you're going to hear the testimony from the stand, I'm going to give you a little bit of on overview.

Back on July 7, 2008 -- that's right, this case is three years old, it happened three years ago -- Victim 1 Victim 1 who was about twelve years old, was on the couch one morning sleeping, with her brother on the other couch or one of those big chairs with the ottoman, and she woke up to

her step-father, this man, with his hands down her pants. She was twelve-years-old. That's why he's been indicted for lewd act. Well, the sister told. They were taken out of that environment. When they were taken out of the environment, she and her family realized that her eight-year-old brother was acting funny. He was dealing with some very hard emotional problems, and you're going to hear all of this from the witness stand. He finally came forward and told what the Defendant had done to him.

You're going to hear testimony that this Defendant started by touching him, just like he started by touching Victim 1 [redacted]. But this eight-year-old didn't come out and tell and it got progressively worse. And that's why he's been charged with CSC, criminal sexual conduct, first degree. Because it culminated in this Defendant committing anal intercourse on that eight-year-old little boy. He was under the age of eleven, obviously. So that's why we're here today.

I want to thank you for your time. I know this isn't going to be pleasant and I apologize for that, but I really do appreciate y'all coming here today and helping us figure this out. Thank you very much.

THE COURT: Mr. DeJong, you may address the jury.

MR. DEJONG: Thank you, Your Honor. May it please the Court, Madam Prosecutor.

OPENING STATEMENT

BY MR. DEJONG:

At this moment in time, ladies and gentlemen, there are no facts in this case. His Honor has shared with you that there are indictments in this case, and indeed there are. But those indictments are in no way facts or proof in this case. And you might follow up on that with a question, well, wasn't Mr. Beekman arrested? He was. But the fact that Mr. Beekman was arrested is no proof whatsoever in this case. There are no facts in this case at this point in time. Why? Because the twelve, fourteen of you, determine what the facts are. Because it comes off the witness stand does not make it a fact. You are the fact-finders in this case.

Yesterday, His Honor, had introduced Mr. Beekman. I don't recall if he had him stand or not. And we all introduced ourselves. And who I am is not particularly relevant. But I can share with you today, ladies and gentlemen, that I represent the innocent Richard Burton Beekman. How can I say that so dogmatically? Here's how I say it. A substantial right afforded every citizen of Pickens County South Carolina, every county of any -- any County in the State of South Carolina, any person in any state in the United States of America, a substantial right afforded every citizen is what we call the presumption of

innocence. Mr. Beekman comes before you today in this trial presumed to be innocence. That is not a legal theory. That is not legal mumbo jumbo. Those are not words that fall glibly from the lips of attorneys. It is a substantial right afforded every citizen of this country that is charged with a crime. And throughout this case I humbly beg you to recall that substantial right.

Now, that right, ladies and gentlemen, is a right that follows Mr. Beekman throughout this trial. It doesn't stop after the first witness testifies. It doesn't go away. It doesn't vanish into thin air. Or the second or the third or the fourth or however many witnesses the State calls. It doesn't go away. Indeed, it doesn't go away at the end of this case when you have to listen to us attorneys again. And once we sit down and hush, it's still there. And then His Honor will charge you on the law and it doesn't vanish then. Indeed that presumption, Your Honor -- I mean, ladies and gentlemen of the jury, follows Mr. Beekman back into the jury room with you when you start your deliberations.

Now, what goes hand-in-hand basically with that substantial right of presumption of innocence is what we call burden of proof. Burden of proof, we'll talk a little bit more about at the end of this case. I don't want to dwell on it now. But the burden of proof in this case, ladies and gentlemen, rests solely on this table. This is

the case of the State of South Carolina, with all its power and its resources, a versus Richard Burton Beekman. And as a result of that, the burden of proof is on the State solely. They must prove beyond a reasonable doubt -- and basically that's what this case is about, whether or not the State can prove their case beyond a reasonable doubt. That is for you to determine.

Now, having said that, at this point in time -- let me back up a little bit. Mr. Beekman, as I have shared with you, is presumed to be innocent. And with that presumption of innocence, he walks into this courtroom and sits at counsel table with nothing to prove, not one thing. At this point in time, I don't know if Mr. Beekman will testify. Now, whether he does or he doesn't, he has nothing to prove the twelve, fourteen of you jurors. Absolutely nothing at all. The burden of proof is never on the Defendant to prove innocence. The proof is on the State, if they can under the law, prove their case beyond a reasonable doubt. And we'll talk about that again at the end of the case.

I thank all fourteen of you for being here today. If I were a betting man, there are probably about a thousand or more places most of you would rather be than sitting in this jury box. But you are the very fundamental cornerstone of our judicial system. Without you, our whole system would be meaningless. Without the fourteen of you at this moment in

time sitting in the jury box, with no disrespect to His Honor, but there would be no need for him. There would be no need for the prosecutor and there would certainly be no need for me.

I believe it was the great Winston Churchill who one time said, jury duty is the greatest service a citizen can provide for their community in peace time. We're not exactly at peace in this country. Maybe we can paraphrase Mr. Churchill a little bit and say, it is the greatest service you can provide for your community as a non-combatant. That's how important this case is. So, again, I thank you.

I am not going to stand here and discuss with you what the State believes they have as evidence. We will listen to that together as this trial unfolds. These are charges could very easily make your minds want to slam shut. These are not things we even like to discuss in the privacy of our own homes. But they must be dealt with. So I ask you, I beg of you, humbly request of you, don't let your minds slam shut based on the allegations. Keep an open mind. Listen to the testimony. I don't know what evidence the State is going to bring forth, but look at it with an open mind. Don't let the charges themselves overlay prejudice of what you hear and how do you make a determination of the facts based on what you hear. Thank you for your kind attention.

I appreciate it. And we will meet again. And I would ask you to keep an open mind in this case. Thank you so much.

THE COURT: You may call your first witness, Solicitor.

MS. BARWICK: The State would call Victim 1 [redacted] to the stand. Judge, may we clear the courtroom for her testimony? Just the people in the audience.

THE COURT: Mr. Robinson, if you could just step outside for right now.

THE CLERK: Place your left hand on the bible and raise your right.

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

THE WITNESS: I do.

THE CLERK: Speak up so she can hear you. Please have a seat and state your name for the record.

Victim 1

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Victim 1 if you'll just say your name for the record?

A. Victim 1 [redacted].

Q. That's kind of loud. They can hear you just find. Just sit back and get comfortable, okay? Are you a little

nervous?
A. Yes.
Q. Okay. How old are you?
A. Fifteen.
Q. When were you born?
A. [redacted], 1995.
Q. Who do you live with?
A. My mom and dad.
Q. Okay. Explain that for the jury. Are your mom and dad together or separate?
A. They're separated.
Q. Do you have a brother?
A. Yes, ma'am.
Q. What's his name?
A. Victim 2 [redacted].
Q. Okay. Does he has the same last name as you?
A. Yes, ma'am.
Q. Do you know when his birthday is?
A. [redacted], 1999.
Q. 1999?
A. Yes, ma'am.
Q. Are you in cheerleading anymore?
A. No, ma'am.
Q. Did you used to be in cheerleading?
A. Yes, ma'am.

Q. Back in 2008, were you a cheerleader?
A. Yes, ma'am.
Q. And were you really involved with cheerleading?
A. Yes, ma'am.
Q. What do you -- describe for the jury how your year was as far as cheerleading goes?
A. Do you mean like how much I cheered?
Q. Uh-huh (affirmative). In the fall, were you involved in cheerleading?
A. Yes, ma'am.
Q. What about the wintertime?
A. Yes, ma'am.
Q. What would you do in the wintertime?
A. I was always cheering.
Q. Okay. And the springtime, were you cheering?
A. Yes, ma'am.
Q. Well, what about the summertime?
A. Yes, ma'am. Well, I practiced. I had a little bit of time off, but not much.
Q. Did you do any tumbling or anything like that?
A. Yes, ma'am.
Q. What is tumbling?
A. I went and I just did flips.
Q. And that's just something you kind of do with cheerleading?

A. Yes, ma'am.
Q. Do you remember when your mom met the Defendant?
A. Yes, ma'am.
Q. Okay. Did your mom eventually marry him?
A. Yes, ma'am.
Q. And did y'all move in with the Defendant?
A. Yes, ma'am.
Q. When you first met him and when you were living with him before any of this occurred, how did you feel about him?
A. I liked him a lot.
Q. Okay. What do you mean a lot?
A. I wanted him to be my dad.
Q. Well, let's back up a little bit and talk about your dad a little, okay? How is the custody arrangement between your mom and your dad?
A. I go with mom one week and my dad another.
Q. Okay. So one week at a time at your mom's and one week at a time at your dad's?
A. Yes, ma'am.
Q. [redacted] now you have two boxes. So just in case. When -- describe your relationship with your dad for the jury. Do y'all have an easygoing relationship or is it kind of difficult?
A. We get along, but I would rather be with my mom most of the time.

Q. Right. Just kind of describe your relationship with your dad for the jury.
A. Well, I know I can always count on him.
Q. Okay. Do you consider your dad strict or ---
A. He's strict but he loves me.
Q. Okay. Are your mom and dad in the courtroom right now?
A. No, ma'am.
Q. Okay. Did you want them in here?
A. No, ma'am.
Q. Well, tell the jury why you didn't want your parents in the courtroom?
A. Because it tears them up.
MR. DEJONG: Your Honor, I object to that on the basis of relevance.
THE COURT: I'll overrule your objection.
Q. That means you can continue. I'm sorry, [redacted] Why didn't you want your parents in the courtroom today?
A. Because I don't like seeing them cry.
Q. Okay. Well, why do you think this would make your parents cry?
A. Because it hurts them.
Q. We're going to move on from that. When you met Rick, you said you loved him?
A. Yes, ma'am.
Q. Did you consider him like your father figure?

A. Yes, ma'am.
Q. Did y'all do things together?
A. Yes, ma'am.
Q. Like what kind of things would you do?
A. We just all hung out and we'd go out to eat.
Q. All right. Do you remember back the July 4th weekend back in 2008?
A. Yes, ma'am.
Q. Where did y'all go?
A. Charleston.
Q. Did you have a good time in Charleston?
A. Yes, ma'am.
Q. What did y'all do?
A. We went shopping. I remember that.
Q. Okay. Did y'all do any kind of beach stuff or anything like that?
A. Yes, ma'am
Q. Who went to Charleston?
A. Me, Rick, my mom and brother.
Q. Do you remember when you were in Charleston locking Rick out of the hotel room?
A. Yes, ma'am.
Q. Why did you do that?
A. Just to play around.
Q. Did you -- okay. Did ever disobey Rick or anything

like that?
A. I mean, I argued sometimes, but I'm not a bad kid.
Q. Right. And did you argue with your dad sometimes, too?
A. Yes, ma'am.
Q. When you locked Rick out of the hotel room in Charleston, was he mad about it?
A. I don't remember.
Q. Okay. Do you remember much about that incident in Charleston?
A. No, ma'am.
Q. When did you come home from that Charleston trip, do you remember? Was it like a Saturday or a Sunday?
A. I think it was a Sunday.
Q. Do you remember what date this incident occurred that we're going to talk about?
A. The 7th.
Q. Of what?
A. July.
Q. Do you remember the year?
A. 2008.
Q. Okay. Do you remember that being a Monday or anything like that?
A. I think it was a Monday.
Q. Well, the night before, I guess that would be July 6th, 2008 then, did you sleep in your bed that night?

A. No, ma'am.
Q. Where did you sleep?
A. The couch.
Q. Well, why did you sleep on the couch?
A. Because my room was messy.
Q. Okay. And where did Victim 2 sleep?
A. The little couch.
Q. Was that also in the living room?
A. Yes, ma'am.
Q. Okay. And why didn't he sleep in his bed?
A. Because it was messy.
Q. Okay. When you say messy, what was going on there?
A. We were redoing the dining room.
Q. I'm going to show you something real quick. Do you know what this looks like?
A. Yes, ma'am.
Q. What does that look like?
A. My old house.
Q. The one that you lived in when this incident occurred?
A. Yes, ma'am.
Q. With Rick?
A. Yes, ma'am.
Q. Okay. It's not exactly to scale, is it?
A. No, ma'am.
Q. Okay. If you'll push this button right here. That's the laser.

MS. BARWICK: Judge, the State would like to introduce State's Exhibit Number 3 into evidence.

THE COURT: Any objection?

MR. DEJONG: No objection, Your Honor.

THE COURT: Without objection, State Exhibit Number 3 is into evidence and may be published.

(WHEREUPON, State Exhibit Number 3 was admitted into evidence.)

Q. Does that look like your living room, Victim 1?

A. Yes, ma'am.

Q. Okay. Is that the couch you were sleeping on?

A. Yes, ma'am.

Q. And where's the couch that Victim 2 was sleeping on?

A. Do you want me to just point?

Q. Yes, please. Right there?

A. Right there.

Q. Okay. When you fell asleep that night, which direction was your head on?

A. Right there.

Q. Okay. And when Victim 2 fell asleep, which direction was his head?

A. When he woke up?

Q. Just when he went to sleep?

A. (Indicating.)

Q. Okay. Did you sleep with any blankets or anything like that?

A. Yes, ma'am.
Q. How many blankets?
A. I believe two, but I'm not sure.
Q. Okay. And what were you wearing?
A. I had on my underwear and I had on bloomers, cheerleader bloomers, and pajama like stretchy pants.
Q. So you had three layers on your bottom part?
A. Yes, ma'am.
Q. Well, why were you wearing bloomers?
A. Just I got in the habit of wearing them for cheerleading.
Q. Did all your friends wear them too?
A. Yes, ma'am.
Q. Were any lights on when you fell asleep?
A. No, ma'am.
Q. Okay. Had the light been on before you fell asleep?
A. I turned it off.
Q. Okay. What was on TV, do you remember?
A. Disney Channel.
Q. Did you have a hard time sleeping that night?
A. Yes, ma'am.
Q. Well, what did you do?
A. I went and got my mom.
Q. Okay. Well, what happened with that?
A. She got me melatonin.

Q. What's that?
A. Medicine that the doctor gave me.
Q. Okay. What does that do for you?
A. Helps me sleep.
Q. All right. So you took one of those?
A. Yes, ma'am.
Q. Do you remember about what time it was or is it just during the middle of the night?
A. During the middle of the night.
Q. So did you go to sleep after that?
A. Yes, ma'am.
Q. How were the blankets when you fell asleep?
A. They were on me and tucked in the side of the couch.
Q. Like the back side of the couch or the front side or both?
A. Like -- I don't know. The side that the pillow, like the back of the pillow is.
Q. Okay. Do you remember waking up?
A. Yes, ma'am.
Q. Do you remember what made you wake up?
A. Yes, ma'am.
Q. What made you wake up?
A. Rick.
Q. And what was he doing?
A. Touching me.

Q. Where was he touching you?
A. My private area.
Q. Were your clothes -- how were your clothes?
A. Down.
Q. Okay. Let's talk about your pants, how far down were they? And you can stand up to show the jury.
A. Right here.
Q. Okay. And where were your underwear and your bloomers?
A. About to my knees.
Q. To your knees?
A. About right there.
Q. Okay. Where were the blankets?
A. In the floor.
Q. Did you sleep with any stuffed animals or dolls or anything?
A. My doll.
Q. And where was that?
A. With me.
Q. Okay. What was he doing with his hand?
A. Touching me.
Q. And I know this is difficult. Did he put his hands inside of you?
A. No, ma'am.
Q. He was just touching?
A. Yes, ma'am.

Q. If you were laying on the couch with your head -- when you woke up where was your head?
A. In the same place.
Q. Where would he -- was he sitting on the couch with you or standing up when he did that?
A. Sitting down.
Q. Where was he sitting?
A. You want me to point? Like right there.
Q. Okay. Were his hands -- show -- if he was sitting there and you were laying there, was his hand like this or did he have to reach down and go in?
A. He just had to lay it down.
Q. And it was on your bare naked skin?
A. Yes, ma'am.
Q. And it was on your private area?
A. Yes, ma'am.
Q. Did you scream or anything like that?
A. No, ma'am.
Q. Why didn't you?
A. Because I was really scared.
Q. Do you remember when you woke up like that, what was on TV?
A. The news.
Q. What did the Defendant do when you woke up?
A. He jumped up and hesitated and asked where the remote

was.

Q. Where was the remote?

A. Right in front of him on the -- you want me to point?

Q. Yes. So it was on the trunk?

A. Yes, ma'am.

Q. Is that what y'all used for the coffee table?

A. Yes, ma'am.

Q. Was the remote clearly visible?

A. Yes, ma'am.

Q. What did you do with the remote?

A. I grabbed it and threw it.

Q. You threw it at him?

A. Yes, ma'am.

Q. Well, what did he do after that?

A. He walked out.

Q. Was the lamp on?

A. Yes, ma'am.

Q. And the TV was on the news?

A. Yes, ma'am.

Q. Were you able to go back to sleep?

A. Yes, ma'am.

Q. Did you wake up later on?

A. That morning?

Q. Uh-huh (affirmative).

A. (Affirmative nod.)

Q. Did you have a chance -- well, did you tell anybody?
A. My mom.
Q. When did you tell her?
A. When she got home from work, as soon as I could get her alone.
Q. Okay. Kind of let's explain your morning routine for the jury a little bit.
A. Okay.
Q. Does Rick go to work?
A. Yes.
Q. Does he leave before your mom?
A. She gets up with him.
Q. Okay. But who leaves for work first?
A. My mom -- I mean, Rick. Sorry.
Q. Okay. And then where do y'all stay -- where did you stay when your mom and Rick went to work?
A. Me and my brother went to our babysitter, Missy's.
Q. Did you go to your babysitter's that day?
A. Yes, ma'am.
Q. Who picked you up from the babysitter's?
A. Rick.
Q. When he picked you up, did he say or do anything?
A. He asked me if I was mad at him.
Q. Were you in his -- what does he drive, a car or a truck?

A. Truck.
Q. When you were in his truck -- well, when did he say that to you? Were you in the truck yet?
A. No, I was getting in. Starting to get in.
Q. And he said?
A. Am I mad at him.
Q. What did you say?
A. I didn't answer him.
Q. What did you do?
A. I got in the truck and shut the door.
Q. At this point, how are you feeling?
A. Scared.
Q. When he touched you like that, how did that make you feel?
A. Like I couldn't trust anybody.
Q. Was that car ride quiet on the way home?
A. Yes, ma'am.
Q. How far away did the babysitter live from your house?
A. About five to seven minutes away. Not far.
Q. When you got home, what happened?
A. He got out of the truck and just -- do you want me to just explain what ---
Q. Yes.
A. There was a dead bird in the garage and he picked it up and he had gnats all over him and I opened the door for him

so he would get gnats on the door. And he washed his hands and me and my brother went in -- went into the bathroom and I took a shower because I felt gross and I just wouldn't let my brother out of my sight, so he stayed in there.

Q. So when you were in the shower where was your brother?

A. In the bathroom.

Q. Do you remember how old he was at the time?

A. Like eight, I guess.

Q. And why did you want him in the bathroom with you?

A. Because I was scared and I didn't want him to leave my side.

Q. Did your brother take a shower too?

A. Yes, ma'am.

Q. And where were you when he took a shower?

A. In there.

Q. In where?

A. In the bathroom.

Q. Okay. And why did you stay in there when he took a shower?

A. Because I didn't want him out of my sight.

Q. Was your mom home at this time?

A. No, ma'am.

Q. She hadn't gotten home from work yet?

A. No, ma'am.

Q. What did you do then?

A. After?
Q. Yes.
A. We went and went into Rick and my mom's bedroom and just watched TV.
Q. Why did you go in there?
A. Because -- I don't know. So we didn't have to get up.
Q. Okay. Did you tell your mom that morning?
A. No, ma'am.
Q. How come?
A. Because she just -- she was like -- we were all in a rush and I was scared.
Q. Did you tell your brother?
A. No, ma'am.
Q. Did you tell your daycare worker?
A. No, ma'am.
Q. Did your grandma call you when you got home from the daycare?
A. Yes, ma'am.
Q. Did you tell your grandma?
A. No, ma'am.
Q. When Rick did that to you, were you shocked that he did that?
A. Yes, ma'am.
Q. Did you expect something like that?
A. No, ma'am.

Q. When you were in the bedroom, was [redacted] with you?
A. At the end of the day?
Q. Yes. When you got home from the daycare?
A. Yes, ma'am.
Q. And y'all were just watching TV?
A. Yes, ma'am.
Q. Do you see Rick's bedroom on here?
A. Yes, ma'am.
Q. Can you point it out for the jury?
A. (Indicating.)
Q. Okay. So y'all were watching TV in there. Did y'all shut the door or leave the door open?
A. We shut it.
Q. And why did you shut it?
A. Because I was scared and I just wanted to shut it.
Q. Did Rick say anything at this point?
A. He told us not to shut it after we did.
Q. Did y'all have any rules about not leaving doors shut in your house or anything like that?
A. No. We just weren't supposed to lock them.
Q. Okay. Your mom got home -- how long do you think you'd been at the house after daycare when your mom got home?
A. I'm not sure.
Q. Do you think that maybe it was like an hour or an hour and a half or two hours?

A. Like an hour and a half or two.
Q. Okay. When she got home, what did you do?
A. Ran immediately to her and took her to the bathroom.
Q. Okay. When your mom came in the door, where was Rick?
A. At the door opening it for her.
Q. So you have to go and get your mom right in front of Rick?
A. Yes, ma'am.

MR. DEJONG: Your Honor, I object to leading.

THE COURT: I sustain the objection. Try not to lead, Solicitor.

Q. Where was Rick when your mom came in?
A. At the door.
Q. And where did you go and get your mom from?
A. The door.
Q. Okay.
A. As soon as she got in.
Q. All right. And what did you tell her?
A. To come, I had to tell her something.
Q. And where did y'all go?
A. To the bathroom.
Q. Which bathroom?
A. Mine. Do you want me to point?
Q. Yes, please.
A. (Indicating.)

Q. Okay. And in the bathroom did you disclose to your mother what Rick had done to you?
A. Yes, ma'am.
Q. And how did she act?
A. Really upset.
Q. Do you need water?
A. I'm okay.
Q. And when she was upset, what did y'all do?
A. We were going to my grandmother's.
Q. Is that her mother?
A. Yes, ma'am.
Q. Did you tell Rick that you were going to your grandmother's?
A. Yes, ma'am. My mom did.
Q. And what did Rick say?
A. No.
Q. What did he say no about?
A. I couldn't leave because my room was a mess.
Q. Was he usually concerned with your room being a mess?
A. No, ma'am.
Q. What did you and your mom do?
A. Went in there and just made my bed over stuff and put stuff in the closet.
Q. Did you go to your grandmother's that night?
A. Yes, ma'am.

Q. And that was your mom's week to have you?
A. Yes, ma'am.
Q. Then did you end up telling your father what happened?
A. Yes, ma'am.
Q. About how long after you moved out of your house did you tell your father what happened?
A. I'm not sure.
Q. Do you think it was a few days?
A. Yes.
Q. Maybe a week?
A. Yes, ma'am.
Q. Did your brother and your mother -- where did they stay that night at your grandma's or at the house?
A. At the house.
Q. What about the next day?
A. We left. They were gone. We stayed at my grandma's.
Q. Okay. So after that point y'all never went back in the house?
A. No, ma'am.
Q. About how long do you think you stayed with your grandmother?
A. How long did we live there?
Q. Yes.
A. I'm not sure.
Q. Are y'all -- when you live with your mom, when it's

your mom's time, where do y'all live?

A. Now?

Q. Yes.

A. At our house in ---

Q. So you have your own house now?

A. Yes, ma'am.

Q. Do you think you lived with your grandma for a few months, a few days, weeks, years?

A. Months or a year. I'm not sure.

Q. Okay. Just a relative time frame. What happened when you told your father?

A. He ---

Q. How did he act?

A. He was really hurt and just mad.

Q. Did you do anything -- did y'all ever report it to the police?

A. Yes, ma'am.

Q. Was it before or after you told your dad?

A. It was after I told my dad.

Q. When you went to the Sheriff's Office, did you tell them what happened to you?

A. I wrote it down.

Q. Okay. And was it a male officer or female officer you spoke with first?

A. A male officer.

Q. Younger or older?
A. I don't remember.
Q. Well, everybody's probably older than you. Did you give a second statement as well?
A. Yes, ma'am.
MS. BARWICK: Your Honor, can we approach?
THE COURT: Yes, ma'am.
(WHEREUPON, Ms. Barwick and Mr. DeJong approached the bar.)
Q. Have you received counseling?
A. Yes, ma'am.
Q. About how many times do you go to counseling, say, a week?
A. I go -- in a week? Once.
Q. Have you been going to counseling since this incident?
A. Yes, ma'am.
Q. Are you still in counseling?
A. Yes, ma'am.
Q. When you were at your grandmother's house, did Victim 2 make a disclosure of sexual abuse?
A. Yes, ma'am.
Q. How did that come about?
A. Do you mean like how he came out with it?
Q. Yes. Well, I'll ask this question first. About how long had y'all been out of the house when Victim 2 made his

disclosure?

MR. DEJONG: Your Honor, I'm going to object to that. Without any other foundation, I don't know if she's testifying from hearsay or knowledge or what she's testifying from.

THE COURT: All right. Just rephrase your question as to ---

Q. Did [redacted] make a disclosure of sexual abuse?

A. Yes, ma'am.

Q. When did he make that disclosure?

MR. DEJONG: Same objection, Your Honor. She's not laying any foundation here.

THE COURT: Disclosure to whom?

Q. Did he disclose to you any sexual abuse?

A. Yes, ma'am.

Q. Where did he make that disclosure?

A. In his bedroom. It was a laundry room/bedroom.

Q. In the bedroom at your grandmother's house ---

A. Yes, ma'am.

Q. --- or at Rick's house?

A. My grandmother's.

Q. And how long after y'all had been removed from the house did he make that disclosure?

A. I'm not sure.

Q. Do you think it was maybe a week or was it just a few

days?
A. I'm not sure.
Q. Okay. How was he acting before he made the disclosure?
A. He was freaking out.
Q. What do you mean by freaking out?
A. He was pulling his hair, hiding in the closet and just crying.
Q. Did your mom ask him what was the matter?
A. I don't remember.
Q. When he told you what happened, where was he?
A. In his bedroom.
Q. Okay. Immediately before he told you what happened, where was he?
A. I think in the living room.
Q. Okay. He was in the living room. What made him go into his room?
A. He went into the closet.
Q. The closet in his bedroom?
A. Yes, ma'am.
Q. And did you go and talk with [redacted]?
A. Yes, ma'am.
Q. And how was he acting?
A. Really scared.
Q. Okay. And what was he actually doing?
A. Pulling his hair.

Q. Was he crying?
A. Yes, ma'am.
Q. Did you disclose to him what Rick had done to you?
A. Kind of. After he told me.
Q. Okay. When he disclosed to you -- let's back up. What made you go in there to talk to him?
A. Because he's my brother and I just was scared for him.
Q. Why did you want to tell him what had happened to you?
A. I don't know.
Q. Was that the first time that you had told him what happen to you?
A. Yes, ma'am.
Q. Okay. What was his reaction when you told him what happened to you?
A. He was really, really angry.
Q. When he disclosed to you, did he disclose everything?
A. No, ma'am.
Q. How do you know that?
A. Because he won't tell everything.
Q. Okay. But how do you know he hasn't told everything?
A. Because he said so.
Q. Okay. Do you remember him before he disclosed drawing any pictures?
A. Yes, ma'am.
Q. What did he draw a picture of?

A. Rick dying.
Q. Okay. Had you disclosed to him what had happened to you at that point?
A. I don't remember.
Q. He showed you the pictures -- did he show you the pictures?
A. No, ma'am.
Q. How were you able to see those pictures?
A. Just -- I just seen them.
Q. Okay. Where were they when you discovered them?
A. The trash can.
Q. Were they just gently placed in there or were they balled up?
A. Balled up.
Q. And was that -- did you see those pictures before or after he disclosed?
A. I believe it was before.
Q. And when you told him in the bedroom, was that the first time ---
A. Yes, ma'am.
Q. --- that you'd disclosed to Victim 2 what happened to you?
A. Yes, ma'am.
Q. Okay. After you told him what happened to you, did he tell you everything -- well, did he tell you what Rick ---
MR. DEJONG: Your Honor, I'm going to object.

Number one, asked and answer. Number two, she's not coming right out and asking for hearsay, but she's asking for hearsay.

MS. BARWICK: Judge, ---

MR. DEJONG: And I object on both grounds, Your Honor.

MS. BARWICK: --- children are especially ---

THE COURT: Has your question not already been asked and answered?

MS. BARWICK: No, Your Honor.

THE COURT: All right. Ask your question again.

Q. When he disclosed to you -- or when you disclosed to him, did he then disclose to you?

A. Would you asks that again? I'm sorry.

Q. When you disclosed to him, did he in turn disclose to you?

A. Yes, ma'am.

Q. After all of this has happened, how do you feel?

A. Really mad and hurt.

Q. You're older now. Do you think you're dealing with this better than what [redacted]'s dealing with?

A. Yes, ma'am.

MR. DEJONG: Objection, Your Honor. That calls for speculation on her part.

THE COURT: Sustain the objection.

Q. How has [redacted] changed since before all this happened until now?
A. He's just -- I don't know. He's just different.
Q. Okay. Does he have an easy time talking about it?
A. No, ma'am.
Q. What does he do when he talks about it?
A. Gets really mad and just really angry.
Q. Does he like talking about it?
A. No, ma'am.

MS. BARWICK: That's all the State has for this witness at this time.

THE COURT: You may cross-examine, Mr. DeJong.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So you say this happened in July of 2008?
A. Yes, sir.
Q. And you were twelve at that time, right?
A. Yes, sir.
Q. All right. Now, and how old was [redacted]?
A. He was eight.
Q. Okay. Now, looking at this picture up here, did you draw this picture?
A. No, sir.

Q. Do you know who did draw the picture?
A. Yes, sir.
Q. Who did?
A. My mom.
Q. Your mom did? I see. And, of course, it's been -- do you know when she drew it?
A. Recently.
Q. Recently. Okay. So it's been some three years since y'all lived in the house, right?
A. Yes, sir.
Q. Well, just based on what you can remember, is it possible that where you've got the couch here and the TV here, that they possibly have been reversed?
A. Where?
Q. Huh?
A. Where?
Q. When you lived there? In other words, could the couch have been -- I've lost my point. The couch was here on the picture and the TV is over here. Is it possible that the couch was where the TV is showing on the drawing and the TV on the other side?
A. No, sir.
Q. Okay. Now, on this night, on -- and I believe you said it was July the 7th of 2008. Is that correct?
A. Yes.

Q. Okay. On this night, your mother was home?
A. Yes, sir.
Q. I'm sorry?
A. Yes, sir. I'm sorry.
Q. Okay. And do you remember what day of the week -- well, the day -- well, I'm going to confuse you and me both here in a minute. July the 7th of 2008, do you remember what day of the week that was?
A. A Monday.
Q. Okay. So July the 6th would have been a Sunday?
A. Yes, sir.
Q. You came home from the beach on Sunday?
A. Yes, sir.
Q. Okay. When you got home from the beach, were all four of you there in the house?
A. Yes, sir.
Q. That being you, [redacted] your mom and Rick, right?
A. Yes, sir.
Q. Did your mom ever leave that night?
A. That night, no, sir.
Q. I'm sorry?
A. That night?
Q. Yes, ma'am.
A. No, sir.
Q. All right. And do you know or if you know, where did

she sleep that night?

A. In the room -- in their bedroom with Rick.

Q. Okay. Is that the room that's marked on this drawing as Rick and Tina's bedroom?

A. Yes, sir.

Q. Now, I believe there's a little bathroom in that bedroom, isn't there?

A. Yes, sir.

Q. Okay. Now, when you were living there in 2008, do you know if Rick worked?

A. Yes, sir.

Q. Do you know what time he would get up to go to work?

A. He would get up about four, I'm pretty sure.

Q. I'm sorry?

A. I'm pretty sure it was like four.

Q. And your mama would get up with him?

A. No, sir.

Q. So you're saying he got up by himself?

A. Yes, sir. And then she would get up after.

Q. Okay. Would he still be home when your mom got up?

A. Yes, sir.

Q. Okay. And then they would have coffee together?

A. Yes, sir.

Q. Okay. Where would they have their coffee?

A. I usually wasn't awake.

Q. Okay. So you don't know where they normally had their coffee?
A. No, sir.
Q. Well, does Rick like to watch the news?
A. Yes, sir.
Q. Okay. Kind of a news buff, wasn't he?
A. Yes, sir.
Q. As far as you and Victim 2 sleeping in -- I guess that was the living room?
A. Yes, sir.
Q. Is that a fairly common occurrence or did that happen often or ---
A. No, sir.
Q. Have y'all ever slept in that room before?
A. Yes, sir.
Q. Okay. Now, I want to do a pause there and go back a little bit, go back to this trip to Charleston. You and Rick were going to go get some towels, weren't you?
A. Yes, sir.
Q. And actually, the disturbance, the episode happened outside of the room?
A. I don't remember.
Q. You don't remember. Well, you remembered a moment ago, if I recall correctly, that you said you had locked Rick out of the room.

A. I just locked him out, just for a joke.
Q. All right. Well, let's take that for a moment. But there was some more stuff that went on out in the parking lot, wasn't there?
A. I don't remember.
Q. You don't remember hitting him out in the parking lot?
A. No, sir.
Q. You don't remember screaming out in the parking lot?
A. No, sir.
Q. And he wasn't doing anything to you in the parking lot, was he?
A. No, sir.
Q. Okay. Now, when you say Rick touched you, do you know what time of the day it was?
A. I don't remember exactly.
Q. Well, what time do you think it might have been?
A. It was early in the morning.
Q. Okay. Four o'clock, four-thirty?
A. Somewhere around four-thirty.
Q. Okay.
A. Four to four-thirty.
Q. And as I understood you, he got up normally about four o'clock, the best you know, right?
A. Yes, sir.
Q. And then sometime after he got up, your mama got up,

right?
A. Yes, sir.
Q. Okay. Before he left for work?
A. Yes, sir.
Q. Okay. What time did your mama give you this sleeping pill?
A. I don't remember.
Q. Okay. Well, you said this happened around four-thirty. Had it been a long time, a short time? Do you know?
A. It was before I went to sleep. I couldn't sleep.
Q. How often did you take sleeping pills?
A. Not too often.
Q. All right. Did you take any other kind of medicine?
A. Yes, sir.
Q. What else did you take?
A. ADHD medicine.
Q. I see. Had you taken that on July the 6th?
A. No, sir.
Q. Pardon me?
A. No, sir.
Q. Are you supposed to take that everyday?
A. I usually take it during the school time.
Q. All right. Now, July the 7th, you were not in school, were you?
A. No, sir.

Q. You say you participated in cheerleading and tumbling?
A. Yes, sir.
Q. And in the summertime that was practice, right?
A. Yes, sir.
Q. And when you practiced cheerleading and tumbling, would that be at the same place?
A. No, sir.
Q. All right. Well, let's do cheerleading first. How many days a week did you practice cheerleading?
A. Like all week.
Q. Every day?
A. Yes, sir.
Q. Where did you go for that?
A. I think the high school.
Q. The high school in Liberty?
A. Yes, sir.
Q. Do you know how far away that was from your house?
A. Not very far.
Q. Okay. Who would normally take you to the cheerleading?
A. I don't remember.
Q. I see. Who would normally pick you up from the cheerleading?
A. Either Rick or my mom.
Q. Okay. And when you were picked up from cheerleading did [redacted] come along to pick you up?

A. I don't remember.
Q. You and [redacted] have a very close relationship for a brother and a sister, don't you?
A. Yes, sir.
Q. You love each other a lot?
A. Yes, sir.
Q. I'm sorry. You have to answer out loud.
A. Yes, sir.
Q. You protect each other, don't you?
A. Yes, sir.
Q. Cover each other's backs, don't you?
A. Yes, sir.
Q. Now, do you recall, [redacted] what hours you took tumbling practice?
A. I don't remember.
Q. I'm sorry?
A. Do you mean like when I took? I remember the day.
Q. We've got every day, okay.
A. Okay.
Q. Was it morning or afternoon?
A. I think it was afternoon.
Q. Early afternoon, mid afternoon, late afternoon?
A. I think around five.
Q. Okay. And what time would it be over?
A. I'm not sure.

Q. Well, how about tumbling practice, how often did you take that?
A. Just on a Sunday.
Q. I'm sorry.
A. On Sundays.
Q. On Sundays?
A. Yes, sir.
Q. So tumbling practice was only on Sunday, right?
A. Yes, sir.
Q. Okay. All right.
A. Well, I went -- like, I would go sometime during the week. I just went to like to make up a day.
Q. All right. Okay. But again, you really don't remember?
A. No, sir.
Q. Either on cheerleading or tumbling, right?
A. No, sir.
Q. Okay. Fair enough. Now, going back to this drawing, you say you were sleeping on the couch on the night of July the 6th, morning of July the 7th, correct?
A. Yes, sir.
Q. And the way the couch is in that picture, your head would have been toward the kitchen or would it have been towards the -- I'm sorry. Would it have been towards the kitchen or would it have been towards -- I guess that's a

window in there. Do you remember which way your head was?
A. My head was closer to the window.
Q. To the window?
A. Yes, sir.
Q. Okay. And so that would have made your feet closer to what is shown up here -- and I don't know if you can see it. Your eyes are younger than mine. Can you see a chair and an ottoman on that?
A. Yes, sir.
Q. Okay. So your feet would have been closer to the chair and the ottoman, right?
A. Yes, sir.
Q. Now, is that where Victim 2 was sleeping?
A. Yes, sir.
Q. Okay. Did Victim 2 take a sleeping pill that night, do you know?
A. No, sir.
Q. Now, you say you took melatonin. Did you get that out of the bottle or did your mother just give you a pill?
A. My mom gave it to me.
Q. Okay. So you don't know whether it was melatonin or some other sleeping pill, do you?
A. I know it was melatonin.
Q. Well, what does your mother do for a living?
A. She's a pharmacist.

Q. Was she working during this period of time?
A. Was she a pharmacist then?
Q. Uh-huh (affirmative).
A. Yes, sir.
Q. All right. But on July the 6th, July the -- well, July the 6th, the morning of July the 7th, she wasn't working? She wasn't at work. Let me put it that way.
A. Yes, sir.
Q. Okay. And [redacted] was in the house?
A. Yes, sir.
Q. All right. Now, you say the light was on when you woke up?
A. Yes, sir.
Q. And you and [redacted] watch the Disney Channel a lot or did then, at any rate, didn't you?
A. Yes, sir.
Q. Okay. Other than the TV that was in the living room -- well, was there a TV in Rick and your mom's room?
A. Yes, sir.
Q. Were there TVs in any other rooms?
A. Mine and [redacted]'s.
Q. All the rooms in the house?
A. Yes, sir.
Q. Your room and [redacted]'s room were pretty messed up, right?

A. Yes, sir, they were, like destroyed.
Q. Yes, ma'am. I'm sorry. I didn't mean to interrupt you. Messed up to the point nobody could sleep in them, right?
A. Yes, sir.
Q. Or watch television in them?
A. Yes, sir.
Q. Now, you said that, as I understood you, that this was not the first time you had slept in the living room, right?
A. Yes, sir.
Q. How many times would you say you had slept in the living room three months before July? In May, June, and July?
A. I don't remember. But I didn't really ever sleep in there, just sometimes.
Q. Well, I understand that. You didn't sleep there every night?
A. No, sir.
Q. But this wasn't the first night you had slept there, right?
A. No, sir.
Q. There were certainly other times when you slept there that Rick came in the living room, right?
A. I guess. I was asleep.
Q. Okay. Well, do you ever remember the news coming on?

A. I would be asleep.
Q. All right. Well, when you went to sleep on the sofa on July the 6th or the 7th, whatever day that was, where was the remote when you went to sleep?
A. On the trunk. I don't remember where it was. I know where it was when I woke up.
Q. Yes, ma'am. It could have been behind you, correct?
A. I don't remember.
Q. Right. You just don't know. It could have been behind you?
A. Could have been. I don't remember.
Q. Yes, ma'am. You could have been laying on it?
A. I don't remember.
Q. Because you don't remember, correct?
A. (No verbal response).
Q. All right. Do you remember when you first told somebody about this, you said that Rick's hands were under your clothes?
A. Could you ask that again? I don't understand.
Q. Yes, ma'am. When you first told somebody -- I don't know if it was your mother or police officer, who -- you said Rick's hands were under your clothes. Do you remember that?
A. I don't remember that.
Q. And then later on you said your clothes were down,

right?
A. Yes, sir.
Q. Well, you say this happened on July the 7th?
A. Yes, sir.
Q. And you say you told your mom on July the 7th, right?
A. Yes, sir.
Q. But you didn't go to the police on July the 7th, did you?
A. No, sir.
Q. Actually, it was about a week later, wasn't it?
A. I don't remember exactly when, like ---
Q. That's fair enough. Dates are hard to remember.
A. Yes, sir.
Q. Okay. But it was several days after you told your mom that you ever went to the police, right?
A. Yes, sir.
Q. Who actually took you to the police?
A. My dad.
Q. Now, you swapped off with weeks between your mom and your dad, correct?
A. Yes, sir.
Q. Okay. Now, when you were at your dad's, did you stay with your dad all day and every night for a week or did you come home to your mom's some? How did that work?
A. Well, I stay with my mom most of the time just -- and

then -- I mean, I'll go to my dad's and stay the night, but a lot of times I'm with my mom.

Q. Okay. So even -- I guess we could say it was your dad's week, so to speak, you would spend the night there but then you would come back and be with your mom during the day, right?

A. Yes, sir.

Q. All right. On these -- well, after July the 7th of 2008, y'all went to live with your grandmother?

A. Yes, sir.

Q. Did you have the same arrangement then that you spent most of the day with your mother?

A. I don't remember. I'm pretty sure.

Q. Well, you and your mom talked about this, right?

A. Yes, sir.

Q. On more than one, more than one time you talked about it?

A. Yes, sir.

Q. You talked about it a pretty good bit, didn't you?

A. About, like, what happened?

Q. Yes, ma'am.

A. Yes, sir.

Q. And you talked to your mom several times before you ever went to the police, right?

A. Yes, sir.

Q. And when you talked with your mom these several times about it, was [redacted] there?
A. I don't remember.
Q. Do you know if [redacted] heard these conversations between you and your mom?
A. No, sir.
Q. No, he didn't? Or no you don't remember?
A. I don't remember. He wasn't around.
Q. [redacted] liked to sneak around, didn't he?
A. Yes, sir.
Q. Pardon me?
A. Yes, sir.
Q. Liked to hide, right?
A. Yes, sir.
Q. That was kind of his thing, right?
A. Yes, sir.
Q. And liked to play with action figures, right?
A. Yes, sir.
Q. That was more or less how he occupied himself, right, with action figures and sneaking around, right?
A. Yes, sir.
Q. All right. Do you know what action figures he played with?
A. I don't remember.
Q. Okay. Well, on July the 7th, you said you went and

spent the day with the babysitter. Is that right?
A. Yes, sir.
Q. Who took you to the babysitter?
A. My mom.
Q. Okay. And who went to the babysitter?
A. Me and my brother.
Q. And did she drive you, walk you, how did you get there?
A. My mom drove us.
Q. And how far is it from your house to the babysitter?
A. About five to seven minutes.
Q. Five to seven -- I'm sorry?
A. About five to seven minutes.
Q. Minutes?
A. Minutes, yes, sir.
Q. And nothing was said to your mother during that point in time, right?
A. No, sir.
Q. Now, Missy, had she been baby -- you weren't baby -- but we'll use the word babysitter. Had she been your babysitter for a while?
A. Yes, sir.
Q. You and Missy get along well together?
A. Yes, sir.
Q. Did you ever say anything to Missy that day?
A. No, sir.

Q. You were twelve at the time?
A. Yes, sir.
Q. And did you know where your mother worked?
A. Yes, sir.
Q. Did you know her telephone number?
A. Yes, sir.
Q. Did you ever call her throughout the day?
A. I don't remember. I'm sure I talked to her.
Q. All right. But in talking to her when you called her throughout the day, you never said anything about what you say Rick did?
A. No, sir.
Q. Now, as I understand it, you say you were laying on the couch, that's on the long one here. Right here. Now my finger doesn't want to work but somewhere right in there, right?
A. Yes, sir.
Q. But you were on the big couch?
A. Yes, sir.
Q. And your head was closer to the window?
A. Yes, sir.
Q. And your feet were towards the kitchen?
A. Yes, sir.
Q. Now, was Rick sitting at your head or at your feet?
A. My feet.

Q. At your feet. Was he sitting all the way back on the sofa? Was he sitting, standing, what was he doing?
A. He was sitting down, leaning over.
Q. Sitting down, leaning over. Now, you say he touched you?
A. Yes, sir.
Q. Was it the front of his hand or the back of his hand that you say touched you?
A. His front.
Q. I see. All right. You say that once this happened you just went back to sleep?
A. Yes, sir.
Q. You stayed in the living room?
A. Yes, sir.
Q. Did you wake Victim 2 up?
A. No, sir.
Q. Now, your mama's back in the bedroom, right?
A. Yes, sir.
Q. Did you go wake her up?
A. No, sir.
Q. How was Rick dressed?
A. For work.
Q. For work?
A. Yes, sir.
Q. Does he wear one of these get-ups, ---

A. No, sir.
Q. --- speaking of my suit? Or does he wear just trousers or slacks or how does he dress?
A. Just like a Carhart T-shirt and jeans.
Q. And when you say he did this, he was fully dressed, wasn't he?
A. Yes, sir.
Q. Nothing unusual about his clothing, was there?
A. No, sir.
Q. You don't recall what time you took the sleeping pill. Do you have any idea how long you had been asleep?
A. No, sir.
Q. Are you an active sleeper?
A. What does that mean?
Q. I thought you were going to ask me that. That means do you toss and turn in your sleep a good bit?
A. Not usually.
Q. Okay. Well, does it make a difference when you take a sleeping pill or when you don't take a sleeping pill?
A. It helps me sleep better.
Q. Okay. Taking sleeping pills, do you ever dream?
A. No, sir.
Q. You don't dream at all?
A. Oh, I thought you said drink.
Q. Oh, I'm sorry. There are plenty of uses for hearing

aids here. I'm trying to figure out how loud my voice is. I apologize. Do you dream?

A. Yes, sir.

Q. Okay. Vivid dreams?

A. What is that?

Q. Okay. I'm sorry.

A. That's okay.

Q. Bright dreams. You know, just really real.

A. Sometimes.

Q. Yes, ma'am. Okay.

A. I do it, like, whether I take medicine or just ---

Q. Sure. I understand. I understand. And you did that at this point in your life as well, when you were twelve years old?

A. Yes, sir.

Q. Do you think you dream more at twelve than at fifteen?

A. Not really.

Q. About the same?

A. Yes, sir.

Q. Still these bright, vivid dreams?

A. Yes, sir.

Q. Okay. Where -- okay. Here's the couch. Hey, this works better than that. Here's a couch. Here's a trunk, TV. Where was the lamp?

A. I'm thinking.

Q. Okay. That's what we kind of call an end table or something?
A. Yes, sir.
Q. Okay. All right. Now, you say the television was on?
A. When?
Q. When you say Rick came in the living room. Was the television on?
A. Yes, sir.
Q. And it was on the Disney Channel?
A. It was on the news when I woke up.
Q. On the news when you woke up?
A. Yes, sir.
Q. Okay. I'm sorry. I may have misunderstood you. What time, if you know, did Rick normally get home in the evening? Or was it afternoon? Do you know?
A. It was in the afternoon, but I'm not sure.
Q. Well, when your mom worked and Rick worked, did they work the same hours or different hours or do you know?
A. Different.
Q. Different. Okay. What time -- if you know, what time would your mom normally wake up?
A. I'm not sure.
Q. Okay. Well, at any rate, Missy -- at any rate, Rick picked you up from Missy's on July the 7th?
A. Yes, sir.

Q. What kind of vehicle did he drive?
A. A truck.
Q. A truck. One seat, two seats? How many seats?
A. Three.
Q. Three seats?
A. Yes, sir.
Q. Well, when you went to Missy's on July the 7th, did Victim 2 go also?
A. Yes, sir.
Q. And did Rick pick both of you up?
A. Yes, sir.
Q. Okay. And when we say this truck had three seats, was that three seats in a row, like bucket seats, or did it have seats up here and then another door or some area back there that you could get into a seat?
A. Just three in a row.
Q. Three in a row?
A. Yes, sir.
Q. All right. Now, where did you sit?
A. The far passenger side.
Q. Okay. Victim 2 in the middle?
A. Yes, sir.
Q. When you get home -- well, let's back up a little bit. You said Rick asked if you were mad at him?
A. Yes, sir.

Q. But you don't know why he asked you that question, do you?

A. No, sir.

Q. No idea?

A. He just asked me.

Q. All right. Now, you ride five to seven minutes from Missy's to Rick's house?

A. Yes, sir.

Q. Any conversation?

A. No, sir.

Q. Dead silence?

A. That I remember. I didn't talk to him.

Q. All right. And you get out and you open the door for Rick, right?

A. Yes, sir.

Q. And when you say you open the door for Rick, we're talking about the house door, the car door or what?

A. The house door.

Q. And did Victim 2 normally stay in the bathroom when you took a shower?

A. No, sir.

Q. But on this particular day, you say Victim 2 stayed in the bathroom with you while you took a shower?

A. Yes, sir.

Q. Did he ask you anything about that?

A. About? What do you mean?
Q. Ask you why you wanted him in the bathroom while you were taking a shower?
A. No, sir. I just made him stay in there.
Q. So he stayed in the shower there with you the entire time you were showering, right?
A. Yes, sir.
Q. Then from there -- you say you were afraid, but when you left there, if I understood you correctly, you and Victim 2 went to Rick's bedroom. Is that right?
A. Yes, sir.
Q. Okay. Which is way back over here, right?
A. Yes, sir.
Q. Now, the door -- here's the front door right here, correct?
A. Yes, sir.
Q. And I don't see another door on there. I'm sure there is one. Is there a door that comes out of the kitchen into the garage?
A. Do you want me to point?
Q. Yeah. Please.
A. Right here.
Q. Okay. I thought that's probably where it was. So you say you're afraid of Rick, but when you get through taking a shower, you go to the room the farthest away from any door

in the house, right?

A. Yes, sir.

Q. Now, back when you were twelve years old did you have a cell phone?

A. Yes, sir.

Q. Was that cell phone working?

A. Yes, sir.

Q. And did Victim 2 have a cell phone?

A. I don't remember. I don't think he did.

Q. I'm sorry?

A. I don't think he did, but I'm not sure.

Q. Okay. Fair enough. Other than the cell phone you had, were there other telephones in the house?

A. Rick had one.

Q. Okay. I'm an old guy. When I talk about telephones, I'm talking about one that sits there and hooks into the wall. Did you have any of those?

A. I don't remember.

Q. All right. But you do know you had a cell phone?

A. Yes, sir.

Q. Okay. And now it's some one and a half to two hours before your mother gets home, correct?

A. Yes, sir.

Q. Well, from the time you got home, speaking of home, Rick's home, from the time you got there until your mother

got home, did you talk to your mother on the telephone?

A. By the time she got home, before ... I don't remember.

Q. All right. Now, there was nothing when you and Victim 2 came out of the shower -- and I just -- help me out here. Where's the bathroom?

A. Mine?

Q. I beg your pardon?

A. What bathroom?

Q. The one where you took the shower.

A. Oh. (Indicating.)

Q. Okay. And then where's the other little bathroom?

A. I think it's ... (indicating.)

Q. Okay. So those two bathrooms kind of back up to each other but there's a wall in between them, correct?

A. Yes, sir.

Q. All right. So you and Victim 2 went to the back part of the house to Rick and your mom's bedroom?

A. Yes, sir.

Q. Did Rick ever come back there while you were back there?

A. Yes, sir.

Q. What did he do?

A. Sir?

Q. What did he do?

A. Told us not to shut the door.

Q. Okay. Did he come in the room?
A. He just came right to the door.
Q. Okay. Did he ever try to get Victim 2 to come out of the bedroom?
A. No, sir.
Q. Ever try to get you to come out of the bedroom?
A. No, sir.
Q. So all that transpired is he said, don't close the door?
A. Yes, sir.
Q. But that was basically -- well, you couldn't lock the doors?
A. He told us not to shut the door so the air could circulate.
Q. I think -- wasn't there an air conditioning unit in one of these windows?
A. In Rick's.
Q. Okay. Can you point out where that was?
A. (Indicating.)
Q. All right. If you know, was that the only air conditioner that was in the house?
A. I don't think. I think there was one in the living.
Q. But he came back and said don't close the door because the air needs to circulate?
A. Yes, sir.

Q. Was he angry, that you could tell?
A. Not that I could tell.
Q. Was he upset?
A. Not that I could tell.
Q. From the time you got home from Missy's or Misty, whatever her name was, did Rick ever leave the house?
A. No, sir.
Q. [redacted] didn't have as good a relationship with Rick as you had, did he?
A. I don't remember.
Q. Fair enough. How long, if you know, [redacted] how long was it after you shared this with your mother that you say [redacted] talked to you?
A. I don't, I don't remember, not the exact days.
Q. Well, was it the next day?
A. No, sir.
Q. It was a good bit of time that lapsed in there?
A. A little bit of time, yes, sir.
Q. When you say on the evening of July the 7th of 2008 that you and your mother went to your grandmother's house. Is that right?
A. Yes, sir.
Q. Where was [redacted]?
A. He came with us.
Q. He came with you?

A. To my grandmother's.

Q. So nobody stayed at Rick's house that night ---

A. Rick did.

Q. --- other than Rick? Okay.

MR. DEJONG: May I have one moment, please, Your Honor?

THE COURT: Yes, sir.

Q. Now, since July the 7th of 2008, you've talked to quite a few people about this, right?

A. Yes, sir.

Q. And indeed you've talked to this young lady over here, haven't you?

A. Yes, sir.

Q. Getting ready for Court, right?

A. Yes, sir.

Q. How many times would you say you talked with that young lady?

A. A few times.

Q. A few times, okay. And did you talk to your counselor about coming to Court?

A. Yes, sir.

Q. And did you talk to Officer Palis about coming to Court?

A. No, sir.

Q. Did you talk to your mom about coming to Court?

A. Yes, sir.

Q. Did you talk to your dad about coming to Court?

A. Yes, sir.

Q. Quite a few times?

A. Quite a few times.

MR. DEJONG: I believe that's all I have. Thank you, Your Honor.

THE COURT: Any redirect?

MS. BARWICK: Yes, sir.

REDIRECT EXAMINATION

BY MS. BARWICK:

Q. [redacted], every time you'd come and speak with me, what has -- the ten rules that I've told you are?

A. Tell the truth. Tell the truth. Tell the truth. Tell the truth. Tell the truth. Tell the truth. Just tell the truth and if you're not sure at the end, tell them you're not sure.

Q. Okay. Where did -- you said that [redacted] and your mom came over to your grandma's on July the 7th. Where did they sleep that night?

A. Rick's, in my bedroom.

Q. They went back to Rick's?

A. Yes, ma'am.

Q. If you would have screamed at him in the parking lot down in Charleston, would you have remembered that?

A. What do you mean? I'm sorry.
Q. You said you didn't remember screaming at the Defendant in the parking lot down in Charleston. Did you scream at him?
A. I don't remember screaming at him.
Q. Okay. And you take ADHD medication during the school year and not the summertime because of why?
A. Just so -- I don't really need to concentrate.
Q. So you use the ADHD medicine to concentrate?
A. Yes, ma'am.
Q. When Rick was touching you and it caused you to wake up, and he saw that he woke up, what did he say?
A. He asked where the remote was.
Q. So he asked where the remote was?
A. Yes, ma'am.
Q. Okay. And it was where again?
A. On the trunk.
Q. Do you remember all of this clearly, what Rick did to you, or is it fuzzy?
A. I remember it.
Q. Were you dreaming ---
A. No.
Q. --- that it happened to you?
A. No, ma'am.
Q. Did it happen to you?

A. Yes, ma'am.

MS. BARWICK: That's all the State has for this witness.

THE COURT: All right. Thank you, ma'am. You may step down.

MR. DEJONG: No objection to her being excused, Your Honor.

THE COURT: Ladies and gentlemen, this might be a good time for us to take a short break. I'll let you go back to your jury room. I'll remind you each time, don't discuss the case one with another. We'll take about a ten minute break and call you back then. You may retire back to your jury room.

(WHEREUPON, the jury exited the open court at approximately 11:17 p.m.)

THE COURT: All right. Let's -- yes, sir.

MR. DEJONG: Your Honor, may I take one brief matter up with the Court?

THE COURT: Yes, sir.

MR. DEJONG: Obviously, the jury has been sworn. I would ask you not to take Mr. Beekman into custody. I would submit to you if he was going to run he had every opportunity in the world to run. This case is more than three years old now. He's been to my office every time he's supposed to have been there. Yesterday morning he beat me

to the courthouse and may have this morning, but I think I beat him by about ten minutes this morning. So I would ask that you not take him into custody, Your Honor. He knows if he doesn't show up the trial is going to go on without him, Your Honor.

THE COURT: Does the State have a position?

MS. BARWICK: Your Honor, normally the State doesn't take a position in this matter. Given that he's facing up to life in prison and given the fact that he didn't know if these children would be up -- able to come up here and testify against him, I think there's a strong risk of flight in this matter.

THE COURT: All right. Well, my process always is to have them in custody unless there's a bond still going on. I don't know if he has a bondsman that will assure his presence, but I'll have him in custody during the breaks.

MR. DEJONG: Yes, sir.

THE COURT: We'll take about a ten minute break.

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

THE COURT: All right. Are you ready to proceed?

MS. BARWICK: Yes, sir, Your Honor.

MR. DEJONG: Ready for the Defense, Your Honor.

THE COURT: If the jury's ready, you can have them come in, Mr. Evans.

(WHEREUPON, the jury entered the open court at approximately 11:34 a.m.)

THE COURT: Solicitor, you may call your next witness.

MS. BARWICK: The State would call [redacted] to the stand.

THE CLERK: Place your left hand on the bible and raise your right hand.

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

THE WITNESS: Yes, ma'am.

THE CLERK: Please have a seat and state your name for the record, please.

THE WITNESS: [redacted]

[redacted]

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. [redacted] this is a lot like TV, isn't it? Who's your sister?

A. [redacted]

Q. Okay. Who's your mom?

A. Tina Aiken.

Q. Who's your dad?

A. Ted Wheeler.

Q. Okay. Who do you live with?

A. My mom and my sister in one house, and my dad and my sister in another.

Q. Okay. When's your birthday?

A. [redacted].

Q. Do you remember which year?

A. 1999.

Q. How old are you now?

A. Eleven.

Q. Are you in middle school right now?

A. Yes, ma'am.

Q. And what grade are you in?

A. Going to six.

Q. What are you studying? Well, what did you just study? I guess you're on summer break. I forget about that now. Back in fifth grade, what were you studying?

A. Science and social studies and reading.

Q. What's your favorite subject?

A. Science.

Q. Are you good in science?

A. Yes, ma'am.

Q. Are your mom or your dad or your sister in the courtroom today?

A. No, ma'am.

Q. Did you want them in the courtroom?
A. No, ma'am.
Q. And why not?
A. I feel more comfortable talking about it.
Q. Do you like talking about what we're going to talk about today?
A. No, ma'am.
Q. Why don't you like talking about it?
A. It's embarrassing.
Q. Do you remember living with Rick?
A. Yes, ma'am.
Q. Was he your step-dad?
A. Yes, ma'am.
Q. When you first started living with him, how would you describe your relationship with him? Did you like him?
A. Yes, ma'am.
Q. Did y'all get along pretty well?
A. Yes, ma'am.
Q. What are some of the things you would do together?
A. We would go to the Liberty Bell. He would just take me places.
Q. Were y'all kind of like buddies?
A. Yes, ma'am.
Q. Did he ever punish you or anything like that?
A. No, ma'am.

Q. Did he ever do any spankings?
A. No, ma'am.
Q. Is he strict or more lenient than your dad?
A. Less stricter.
Q. Did you know what lenient meant?
A. (Negative nod).
Q. Okay. I guess -- do you think -- you said your dad is more strict?
A. Yes, ma'am.

MR. DEJONG: Excuse me. Your Honor, he's fading on me a little bit. Could we get him just a little closer to the microphone?

THE COURT: Yeah. Can you sit a little closer to the mike so that everybody -- we want to make sure the jury can hear you.

Q. Can you sit up real quick?
A. Yes, ma'am.
Q. Are you too squished like that?
A. No, ma'am.
Q. Do you remember moving out of the house with Rick?
A. Yes, ma'am.
Q. When you first moved out did you know why y'all moved out?
A. No, ma'am.
Q. Did Rick ever touch you in any inappropriate ways?

A. Yes, ma'am.

MR. DEJONG: Your Honor, I object based on the same objection I made yesterday.

THE COURT: Your objection is noted and overruled.

MR. DEJONG: Thank you, Your Honor.

Q. That means you can answer it, [redacted]. Did the Defendant ever -- or did Rick ever touch you in any way that was inappropriate?

A. Yes, ma'am.

Q. Where did he touch you?

A. On my ...

Q. You can say the word in here. We'll back up a little bit. Do you have private parts?

A. Yes, ma'am.

Q. And what do you call those private parts, your front private part?

A. A worm.

Q. We'll call it a worm in here today. Fair enough?

A. Yes, ma'am.

Q. Did Rick ever touch you on your worm?

A. Yes, ma'am.

Q. Where were you when he did that?

A. In his room.

Q. Where were you in his room?

A. I was sitting on the bed watching the news with him.

Q. When he touched your worm, was it underneath your clothing or over your clothing?
A. Underneath.
Q. Did you have your clothing on?
A. Yes, ma'am.
Q. So he touched your skin?
A. Yes, ma'am.
Q. On your worm?
A. Yes, ma'am.
Q. What did he touch it with?
A. His hand.
Q. What would he -- did he do anything with his hand?
A. He just grabbed it?
Q. And how did it feel?
A. It hurt.
Q. Did he say anything when he did that?
A. He -- one time he told me not to tell.
Q. Did he tell you why not to tell?
A. What do you mean?
Q. Okay. Did he ever say why you shouldn't tell?
A. Because he might get in trouble or something.
Q. Did he touch your worm once or twice?
A. Twice.
Q. The second time he touched your worm, where were you?
A. In his room.

Q. And where in his room?
A. The news was on and this time it was on his bed still.
Q. Okay. And was his hand on your skin again like the first time?
A. Yes, ma'am.
Q. Was your clothing on?
A. Yes, ma'am.
Q. Did he go under your clothing or over your clothing?
A. Under.
Q. Did he do anything with his hand this time?
A. He grabbed it.
Q. And did it hurt again?
A. Yes, ma'am.
Q. And, Victim 2, I know this embarrasses you a little bit. Did he force you to ever touch his worm?
A. Yes, ma'am.

MR. DEJONG: Objection, Your Honor. She's leading.

MS. BARWICK: Your Honor, this is a child.

THE COURT: I'll overrule the objection on this question.

Q. Victim 2, did he ever force you to touch his hand -- or to touch his worm?
A. Yes, ma'am.
Q. Was his clothing on?

A. Yes, ma'am.
Q. Okay. So did you go over his clothing or under his clothing?
A. Under.
Q. Do you remember what kind of underwear he wore or do you remember that at all?
A. Hanes.
Q. Okay. So were they like boxers or like briefs?
A. Briefs.
Q. Okay. Now, we're going to talk about the penetration side of things a little bit. Did the touching happen before the penetrating?

MR. DEJONG: Your Honor, again, I object. I know this is a child witness but how far does she get to go?

THE COURT: Right. I sustain the objection on that question.

MS. BARWICK: Yes, sir.

THE COURT: Just ask the question ---

MS. BARWICK: Yes, sir.

THE COURT: --- and let him answer it.

Q. Did the Defendant ever penetrate you?
A. Yes, ma'am.
Q. Do you know what penetration means?
A. Yes, ma'am.
Q. What does it mean?

A. When something like goes in another something.
Q. When the Defendant penetrated you was that before or after the touching?
A. That was after.
Q. Now, we're going to talk a little bit about this penetration. How did he penetrate you? I know you don't like to talk about it, but we'll talk about it and then we'll be done with it, okay? How did he penetrate you?
A. He stuck his worm in my butt.
Q. Okay. [redacted], do you remember where you were when he did that?
A. In his room.
Q. And where in his room?
A. On the floor.
Q. Do you remember what was on the TV?
A. News.
Q. Were you clothes off all the way?
A. They were a little bit.
Q. Were they -- your bottom half, what were you wearing? Were they pants or shorts?
A. I don't remember.
Q. Well, the bottom half of your clothing, was it all the way off or pulled down?
A. Just pulled down.
Q. Do you remember what position you were in?

A. Like on my knees.
Q. And where was the Defendant when he did that?
A. On my back.
Q. Okay. What did you say, I'm sorry?
A. Like on my back part.
Q. Was he behind you or in front of you?
A. Behind me.
Q. Did you see his worm?
A. No, ma'am.
Q. How do you know he stuck in your butt?
A. Because that's what it felt like.
Q. How did that feel?
A. Bad.
Q. Did you feel any pain with that?
A. Yes, ma'am.
Q. What were you able to see?
A. Just around, like carpet.
Q. Did you ever tell anybody about that?
A. (Negative nod.)
Q. Did you tell right away what happened to you?
A. No, ma'am.
Q. Why didn't you tell right away?
A. Because he told me not to.
Q. Okay. Why do you think he told you not to?
A. Because he would get in trouble.

Q. Did he ever make any threats or promises to you?
A. Yes, ma'am.
Q. What did he do?
A. Told me that he would hurt my family.
Q. Did you believe him?
A. Yes, ma'am.
Q. How do you feel about Rick now?
A. A nasty man.
Q. Do you remember your sister staying the night at your grandma's house and you and your mom staying home?
A. Yes, ma'am.
Q. Where did you and your mom sleep that night?
A. I don't remember.
Q. Did y'all sleep together or apart?
A. Together.
Q. Was it in Rick's room?
A. No, ma'am.
Q. Okay. How many rooms are in the house?
A. Three.
Q. Do you remember if it was in your room or in Victim 1's room?
A. No.
Q. What were your sleeping patterns like? Where did you normally sleep?
A. Like in my bed or something?

Q. Right. Where did you ---
A. Oh. I mostly slept in my closet.
Q. Okay. And did you ever sleep with your sister?
A. Yes, ma'am.
Q. Why would you sleep in your closet?
A. So in case he tried to find me.
Q. And who were you worried about finding you?
A. Rick.
Q. Well, why did you sleep in your closet? Did you think he could find you in there?
A. (Negative nod.)
Q. Describe your closet a little bit for the jury. Is it the kind that just opens and shuts or are they the doors that open and shut?
A. The doors, like it bends and then flattens.
Q. Okay. Did Rick ever say anything to you about sleeping in your closet?
A. Yes, ma'am.
Q. What did he say?
A. I don't remember.
Q. Okay. Do you remember telling your sister what Rick did to you?
A. Yes, ma'am.
Q. Have you told her everything?
A. No, ma'am.

Q. Why didn't you tell her everything?
A. I don't remember.
Q. When you told your sister -- well, do you remember your sister telling you what Rick did to her?
A. Yeah.
Q. Did she tell you what Rick did to her before you told her what he did to you? Do you understand that question?
A. No, ma'am.
Q. Did Victim 1 tell you what Rick did to her before or after you told her what happened to you?
A. She told me first and then I told them.
Q. Well, do you remember drawing pictures of Rick?
A. Yes, ma'am.
Q. Will you tell the jury a little bit about those pictures?
A. I drew one with him hanging. And that's the only one I can remember.
Q. And why did you draw that picture?
A. Because after he did it to me.
Q. Do you think this has changed you at all?
A. Yes, ma'am.
Q. How do you think it's changed you?
A. I used to be like a nice kid. But now when people try to pick on me, I'm meaner.
Q. What about the pictures on the walls? How do you feel

about those?

A. They make me feel like somebody's going to trick me.

Q. Did you ever try to make the Defendant stop doing this stuff to you?

A. Yes, ma'am.

Q. And how did you try doing that?

A. I fought back.

Q. Did it work?

A. Sometimes.

Q. How would you fight back?

A. Just kick and punch and stuff.

MS. BARWICK: That's all the State has for this witness at this time.

THE COURT: You may cross-examine.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So how old are you now, [redacted]?

A. I'm eleven.

Q. Eleven. Okay. Do you remember talking to a Ms. Galloway-Williams?

A. I can't remember.

Q. Okay. Well, let me ask you this. Have you always called your front private a worm?

A. Yes, ma'am -- I mean, yes, sir.
Q. And not that you talked about it a lot, but anytime you talked about it you said it was your worm, right?
A. Yes, sir.
Q. Now wee wee?
A. Well, yeah, I call it that, too.
Q. Pardon me?
A. I call it that, too.
Q. I see. But mostly worm?
A. (Affirmative nod.)
Q. Okay. Now, you say Rick touched you worm before the last thing you shared with this lady over here, right?
A. Yes, sir.
Q. And how many times?
A. You mean like he touched me?
Q. Uh-huh (affirmative).
A. Two.
Q. Okay. And how old were you, do you say, when that happened?
A. I was eight.
Q. Okay. So you would have turned eight in November of ---
A. The 1st.
Q. --- 2007, right?
A. Yes, sir.

Q. How long did you and your mom and sister live with Rick?
A. I can't remember.
Q. Well, for you was it a long time, a little while or how long?
A. It felt like a long time.
Q. All right. Do you ever remember telling anyone that you didn't like Rick because he told lies on you?
A. Yes, sir.
Q. And do you remember who you told that to?
A. My mom.
Q. Anybody else?
A. My dad.
Q. Anybody else?
A. I can't remember.
Q. Okay. Now you told them that before you ever say Rick touched you, didn't you?
A. I can't remember.
Q. Well, you felt like Rick told lies on you to get you in trouble, right?
A. No.
Q. Do you ever remember telling anyone that Rick told lies to get you and [redacted] in trouble?
A. I can't remember.
Q. Okay. Now, how many people have you talked to about

this, [redacted]?

A. I can't remember.

Q. All right. Well, have you talked to the police officer? Well, let's back up. Have you talked to your mom?

A. Yes.

Q. Have you talked to your dad?

A. A little.

Q. Well, the first person you say you talked to was [redacted] right?

A. You mean the first person I told?

Q. Right? Who was the first person you told?

A. My cousin.

Q. All right. But you told [redacted] after -- well, let me back up. You knew that [redacted] had said Rick had touched her, right?

A. (Negative nod.)

Q. Is that correct?

A. She told me that.

Q. Then you told your cousin?

A. Yes, sir.

Q. And then you told [redacted]?

A. Yes.

Q. So before you told anybody, you knew that [redacted] had said Rick had touched her?

A. Yes.

Q. Okay. Now you and your sister are pretty close, aren't you?
A. Yes, sir.
Q. You like each other, don't you?
A. Yes, sir.
Q. All right. That's a good thing. And you kind of look out for each other, don't you?
A. Yes, sir.
Q. Now, when you say that Rick touched your worm, where did that happen?
A. In his room.
Q. In his room. Well, what was he doing in his room when you say this happened?
A. He was watching the news.
Q. How many televisions are in that house or were in that house? I'm sorry.
A. You mean where are the televisions?
Q. Uh-huh (affirmative).
A. Living room, my room, their room, and my sister's room.
Q. Okay. Now, when you say you were watching the news -- and I realize it's been a while back -- but when you were watching the news, do you remember what was on the news?
A. No, sir.
Q. Okay. And every time you say this happened, was the news on?

A. Yes, sir.
Q. Okay. Now, the last time when you say that Rick stuck his worm in your butt, you were on the floor, right?
A. Yes, sir.
Q. And you say you were on your knees, your hands and knees. Would that be right?
A. (Affirmative nod.)
Q. Okay. Would you answer out loud so this lady can get it down, please, sir? Thank you.
A. Yes.
Q. Well, did you spend a lot of time with Rick?
A. Yes, sir.
Q. And did you like to play with action figures?
A. Yes, sir.
Q. Who's your favorite action figure?
A. I don't remember.
Q. Don't remember. Have more than one?
A. Yes, sir.
Q. Pardon me?
A. Yes, sir.
Q. And you liked to sneak around the house, didn't you?
A. Yes, sir.
Q. Liked to hide, didn't you?
A. Yes, sir.
Q. And going back to when you say -- I guess when you

moved out of the house, what do you remember when your mom and [redacted] -- well, let me ask that a different way. Do you remember somewhere around all of this when [redacted] went to stay with your grandma?

A. Can you repeat that?

Q. Pardon me?

A. Can you repeat that, please?

Q. Sure. If I can remember it. Do you remember around this time when [redacted] went to stay with your grandma?

A. Yes, sir.

Q. Did you go with your mom and [redacted] to your grandma's house that night?

A. Yes, sir, but I didn't stay.

Q. You didn't stay? You came back?

A. Yes, sir.

Q. Did your mom come back?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. And you slept in a bed, right?

A. Yes, sir.

Q. I'm sorry?

A. Yes, sir.

Q. Do you remember whose room it was?

A. No, sir.

Q. Was it in your room or [redacted] s room?
A. I can't remember.
Q. Okay. These things that you said -- you just told us that Rick said about you not telling, before today have you told anybody that?
A. Yes, sir.
Q. Who did you tell?
A. My counselor.
Q. I'm sorry?
A. My counselor.
Q. Anyone else?
A. I can't remember what ---
Q. I'm sorry?
A. I can't remember what they're called. I can't remember.
Q. And before coming to Court to testify today, you've talked to quite a few people, haven't you?
A. Yes, sir.
Q. You talked to your counselor about that?
A. Yes, sir.
Q. Talked to this lady about that?
A. Yes, sir.
Q. Talked to your mom about it?
A. A little.
Q. Your grandma?

A. Not really.
Q. Your daddy?
A. Yes, sir.
Q. [redacted]?
A. A little.
Q. Okay. Now, after you say that Rick stuck his worm in your butt, what did you do after all of that?
A. What do you mean?
Q. Where did you go, what did you do?
A. I can't remember that.
Q. Okay. Did you have a cell phone, by the way, at this point in your life?
A. I don't think so.
Q. Was there a phone in the house?
A. I can't remember.
Q. Did you know where your mother worked?
A. She worked one place and then sometimes she moved around.
Q. Did you know the phone numbers to those places?
A. No, sir.
Q. This lady asked you about some pictures in your room. When did you draw those pictures, do you remember?
A. I can't remember.
Q. Do you remember if it was before you and [redacted] talked about all of this or after?

A. Are you talking about when I drew them?
Q. Uh-huh (affirmative)?
A. I drew them at my grandma's.
Q. I'm sorry?
A. I drew them at my grandmother's.
Q. After y'all had moved out of the house?
A. Yes, sir.
Q. When [redacted] told you what she said Rick did to her, how did that make you feel? Did it make you feel angry?
A. Yes, sir.
Q. Want to get even with Rick?
A. Yes, sir.

MR. DEJONG: One moment, please, Your Honor.

Q. Thank you, [redacted]

THE COURT: You may redirect.

MS. BARWICK: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. BARWICK:

Q. [redacted] when you were talking to your parents about the lies the Defendant told, do you remember telling them what will happen when they found out that he's telling lies?
A. Yes, ma'am.
Q. What did you say?
A. I just told them that you'll figure it out one day.
Q. Every time you'd come and talk to me, did we discuss

any rules?

A. What do you mean?

Q. Well, what are the ten rules? What are you supposed to tell?

A. The truth.

Q. Mr. DeJong was asking you about if you've ever told anyone about any threats that the Defendant told and you said a lady and you don't remember. Is it the same lady you talked to that was on tape?

A. I can't remember.

Q. Okay. Fair enough. Do you remember what exactly you told your cousin?

A. I just told her a little bit. I didn't ---

Q. Speak up for me, [redacted]. What did you tell your cousin?

A. I told her what he did.

Q. Okay. Did you tell her all of it?

A. No, ma'am.

MS. BARWICK: That's all the State has for this witness.

MR. DEJONG: No objection to him being excused, Your Honor.

THE COURT: Thank you. Young man, you can step down. You're excused.

You may call your next witness, Solicitor.

MS. BARWICK: The State would call Tina Aiken to

the stand.

THE CLERK: Place your left hand on the bible and raise your right hand to be sworn, please.

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

THE WITNESS: Yes.

THE CLERK: Please have a seat and state your name for the record.

THE WITNESS: Tina Aiken.

TINA AIKEN,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Ms. Aiken, do you remember the first time you met the Defendant?

A. Yes, ma'am.

Q. Okay. It's good. We can hear you just -- you're good.

A. Okay.

Q. And where did you meet him at?

A. The very first time was CVS.

Q. Did you work at CVS?

A. Uh-huh (affirmative). Yes, ma'am.

Q. All right. And what's your profession?

A. I'm a pharmacist.

Q. And how long have you been a pharmacist?
A. Since 1994.
Q. Now, where did you go to med school?
A. The Medical University of South Carolina.
Q. How did you do there?
A. I graduated third out of my class, 3.81 grade point average.
Q. Okay. So are you currently a pharmacist?
A. Yes.
Q. So back in 2008 would you have been a pharmacist?
A. Yes.
Q. When you met the Defendant at CVS were you working there?
A. Yes.
Q. And just kind of tell the jury how your relationship with him began.
A. He was my customer, but I didn't -- you know, we didn't really start talking outside of work, kind of thing, until I worked for Ingle's Pharmacy and he was no longer my customer.
Q. Okay. Do you know about how old he is? Do you know his date of birth?
A. [redacted] 1955.
Q. Okay. How did you relationship evolve from just the customer relationship to y'all eventually getting married?

A. Just -- mainly just talking and then started hanging out and then just, you know, the usual just hanging out and then kind of started -- got a little more serious and then I moved in with him and then we got married.

Q. When you moved in with him, do you remember about when that was?

A. I'm thinking it was around October 2005.

Q. Did your kids come and stay with you at his residence?

A. Yes.

Q. And how was the custody arrangement split between you and their father?

A. Joint custody.

Q. How often would they see you, how often would they see him?

A. We traded every other Friday. We switched off.

Q. So when did you marry the Defendant?

A. It was June 3rd, 2006.

Q. When you married him, can you kind of describe the relationship he had with both of your children?

A. Oh, they loved him. And he was really good to them. They enjoyed being with him. Just all -- you know, just a good round about type little family.

Q. And how was his parenting, I guess, character? Well, how did he parent? Was it the same or different as your husband?

A. Oh, very different.
Q. And how would your husband parent? Or, I'm sorry, how would the children's father parent?
A. Very, very strict.
Q. Okay.
A. And didn't spend much, I mean, quality time with them. They did a lot of chores and that kind of thing.
Q. And what about the Defendant, how did he parent them?
A. He was just -- would sit and watch TV with them, especially my son. He watched the news with him and he liked to, you know, teach him about birds and they would look at nature books and watch a lot of the nature shows on TV.
Q. Did they go anywhere together?
A. They would have like men's night out. He would take him to Liberty Bell and they had milkshakes. And, you know, he just spent quality time with him.
Q. Did you kids rather spend time at your house or at their father's house?
A. Our house. My house.
Q. When did you marry their father?
A. October 17th, 1987.
Q. And when did you divorce their father?
A. It was around when my son was two. And he was born in '99.

Q. Did you remarry?
A. Yes.
Q. When do you think you remarried?
A. It was November, I think, 23rd or 22nd, 2003.
Q. Okay. And what was that gentleman's name?
A. Randy Lawder.
Q. Did you divorce him?
A. Yes.
Q. And then that's when you married the Defendant?
A. We started dating and then, yes, we got married after that.
Q. Okay. I just kind of want to get everybody's ... Ms. Aiken, who are those photos of?
A. This one is of my son, [redacted] Victim 2 [redacted], and this one's my daughter, Victim 1 [redacted].
Q. Okay. Do you remember about when these pictures were taken?
A. It was probably like the end -- maybe somewhere around 2007, you know, somewhere between the end of 2007, spring 2007 to 2008.
Q. Okay.

MS. BARWICK: Your Honor, at this time, the State would like to introduce State's Exhibits 1 and 2 into evidence.

MR. DEJONG: And I object, Your Honor. There's no

relevance. There's no probative value.

THE COURT: What is the relevance?

MS. BARWICK: Your Honor, the jury's having a chance to see the victims as they are aged today. And I just simply want them to see how old these children were, as a picture is worth a thousand words.

MR. DEJONG: May we approach, Your Honor?

THE COURT: Yes, sir.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the bar.)

THE COURT: The objection is sustained.

Q. Can you explain how your daughter looked back in July 2008 versus how she looks now?

A. She was very little. Very body-wise immature.

Q. Was she prepubescent?

A. Yes.

Q. What about Victim 2, how has he changed since the summer of 2008?

A. He looked really young, I mean, like a little kid and now he's, I don't know, he's just grown up to be, you know, he's taller and weighs more, of course.

Q. Do you remember Victim 1 telling you that the Defendant sexually abused her?

MR. DEJONG: Objection, Your Honor. This is out the realm. She can testify as to place, time, opportunity

and nothing else.

THE COURT: Okay.

MS. BARWICK: I'm not asking what she said.

THE COURT: All right. Okay. Ask your question again.

Q. Do you remember your daughter, Victim 1 [redacted], disclosing any sexual abuse to you?

A. Yes.

Q. Do you remember the date she did that?

A. July the 7th of 2008.

Q. All right. That weekend before, where did y'all go?

A. Charleston, South Carolina.

Q. Oka. Do you remember any kind of incident happening between the Defendant and Victim 1?

A. I do not specifically. I'm not clear about what happened because I was in the room.

Q. Okay. When you say in the room, do you mean the hotel room?

A. Uh-huh (affirmative).

Q. What were you doing in the hotel room?

A. I had been getting ready. I had just got out the shower.

Q. What do you remember about that incident?

A. I just remember that -- Victim 1 came storming through the door and she locked the door.

Q. Okay. Did the Defendant say anything about that?
A. A little. Well, not very much. He just said that there was -- I think that there may have been some yelling or something and that there was a guy outside wanting to beat him up because of what was being said. But as far as what was being said, I don't remember.
Q. Okay. Did the Defendant -- how did he appear over all this, was he angry?
A. He was upset. But, I mean, it didn't ruin the, you know, time that we were together.
Q. Okay. Do you remember which day this hotel incident happened on, whether it was like a Saturday or a Sunday?
A. I can't remember exactly. It was toward the end of our trip.
Q. How long had y'all been down there?
A. I'm not exactly sure if it was -- I'm not sure if it was three or four days, to be honest.
Q. Did y'all come home that Sunday?
A. Yes.
Q. And that car ride, was any mention made of this hotel incident?
A. Not to my knowledge.
Q. Did Rick bring it up again?
A. I can't remember.
Q. How was the rest of your trip after this hotel

incident?
A. We had a good time.
Q. Let's talk a little bit about yours and the Defendant's normal morning routine. About what time do you think he normally woke up?
A. He got up at four-thirty.
Q. And what time would you get up?
A. Five-thirty.
Q. What time would he leave for work?
A. Six o'clock.
Q. You got up at five-thirty. What would y'all do in the morning?
A. Watch the news and drink coffee.
Q. Okay. And that was from the five-thirty to six o'clock span?
A. Uh-huh (affirmative). Yes.
Q. The morning of the 7th, did y'all follow your normal routine?
A. Yes.
Q. Did you come into the living room?
A. Yes.
Q. And where were your kids located?
A. My daughter was laying on the couch, head was more toward like the window area.
Q. I'm going to help you out. Hold on one second.

A. Okay. Her head was down more toward the lower square area, which was actually like an end table.

Q. If you'll use the button. It's a laser.

A. Okay. How do I do it?

Q. Just that one right there.

A. Her head was more that way, right there.

Q. Uh-huh (affirmative).

A. Feet was down this way. My son was asleep on this chair and ottoman.

Q. Okay. And where was the Defendant?

A. When I came into the room, he was sitting, he was sitting at the end of the couch.

Q. Okay. And how was he positioned? Was he kind of laid-out or together?

A. Kind of more -- I don't know. Just kind of bunched up like.

Q. Okay. Was he bunched up towards Victim 1 or away from Victim 1?

A. I would say kind of like -- he was bunched up more toward -- like not so much either way. Just kind of like right there, you know, toward the end of the couch but not like he was scrunched to the side.

Q. Was there any other place in the room that was free to sit down in?

A. Yes.

Q. Where?
A. The rocking chair right there.
Q. Did you get any coffee?
A. Yes, I had coffee.
Q. Where did you end up sitting?
A. Rocking chair.
Q. What was on the TV?
A. The news.
Q. Do you remember anything about the way [redacted] was positioned?
A. Not really, other than her just being -- laying on the couch. And I believe she had blankets on her.
Q. Okay. Were the blankets on her or were they on the floor?
A. They were on her.
Q. That evening had you given [redacted] any sleep aids?
A. She came to the room, you know, like early morning. I don't know if it was around one or two o'clock, somewhere around there. That's just guesstimating. And I gave her -- the doctor had prescribed her, you know, that she could take melatonin three milligrams. I only gave her a half of one.
Q. And what exactly is melatonin?
A. It's a naturally occurring substance in the body. It's made by a gland that's in the brain.
Q. Do you have to have a prescription to get that or could

I just go get it?
A. Anybody can go buy it.
Q. How often would [redacted] take that, do you think?
A. Just occasionally. I mean, I've never really given her that much.
Q. Did she come in your room to wake you up to ask for, or to tell you that she couldn't sleep?
A. Yes.
Q. When you were you in that -- in your bedroom -- I'm sorry, which bed were you in?
A. My bed with Rick.
Q. Okay. Let's talk a little bit about [redacted]'s cheerleading back then. How often would she have some kind of cheerleading or tumbling event?
A. She was constantly doing cheerleading. She went to tumbling -- I can't remember -- I know that she'd go at least once a week, sometimes two times a week. And then in the summer she had a lot of cheerleading that she had to do. They practiced a lot.
Q. Is there anything she would wear all the time?
A. Yes.
Q. Involved with cheerleading?
A. Yes.
Q. What would she wear?
A. She usually wore Soffe shorts, always cheerleading

bloomers and then her regular underwear, panties.
Q. Okay. Would the -- I know this is a silly question, would the panties be over the bloomers or under the bloomers?
A. Under the bloomers.
Q. Would you take her to cheerleading?
A. Yes.
Q. Would Rick take her to cheerleading?
A. He has before.
Q. When you would take her some, did you ever stay or did you just go home?
A. I've stayed. She's been doing cheerleading a long time.
Q. Some of those times when you stayed, did Victim 2 go with you?
A. He stayed at home a good bit.
Q. Okay. And who did he stay at home with?
A. Well, he would stay with Rick.
Q. What was your work schedule when you first met Rick?
A. I usually -- I mean, I've always worked basically thirty hours a week, and it varied. I mean, sometimes I'd work nine to nine, nine to two. This was with CVS.
Q. And did Rick ever make any mention about your work hours?
A. Well, later on we -- I was able to cut back to twenty

hours a week and then -- then, you know, later on I had to go back to thirty hours a week.

Q. Why did you have to go back to thirty?

A. Well, we started having some financial problems and he was out a good bit with different disabilities. You know, he had foot surgery and a kidney stone, all kind of problems.

Q. When he was out, you know, from work for various things, would your kids still go to daycare?

A. That's a hard one. I mean, they may, they may not. He was like Mr. Mom kind of thing.

Q. Gotcha. How would he discipline them?

A. He didn't -- he wasn't a very good disciplinarian. I mean, he would try to take the cell phone away or TV, that kind of thing. But pretty much he wasn't very harsh, I should say.

Q. Did he ever do any spankings or anything?

A. Never.

Q. Do you remember the morning of July 7th, 2008?

A. Yes.

Q. Was [redacted] able to disclose anything to you that morning?

A. Not that morning because I was in a hurry for work.

Q. Did you drive her to daycare? Who drove her to daycare?

A. I did.
Q. Did Rick leave for work before you left to drive the kids to daycare?
A. Yes.
Q. When you drove to daycare, how long -- what time do you think you drove them to the daycare?
A. I had to be at work at eight-thirty, all the way in Seneca so -- on the other side of Seneca, so probably, probably anywhere from -- probably around twenty minutes till eight, somewhere around there. Like forty, forty-five minutes before I had to be at work.
Q. When you were living with Rick back in 2008, where were y'all living, which County?
A. Which county? Pickens County.
Q. Okay. In which town?
A. Liberty.
Q. When you got home that evening, we'll talk about that a little bit. Did you, back in the 2008 time period, did you notice anything about [redacted]'s sleep patterns?
A. He -- first, he liked to sleep -- he would sleep in his own room as long as I left the TV on and the bathroom light on. But then he really started wanting to sleep with [redacted] in her floor on a pallet. And he has expressed, you know, he wanted to sleep in the closet and that kind of thing.
Q. Did Rick have any comments to make about [redacted] sleeping

in the closet?

A. He really wanted him to sleep in his own room in his own bed.

Q. When you got home from work on July 7th, what happened?

A. As soon as I walked through the door, Victim 1 you know, grabbed me right then and said she needed to talk to me and she wanted me to come to the bathroom. But I was like, why can't you just tell me right now? But she wouldn't tell me anything until I went to the bathroom with her.

Q. Well, we're not going to talk about what Victim 1 told you in the bathroom.

A. Okay.

Q. But did she disclose any sexual abuse in the bathroom?

A. Yes.

Q. And in response to that, what did you do?

A. I immediately said we're going to pack your clothes. We're going to grandmother's house.

Q. How were you feeling at this point?

A. Pretty much just in a whirlwind, shocked, I mean, didn't really know what to think other than my child, you know, was telling the truth.

Q. And you were going to take her to her grandmother's house. That's your mother?

A. Yes. I called her Maw Maw.

Q. Okay. And did the Defendant have anything to say about

that?

A. He didn't want her to go. He said, no.

Q. And did he say why?

A. He said her room was messy and that she needed to have that clean.

Q. Did you clean it?

A. We did kind of do like a spot clean, throwed like the covers on the top of the bed, threw stuff in the closet to make it look neater.

Q. Did you go over to your mother's house that evening?

A. Yes.

Q. Did you take -- who was with you?

A. Me, Victim 1 and my son Victim 2.

Q. And when you got to your grandmother's house, did you sleep there?

A. No.

Q. Not your grandmother's, I'm sorry. Your mother's. Did you sleep at your mother's house that night?

A. No.

Q. Where did you sleep?

A. At home with Victim 2 in Victim 1's room.

Q. Did Rick say anything -- I'm sorry. Did the Defendant say anything about you not sleeping in his bed with him?

A. That night?

Q. Yes?

A. Not to my knowledge.
Q. How many TVs do you have -- were in the house at the time?
A. Four.
Q. Did they all have cable?
A. Yes.
Q. Well, I've zoomed in on this, but did you draw this?
A. I did.
Q. And it's not to scale?
A. No.
Q. There's two bathrooms. Who used this bathroom?
A. Let's see. That is my bathroom with [redacted] and [redacted].
Q. And whose bathroom is this?
A. That's Rick's bathroom.
Q. So the Defendant had his own bathroom?
A. Yes.
Q. After you dropped [redacted] off at your mother's house, did anything happen the next day?
A. As soon as I got up and Rick left for work, I packed all -- as much stuff as I could pack. I took [redacted] to daycare first and then I packed everything I could pack and carry.
Q. Did you ever go back to live with the Defendant?
A. Not after the 8th, no, ma'am.
Q. Okay. Did you go back to get the rest of your stuff?

A. Yes, ma'am.
Q. Did the Defendant say anything about you moving out?
A. We had a discussion on the telephone.
Q. Well, tell the jury a little bit about that discussion?
A. Basically, he said that -- first it started out that he was questioning why I left. And I said, you know why I left. And he said, no, I don't. And then I told him what he said -- you know, what happened. And he said that that wasn't true and that my ex, which is Ted, their father, was trying to take them away from him and that if I -- like for me to come back home that we would work through this together.
Q. Okay. When [redacted] told you, did you take her to any law enforcement?
A. I did not.
Q. Okay. Why didn't you?
A. Because I was in shock and I just felt like that if we just didn't say anything it would just go away. I didn't want her to be -- I've seen too many TV shows and stuff where like victims have been persecuted basically, you know.
MR. DEJONG: Objection, Your Honor, to that line of testimony. That's not responsive to the question.
THE COURT: I'll overrule your objection. I'll allow her to explain her -- the thought process.
A. I just felt like that she -- people found out, you

know, in school, in town, that they'd make fun of her and ---

Q. Do you regret that now a little bit?

A. Yes.

Q. Did she eventually go to law enforcement and tell them what happened?

A. Yes. She did.

Q. Do you remember about how long that was after y'all had moved out?

A. I'm going to say about a week.

Q. Who had her when she disclosed? Who had custody of her, you or your husband? Your -- I keep saying your husband. I apologize. I mean, Ted Wheeler, their father.

A. When she disclosed it to him, when she disclosed to him, he is the one who pursued the matter with contacting law enforcement.

Q. Okay. Did Victim 2 ever make a disclosure?

A. Not right away. It took -- oh, it was probably about, around two weeks later, he told some things but not all things and to this day he has not disclosed everything because he said that he would die before he said anything -- all of it.

Q. Well, let's talk about this disclosure a little bit. Did it happen over a weekend?

A. Yes. Yes.

Q. Do you want some water?
A. No, I'm fine.
Q. How did it begin? And I'm not asking you what he told you. I'm just saying, how did it begin?
A. Pretty much went through, you know, that I had left because we wasn't getting along.
Q. How was he acting before he disclosed?
A. Terrible. Terrible. Scratching his skin, banging his head, crying. He couldn't really talk because he was so upset.
Q. Did you ask him why he was upset?
A. Yes.
Q. Would he tell you?
A. No. He just said he had a secret.
Q. Did you see any drawings that he did?
A. Yes.
Q. Where did you see those drawings?
A. He crumpled one up and threw it in the trash and told me not to look at it.
Q. And you looked at it?
A. Yes.
Q. And what was on it?
A. It was a saying, he said Rick was a butt hole.
Q. Is that what was in the picture?
A. That was just, that was -- he wrote it out, but then

there was another picture where he had Rick hanging.

Q. Did you ask Victim 2 about those pictures?

A. I'm sorry. I didn't hear you.

Q. I'm sorry. Did you ask Victim 2 about those pictures?

A. I -- let's see. I asked him, I asked him again, you know, you know, what was going on? Why would he do something like that? And he said he had a secret and it was too ---

Q. Okay. He didn't tell you?

A. Tell me?

Q. At this point when you asked him why he drew those pictures, he told you that he drew those pictures because why?

MR. DEJONG: Objection, Your Honor. It's hearsay, blatantly.

THE COURT: I sustain the objection.

MS. BARWICK: Okay.

Q. We just won't talk about what Victim 2 told you.

A. Okay.

Q. After he drew those pictures and you asked him why he did those, did you have a difficult time talking with him?

A. Yes.

Q. Did anyone come over to help him talk?

A. Yes.

Q. Who came over?

A. My niece, Savannah.
Q. Is that his cousin?
A. Yes.
Q. And she came over. Did they have a discussion?
A. Yes.
Q. And did you see what Victim 2 did after that discussion?
A. As far as the way he was acting ---
Q. Yes.
A. --- he was still doing, you know, hyperventilating, I mean, hid in the closet, scratched his legs. He was just uncontrollable.
Q. And you said he hid in the closet, which closet?
A. It would be the closet -- it's in the laundry room. But we turned it into a small bedroom, too. I mean, it's very small.
Q. Is that where Victim 2 was sleeping at your grandma's -- at your mother's?
A. That's where he was -- would -- that's the room we made for him but he would not sleep in there.
Q. Okay. After Victim 2 ran to the closet, did you tell Victim 1 to go do anything?
A. At the point, before all of this, he had no idea anything else was going on and I told him that -- I mean, I told her that maybe if she went and talked to him, that maybe he would be able to open up a little more to her.

Q. And when you said to her to go talk to him, did you tell her what she needed to talk to him about?
A. The only thing I said was maybe if she could talk to him about what her experience was.
Q. Okay. And did she go in the room with him?
A. Yes.
Q. As a result of [redacted] going into that room, did you do anything after they had their conversation? Did you end up calling law enforcement?
A. Oh, yes, I did. I'm sorry. Yes, I did.
Q. And did you call law enforcement that weekend or did you wait?
A. No, I called immediately.
Q. Law enforcement told you to do what?
A. I spoke with a specific person and I also called rape crisis and they told me to wait until Monday.
Q. On Monday did you have another conversation with law enforcement?
A. I don't remember exactly what happened, but I'm pretty sure that I did. I mean, I know that it was right away.
Q. What kind of undergarments as far -- or what kind of undergarments would the Defendant wear, boxers or briefs?
A. Briefs.
Q. Do you remember what brand name?
A. Not really. I don't know if it was -- I'm not sure to

be honest. They were white. That's all I know.

Q. Did Victim 2 ever mention to you anything about the Defendant lying?

A. He has made mention of that. He said that Rick lies.

MR. DEJONG: Objection to what he said, Your Honor.

THE COURT: Sustained.

MS. BARWICK: Your Honor, may we approach?

THE COURT: Yes.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the Bar.)

Q. Why did you have your son sleep with you the night of July 7th?

A. Just, I mean, that was -- I mean, we are pretty close and that's just something we would do sometimes and I didn't want him sleeping alone.

Q. Can you tell the jury a little bit about what Rick told you about Victim 2 seeing him coming out of the shower?

A. There was an incident where Victim 2 supposedly came into the shower and saw -- into the bathroom and saw Rick come out of the shower, of course, naked. And that Rick said now that Victim 2 saw him naked that he would go and tell his dad what he looked like, you know. Like, I don't know exact words but ---

Q. You can say it.

A. Like his penis or what his private parts look like.
Q. Do you remember how much before July 7th that that conversation too place, just a rough estimate?
A. I don't remember.
Q. Are your kids in counseling now?
A. Yes.
Q. Have they been in counseling since this incident happened?
A. Yes.
Q. How often will they go to counseling?
A. Anywhere from one to two weeks -- I mean, two times a week.
Q. And how long would these sessions last, do you think?
A. Around fifty minutes to an hour.
Q. Did the Defendant ever say anything about waking up in the middle of the night?
A. Yes.
Q. What did he say about that?
A. He said that he would wake up in the middle of the night sometimes and he would go in and check on the children to make sure, you know, they were okay.
Q. Have either of your children ever accused anybody else of something like this?
A. No.
Q. You mentioned you were having some financial

difficulty. What were the Defendant's spending habits towards the kids?

A. I mean, we would not have -- you know, I mean, we didn't have tons of money or whatever, but, I mean, we bought a nine hundred dollar dog because the kids wanted it. We bought a bearded dragon. Just different, you know, animals and that kind of thing.

Q. What about swimsuits?

A. In July ---

Q. Of 2008?

A. --- in 2008, it was suggested by Rick that [redacted] needs to have two swimsuits that summer. Where in the past, he'd never said that before.

Q. Have your children changed at all since this?

A. Most definitely.

Q. How have they changed?

A. [redacted] has nightmares. She cries. She feels -- at times she's made mention that, you know, dirty. [redacted] has nightmares. He is very paranoid. He cannot stand to be alone with his thoughts because he says his mind is racing twenty-four seven. He cries. Says he wishes he could die. That he wished he could be normal and that -- he's just not a happy little boy like he was. He's just, he's just always afraid somebody's watching him. He's afraid that Rick's going to come to the house and hurt us. He's always afraid

like we're going to run into him in the store. I mean, he just goes nuts, crying and hyperventilating and having like panic attacks.

Q. Has he ever expressed any fears to you?

A. After ---

Q. After he disclosed?

A. Just that he's afraid that Rick would harm us, that -- he's just afraid mainly that Rick would find where we were and that he would harm us.

Q. Did y'all have a conversation about homosexuality?

A. Yes.

Q. And what brought that up?

A. It was after a counselor's meeting.

Q. Did Victim 2 express any fears about that?

A. Yes.

Q. And what is his fear?

A. That he was gay.

MS. BARWICK: That's all the State has for this witness.

THE COURT: You may cross-examine the witness.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. Now, how long have you been a pharmacist, Ms. Aiken?

A. As of now, seventeen years.
Q. Okay. And how long had you been a pharmacist in 2008?
A. Fourteen years.
Q. All right. And as a pharmacist you've had certain training in medications. Is that correct?
A. That's correct.
Q. Side effects?
A. That's correct.
Q. And with regard to sleeping pills, as a pharmacist, are you aware of side effects?
A. Sleeping medications, yes, sir.
Q. Many sleeping medications have side effects, do they not?
A. That's true.
Q. One of those side effects can be dreams or vivid dreams, correct?
A. That is true.
Q. All right, ma'am. And, indeed, many sleeping medications are not recommended for children twelve and under, are they?
A. This is not considered an out and out sleeping aid. This medication is used -- it's a natural substance ordered by a doctor.
Q. Yes, ma'am. But in your experience and your training, there's even been questions about melatonin being used on

children twelve and under.

A. All I know is I have several, several patients who are twelve and under who take melatonin on a daily basis.

Q. Yes, ma'am. That wasn't exactly my question.

A. Sorry.

Q. My question was, I believe, that there's certain questions -- there's question about giving even melatonin to children twelve and under.

A. I have not read that.

Q. Okay. Nonetheless, you gave Victim 1 a sleeping pill on -- and this may become a little fuzzy, but was it July the 6th that you gave her the sleeping pill or July the 7th, do you remember?

A. It would be early in the morning on July the 7th. And it was a half a pill.

Q. Okay. So sometime after midnight?

A. Yes.

Q. Do you know what the half life on melatonin is?

A. Thirty to fifty -- I believe it's -- I mean, it's very short.

Q. Okay. But nonetheless, stays in your system, right?

A. Not for very long.

Q. Okay. Now, talking about this Charleston trip. There was an incident -- I understand you said you didn't recall a lot about it, but there was an incident between Rick and

that happened out in the parking lot, right?
A. That's what I was told.
Q. Right. And it wasn't just a matter of locking Rick out of the room?
A. I don't know exactly what happened because I was not out there.
Q. Yes, ma'am. Nonetheless, there was some controversy, disturbance or whatever, between and Rick?
A. Yes.
Q. And that came towards the end of your vacation, correct?
A. Towards the end.
Q. Right. And I guess, what was this, the week of July 4th?
A. Yes.
Q. Okay. So your vacation actually ended, I guess, on July the 6th, right?
A. That Sunday, July 6th.
Q. Okay. Now, when you say Rick watched the news, what news would he watch?
A. News Channel 4.
Q. All right. So when we say News Channel 4, just so -- it was a local news channel that he was watching?
A. Yes.
Q. It wasn't like TBS or CNN or any of those?

A. No.
Q. It was local news?
A. Correct.
Q. Morning and afternoon, correct?
A. Correct.
Q. All right. Now, where was Rick working in 2008?
A. I'm not sure if he was out on leave or not, but he was employed with General Electric.
Q. All right. And was he employed with General Electric when y'all first met?
A. Yes.
Q. And except for some leave, he continued to be employed by General Electric, right?
A. That's correct.
Q. Did he work anyplace else, other than General Electric, as a side job?
A. He was -- he worked for the rescue squad.
Q. Now, the rescue squad, was that Pickens County or ---
A. Pickens County in Liberty.
Q. I'm sorry?
A. Pickens County in Liberty.
Q. Okay. Very good. What was his position or his status, if you know, with the rescue squad?
A. I'm not exactly sure. All I know, it was volunteer.
Q. Okay. Do you know how often he volunteered?

A. Just whenever he could get a call and go.
Q. All right. When Rick worked at GE, what were -- were his hours always the same?
A. Yes.
Q. And what hours did he work?
A. Seven until -- I know it was seven in the morning and I'm pretty sure it was three o'clock in the afternoon because he would arrive home around four o'clock.
Q. So he would get up what time in the mornings?
A. He would get up at four-thirty in the morning.
Q. And then -- well, to your knowledge when he got up, did he dress for work?
A. He would take a shower, shave and do whatever other bathroom duties he needed to do.
Q. Yes, ma'am. I understand. You know how long that took?
A. I just know that around five-thirtyish he was in -- you know, he would drink coffee.
Q. And would you get up and join him to drink coffee?
A. Yes.
Q. And when you got up to join him to drink coffee was that just as he finished his morning routine of dressing and showering and shaving and the other things you do in the bathroom?
A. Yes.

Q. Now, on July the 7th of 2008, you got to the living room, I gather, correct?
A. Yes, sir.
Q. And when you got there, was [redacted] asleep?
A. [redacted] asleep? Yes, sir.
Q. Was [redacted] asleep?
A. Yes, sir.
Q. Okay. Did you notice any movement or anything on the part of [redacted]?
A. No, sir.
Q. Talking in her sleep or anything like that?
A. No, sir.
Q. All right. But from what you could observe as her mother, she was sound asleep?
A. Yes.
Q. And this would have been approximately five-thirty in the morning?
A. When I arrived in the -- yes.
Q. Yes, ma'am. Yes, ma'am. Do you know what was on television when you got into the living room?
A. The news.
Q. Was it Channel 4?
A. As far as I know, it was Channel 4. That's usually what he watched.
Q. All right. Well, when you got into the living room,

did Rick have his coffee?

A. That part, I can't remember. I would like to say that yes, but I'm not a hundred percent positive.

Q. Okay. Well, did Rick bring you your coffee or did you have to go get your own coffee or how did that work?

A. That morning, I can't remember.

Q. All right, ma'am. And Rick was sitting on the sofa?

A. Yes, sir.

Q. Now, other than the rocking chair, I believe, the sofa was the only other place to sit, right?

A. I can't catch all of it. I'm sorry.

Q. I'm sorry. Other than the rocking chair, the sofa would have been the only other place to sit in the room, correct?

A. Yes, that's correct.

Q. Especially on that particular morning because Victim 2 was occupying that other chair, right?

A. That's correct.

Q. And I guess this trunk -- I think it says trunk -- right here. Is that more or less a coffee table?

A. It was my grandmother's hope chest type trunk ---

Q. Uh-huh (affirmative).

A. --- and we would use it as a coffee table.

Q. Okay. You don't remember if Rick had coffee on there or not?

A. I can't remember.
Q. Okay. And you sat in the rocking chair?
A. Yes.
Q. Okay. And all of that pretty much -- well, the TV was pretty much the focal point in the whole room, right?
A. Yes.
Q. Okay. Now, so Rick left for work around six o'clock?
A. Yes, sir.
Q. And then you drove [redacted] and [redacted] to the daycare or babysitter or whatever, correct?
A. Well, [redacted] was already -- let's see. Okay. Yes. I took -- that was the morning off so I took them to the babysitter's.
Q. Okay. That was your morning off. Did I understand that correctly?
A. Okay. Let's see. Okay. We're talking about the morning all of this happened. So the morning that it happened, I was taking them to the babysitter's because I was running -- I was going to work.
Q. Okay.
A. And I -- I mean, I have to be there by eight-thirty.
Q. All right. So if I understood you correctly, you left the house about seven forty, twenty till eight, right?
A. Somewhere around there. It may have been a little bit earlier since I had to take them to daycare.

Q. But Rick was gone after six o'clock?
A. Yes.
Q. So it was you, Victim 1 and Victim 2 in there for about an hour, forty minutes, forty-five minutes.
A. Okay.
Q. Is that right?
A. It was -- I mean, we were there alone for a good while.
Q. Okay. Now, in the -- well, and how far was it to daycare or babysitter or whatever from where you lived?
A. Probably no more than five minutes.
Q. And I gather Rick had a vehicle and you had a vehicle, right?
A. Yes, sir.
Q. What kind of vehicle did you drive?
A. A Dodge Durango.
Q. I'm sorry?
A. A Dodge Durango.
Q. Okay. Four doors, two seats.
A. Four.
Q. Okay. What was the seating arrangement normally when you drove? Who sat where? Obviously, you drove, but ---
A. Not always. But it would be the two adults in -- you mean when Rick was with us?
Q. No, when Rick wasn't with you.
A. It was myself, Victim 1, and then Victim 2 usually in the

back.

Q. All right. Ma'am.

A. Not in the far back but in the middle.

Q. Now, you say [redacted] occasionally took sleeping pills. How often is occasionally?

A. Oh, maybe once -- I mean, once a month, once every two months. It was not an on-going thing. She did not do this on a regular basis.

Q. Now, in the summertime when it came to cheering, there were no -- cheerleading to me brings up pictures of football game, baseball game, basketball game, that type of thing. So she didn't have any of that in the summer, did she?

A. No, she has competitive cheerleading.

Q. Okay. Where did she do her practicing?

A. At Liberty High School. This is when she was older, Liberty High School.

Q. Well, where did she do it in 2008?

A. Liberty High School.

Q. All right. What were her hours for cheerleading?

A. To be honest, I can't remember because they varied and she had tumbling, also.

Q. Well, as I understood it, she took tumbling maybe two days a week, correct?

A. Yes.

Q. Not ---

A. Somewhere around there, one to two times a week.
Q. All right. And how many times cheerleading?
A. Cheerleading, oh, during the summer they could do it anywhere from three to five days a week.
Q. But you don't remember what hours?
A. No. Because see, the varsity would sometimes do theirs in the morning and then we would do ours in the afternoon, say, like -- I don't know if it was three o'clock or, you know, until seven o'clock, five o'clock. I'm not sure exactly. I don't want to say one hundred percent. She's just a very busy girl.
Q. Okay. You talked a little bit with the Solicitor about sleep patterns and I don't really recall if that was with Victim 1 or Victim 2 or both. But you say you noticed the sleep patterns changed. Was this Victim 1's sleep patterns that changed?
A. No, it was my son's.
Q. And when did you notice that?
A. I can't tell you in a definite answer to that question. I just know that he started wanting to stay more and more with his sister in her room.
Q. Now, Victim 2 and Victim 1 have a very close relationship?
A. That's true.
Q. In fact, they take care of each other, if you will?
A. Yes.

Q. All right. Maybe we'd say on the street they look out for each other's backs, right?
A. They're just like normal brother and sister, so ...
Q. And, of course, [redacted] liked to play with action figures, right?
A. That's true.
Q. What was his favorite action figure?
A. I mean, he'd play with different things, GI Joe, Army men, that type thing. Anything to do with GI Joe. A lot of little race car and motorcycle men.
Q. And as a part of that, he liked to sneak around the house, didn't he?
A. Sneak around the house?
Q. Sneak around the house?
A. I don't recall that.
Q. Okay. And as part of that, he liked to hide around the house?
A. I don't recall that, either. I don't want to say a hundred percent.
Q. When you say [redacted] disclosed, made this disclosure to you, made these allegations to you, did you ever step back and talk to Rick?
A. No, I did not.
Q. And the only conversation you had with Rick is when, I believe, he later called you, right?

A. It was on the telephone.
Q. Yes, ma'am. Well, as I understand it, you said Victim 1 made these allegations, came to you with these allegations on July the 7th. And that he -- now, the week of July 7th, was that your week to have the children or was that dad's week to have the children?
A. I can't remember because we would trade off a good bit, I mean, you know, help each other.
Q. Well, did you ever share with dad these allegations that Victim 1 had made?
A. Did I share them with who?
Q. With your ex-husband?
A. I don't recall that I did, not right away. We didn't talk about them.
Q. Now, at this point in time, Victim 1 was twelve and Victim 2 was eight, correct?
A. Yes, sir.
Q. Thank you, ma'am.
THE COURT: Any redirect?
MS. BARWICK: No, sir, Your Honor.
THE COURT: All right. Thank you, ma'am. You may step down from the witness stand.
MR. DEJONG: No objection to her being excused, Your Honor.
THE COURT: Ladies and gentlemen, this would be a

good time for us to take a lunch break. You've been very conscientious and observant, listened well and I know you're ready for a break, as we all are. I'll remind you again, don't discuss the case with anyone. Don't let anyone discuss the case with you while you're out for lunch. Be careful to protect that purity of the process that I've talked about. You may be eating lunch at a local restaurant here and someone sits close to you and you start overhearing someone talk, you take the initiative to just move away. You've made a high commitment to these parties and you need to maintain that commitment throughout this process.

We'll be ready to start back at two-fifteen. If you'll be back in your jury room then. Have a good lunch, ladies and gentlemen. Everyone else, please remain seated.

(WHEREUPON, the jury exited the open court at approximately 1:05 p.m.)

THE COURT: All right. We'll be at ease until two-fifteen.

MR. DEJONG: Thank you, Your Honor.

(WHEREUPON, the Court stood at recess for a lunch break.)

THE COURT: Are you ready to proceed?

MS. BARWICK: The State is, Your Honor.

MR. DEJONG: I have a couple of matters to take up with the Court before the jury comes in.

THE COURT: All right, sir.

MR. DEJONG: The first matter is, Your Honor, I want the Court and Ms. Barwick to be aware I was downstairs partaking of my lunch during the break. A young lady walked up to me and started talking with me. The conversation was that it was a beautiful day. She was reading memorials and looking at the Andrew Pickens statute. And she did not have a badge on and she was not dressed the same as she was this morning. Had sunglasses on. But the thought occurred to me then, oh, my gosh, I think I'm talking to a juror. I asked her. I immediately removed myself. Nothing about the case was discussed. If Ms. Barwick wishes to have her voir dired, I have no problem with that, Your Honor, but I did want the Court to be aware of it.

THE COURT: Any response from the State?

MS. BARWICK: Your Honor, Mr. DeJong's a very honest man and if he says it, that's how it happened.

THE COURT: All right. Thank you. The next thing?

MR. DEJONG: The other thing, Your Honor, there are two pictures that were not allowed into evidence that the Solicitor has lying on the end of counsel table. I would ask that those be removed. That's all I have, Your Honor, thank you.

THE COURT: All right. If the jury's ready, you

can have them come in.

THE BAILIFF: They're not ready yet, Judge.

THE COURT: Okay.

(WHEREUPON, the jury entered the open court at approximately 2:22 p.m.)

THE COURT: All right. Solicitor, you may call your next witness.

MS. BARWICK: The State calls Ted Wheeler to the stand.

THE CLERK: Place your left hand on the bible and raise your right hand.

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

THE WITNESS: Yes, I do.

THE CLERK: Have a seat, please, and state your name for the record.

THE WITNESS: Ted Wheeler.

TED WHEELER,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Mr. Wheeler, do you know [redacted] and [redacted]?

A. I'm their father.

Q. And you share custody with their mother?

A. Yes, I do.
Q. Do you recall back in July 2008 [redacted] coming to spend your week with you? It would have been after the July 4th holiday.
A. Yes, I do.
Q. When she came and stayed with you, how was she acting?
A. Upset.
Q. When would it have been? Would it have been the week after July 4th weekend?
A. I don't remember the exact date, but I just remember when I got her back, she was real upset.
Q. Okay. And how was she acting that made you think she was upset?
A. She was just nervous and upset and ---
Q. Did you ask her why she was upset?
A. Yes.
Q. And did she make a disclosure of sexual abuse to you?
A. Yes, she did.
Q. When she told you, what was her mannerism in telling you? Was she hesitant or forthcoming?
A. Hesitant.
Q. Okay. After she told you, what did you do?
A. I didn't really know what to do and I had a lot of thoughts, but I called Gene Patterson. He's in law enforcement that's a personal friend of mine.

Q. Do you know which agency he works for?
A. He's with Easley.
Q. Okay. And after speaking with Gene, did he tell you anything?
A. He told me that I had to go to the police.
Q. Okay. And did you go to the police?
A. (Affirmative nod.)
Q. When did you go to the police?
A. I remember it was late at night. We went late.
Q. Okay. Which day of the week do you think that would have been?
A. Honestly, I don't remember.
Q. Okay. And you went and told. And you said it was late at night. Do you have an estimate of time when that was?
A. Eight or nine o'clock at night.
Q. Okay. Who was with you?
A. Just Victim 1.
Q. Where did you go?
A. We went to the LEC.
Q. Okay. And do you know what LEC stands for at all?
A. Law Enforcement Center.
Q. Okay. Did you speak with an officer there?
A. Yes, I did.
Q. Do you see him in the courtroom?
A. Yes, I do.

Q. Okay. And can you point him out for the jury?
A. The man in uniform.
Q. When you spoke with him, did Victim 1 make a disclosure of sexual abuse ---
A. Yes, she did.
Q. --- to the officer?
A. (Affirmative nod.)
Q. Did you find out -- All right. Did you find out about Victim 2? Did you find out about him making a disclosure of sexual abuse as well?
A. Later on.
Q. Okay. After you found out about that, did you have any conversations with Victim 2 about that topic?
A. Yes, I did.
Q. Did he express any fears to you?
A. Yeah. He had a lot of fears.
Q. What were some of the fears he had?
A. He was afraid of Rick and he was afraid that he was gay.
Q. After he expressed that fear to you, what if anything did you do?
A. I asked him if he liked girls and he said, yes. And then I asked him if he liked boys and he said, no. So I told him he wasn't gay.
Q. And I'm sorry to ask you this question. Do you

remember Victim 2 and Victim 1 ever disobeying Rick?

A. Yes.

Q. Did you do anything in response to that?

A. I spanked them and I told them they had to listen to him.

Q. Was that before these disclosures were made?

A. Yes.

MS. BARWICK: That's all the State has for this witness.

THE COURT: You may cross-examine the witness.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So would you agree, Mr. Wheeler, that what you say was a disclosure to you by Victim 1 was at least a week after the alleged incident?

A. I don't remember the time line, sir.

Q. All right. Well, when she disclosed, as you call it and as the Solicitor calls it, did she give you a date?

A. She didn't really talk about a date. She just said that they had left.

Q. Okay. Well, you and her mother communicate, do you not?

A. Yes, we do.

Q. And are you saying that when Victim 1 came to you, when it was your weekend, that was the first knowledge that you had of these allegations?
A. Yes.
Q. Okay. Did Mr. Beekman ever call you about these allegations?
A. I believe he did at one time, but it was after it was all -- we'd already been to Court. I knew he was lying.
Q. You just don't remember is what you're telling me, right?
A. I don't remember the time line.
Q. Well, that being said, I'll ask anyway. How long was it after Victim 1 made these allegations that you became aware of Victim 2's allegations?
A. Honest to God, I don't really remember the time line. I mean, this has been three years ago.
Q. And apparently you asked him if -- Victim 2, if he liked girls?
A. Yes, I asked Victim 2 if he liked girls.
Q. You brought that up, correct?
A. Yes, I did. When he told me he was gay.
Q. All right. And had there been any prior discussion about that between you and him?
A. Never.
Q. And then you asked him if he liked boys, right?

A. Yes, I did.
Q. And he said he wasn't gay, right?
A. He said he didn't like boys. I told him he wasn't gay.
Q. Thank you, sir.
THE COURT: Any redirect?
MS. BARWICK: No, sir, Your Honor.
THE COURT: Thank you, sir. You may step down.
THE WITNESS: Thank you.
MR. DEJONG: No objection to this witness being excused, Your Honor.
THE COURT: The State may call its next witness.
MS. BARWICK: The State would call Deputy Cory Baker to the stand.
THE CLERK: Place your left hand on the bible and raise your right.
Do you solemnly swear or affirm the testimony you're about to give will be the truth, the whole truth and nothing but the truth, so help you God?
THE WITNESS: I do.
THE CLERK: State your name for the record, please.
THE WITNESS: Cory Baker.

CORY BAKER,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Deputy Baker, where do you work?

A. I work for the Pickens County Sheriff's Office.

Q. And how long have you worked for them?

A. Five years.

Q. How long have you been in law enforcement?

A. Five years.

Q. So all five years have been at the Sheriff's Office?

A. Yes, ma'am.

Q. Do you remember Victim 1 [redacted] coming into the LEC with her father to speak with you?

A. I do.

Q. What day did she come in with her father?

A. She came in on July 14th of 2008.

Q. About what time?

A. About nine-thirty at night.

Q. Did you speak with Victim 1?

A. I did.

Q. Did she disclose any sexual abuse to you?

A. Yes, she did.

Q. And what did you do in response to that?

A. I documented what she had told me had happened. I got, with the permission of her father due to her being a minor, I got her to write me a voluntary statement and forwarded that to the Juvenile Detective Division, since that would be

their area of speciality. That way, they could get the ball rolling on what needed to happen the next morning, get the case assigned to them.

Q. And is that the extent of your involvement with this case?

A. It is.

MS. BARWICK: No further questions.

THE COURT: Any cross-examination.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. Anybody come in other than Mr. Wheeler and [redacted]?

A. Not to me.

Q. All right. Once you took your report, did you have any further involvement with the case?

A. I did not.

Q. All right. And you say you documented your report. Is that correct?

A. Yes.

Q. And that report would be accurate?

A. I can't hear you.

Q. That report would be accurate?

A. Yes.

Q. And as part of the reporting -- and I'm not asking for all of it, just one specific part -- did the alleged victim, Victim 1 [redacted], say that the hands were inside her panties?
A. Yes.
Q. And you've been to the police academy, right?
A. Yes.
Q. Part of that is to teach you to write accurate reports?
A. Yes.
Q. And that report is accurate?
A. As to what I was told, yes.
Q. How long did you spend with Victim 1 and her dad?
A. I can't remember exactly how long they were there. That was three years ago.
Q. Do you remember what day of the week it was?
A. I do not.
Q. Okay. Are you road patrol?
A. Yes.
Q. Were you road patrol back in '08?
A. I was.
Q. How did it happen that you met at the LEC?
A. I work the Pickens area. I actually -- if we don't have anybody at the office, if you work the Pickens area and we have a walk-in to the center, to the Law Enforcement Center, that would be one of our responsibilities, to help take -- to handle the walk-in.

Q. All right. As a result of these allegations, did you ever talk to Mr. Beekman?

A. No.

Q. So your basic involvement was taking what we would refer to as the initial report. Is that correct?

A. Yes.

Q. Did you have any other involvement whatsoever with this case?

A. No.

Q. Thank you, sir.

THE COURT: Anything in redirect?

MS. BARWICK: No, sir, Your Honor. May he please be excused?

MR. DEJONG: No objection, Your Honor.

THE COURT: Without objection, the witness may be excused. Thank you, sir. You may step down, Officer Baker. You may call your next witness, Solicitor.

MS. BARWICK: The State would call Detective Cynthia Palis to the stand.

THE CLERK: Place your left hand on the bible and raise your right hand.

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

THE WITNESS: I do.

THE CLERK: State your name for the record, please.

THE WITNESS: Cynthia Palis, P-a-l-i-s.

CYNTHIA PALIS,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Detective Palis, what do you normally go by?

A. Teddi.

Q. Okay. Just like [redacted]?

A. Yes, that's correct.

Q. Did you become involved in this case?

A. Yes, I did.

Q. When did you first learn about this case?

A. I was assigned this case on the 15th of July, 2008.

Q. When you were assigned to it, what did you do?

A. Well, what I did is after receiving this assignment, I met with [redacted] and her mom at the Sheriff's Office at LEC and obtained and spoke with her about the incident that had happened. And after she did disclose the sexual situation that occurred, then I took a written statement from her.

Q. Normally, where do you work during the school year?

A. During the year and during school, I'm assigned as a school resource officer. And during the summer months, while at the Sheriff's Office, we are given different

various assignments. And some of us work investigations and just other different divisions. So I happened to be investigations in 2008 and was assigned this case.

Q. Okay. And how long have you been working for the Sheriff's Office?

A. I've been working there for approximately twenty years.

Q. Did you also take a statement from Victim 1?

A. Yes, I did.

Q. Did you say where her pants were in relation to the Defendant's hands?

A. I'll have to refer back to my notes just to be sure. This was in 2008.

Q. If you need your statement, I'll give it to you.

A. I have a copy.

Q. Okay.

A. She said that her pants had been pulled down and that the Defendant had his hand on her vagina area.

Q. Okay. With her pants being pulled down?

A. That's correct.

Q. Okay. When she disclosed to you, what were her mannerisms?

A. Victim 1 was -- she seemed very, very intelligent. And she was very direct about the situation that happened and she seemed hurt and angry.

Q. Later on did you learn about Victim 2 making any

disclosures of sexual abuse?

A. Yes, I did.

Q. Did you have the opportunity to speak with him?

A. Yes, I did. Victim 2 was brought into the Sheriff's Office by his mom on July the 21st of 2008. And at that time he disclosed a sexual situation also.

Q. When he disclosed, what did you do?

A. He was, if I recall, just going into the third grade. And he had difficulty speaking about what had happened. When he came in, we spoke about school and just things like that. But then when I asked him about the relationship between he and his stepfather, he became extremely nervous and he looked down and, according to my notes, started scratching his legs. It was shortly after that -- I didn't speak. I didn't ask many questions at that point and referred him to a forensic interview.

Q. Okay. And did that forensic interview take place?

A. Yes, it did.

Q. Were you there for it?

A. Yes, I was.

Q. Where did it take place?

A. It took place at the -- I want to say the Rape Crisis in Greenville, South Carolina.

Q. All right. Do you know if goes by a new name?

A. Valentine? I'm not sure of the new name that it has.

Q. All right. But you were present during that interview?
A. Yes, I was.
Q. And was it recorded with audio and video?
A. Yes.

MS. BARWICK: That's all the State has for this witness.

THE COURT: Any cross-examination.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So the first allegations came to you on July the 14th of 2008?
A. It was assigned to me on the 15th. That's correct.
Q. Okay. But the first allegations that came in. I'm sorry.
A. Right.
Q. Was July the 14th of 2008?
A. Yes, sir.
Q. Now, during the course of your working on this case, was an alleged offense date determined?
A. For which ---
Q. Victim 1.
A. For Victim 1?
Q. Yes.

A. July the 7th of 2008 was the date.
Q. So the allegations came to the attention of law enforcement one week later?
A. Yes, sir.
Q. Now you say the mother came in on the 15th?
A. Yes, that's correct.
Q. Do you know who came in on the 14th?
A. No, sir.
Q. Okay. Well, were you aware that on the 14th that a statement had been taken from [redacted]?
A. Yes, sir.
Q. And then you took another statement the following day?
A. That's correct.
Q. After you had interviewed and talked with [redacted], right?
A. That's correct.
Q. All right. Now, how many times did you talk with [redacted]?
A. I spoke with her that day, on the 15th.
Q. Okay. Other times?
A. I don't recall speaking with her at other times.
Q. All right. Now, I may have misunderstood or not heard you correctly, but I thought you used the word sexual relations. There were no sexual relations in this case, was there?
A. What do you mean?

Q. Well, that's what I'm trying to figure out, if you said sexual relations what you mean. No intercourse?
A. Right.
Q. No penetration?
A. Not with Victim 1, that's correct.
Q. All right. And the allegations were a touching, right?
A. Yes, sir.
Q. Okay. Now, how long did you spend with Victim 1 and her mother?
A. I really don't remember the time frame that day.
Q. I beg your pardon?
A. I do not remember the time frame that day with her.
Q. Well, fifteen minutes, half hour, hour, two hours?
A. I'm not really sure that day how long I spent with her.
Q. I'm sorry?
A. I'm not sure that day how long I spent with her. I'm sure it was more than fifteen minutes.
Q. Okay. And that was basically the extent of your investigation, right?
A. With Victim 1.
Q. Yes. All right. Now, when Victim 2 made his allegations, did that case come directly to you?
A. The case was sent to me also. She -- the mom brought him in to speak to me, since I'd already spoken to Victim 1.
Q. Well, my question probably wasn't very clear. Was

there any other officer involved, other than you?
A. No, sir.
Q. Okay. Now, how many times did you talk with Victim 2?
A. In reference to that, it was only the one time.
Q. All right. You say that he went to Greenville for this interview. Did you transport him?
A. No, sir.
Q. But you were there?
A. Yes, sir.
Q. And to your knowledge, was Victim 2 aware that you were there?
A. Yes, sir.
Q. Now, did you have any dealings with a -- well, let me back up. You're a school research -- school resource officer for which school?
A. Edwards Middle School.
Q. Edwards Middle?
A. Uh-huh (affirmative).
Q. Nothing to do with Liberty?
A. No, sir.
Q. So if I understand you right, when Victim 2 came to you, he was not forthright. He was hesitant?
A. There was some hesitation with him.
Q. Well, you said he was hesitant, right? Correct? You said he was hesitant, right?

A. He was nervous. He was hesitant.
Q. Right. Well, who did transport him to Greenville, if you know?
A. I'm not really sure. It wasn't me.
Q. Well, when [redacted] was in Greenville, did you see him?
A. Yes, I did.
Q. Before the interview or after the interview, during the interview?
A. It was before.
Q. Did you speak to him?
A. Yes, sir.
Q. Before the interview started did you talk with him?
A. I spoke to him, but I'm not sure exactly what we talked about, just different things.

MR. DEJONG: One moment, please, Your Honor.

Q. Did you ever speak to Mr. Beekman?
A. Yes, sir.
Q. How many times?
A. Twice, that I remember.
Q. Did he ever give a statement?
A. Yes, he did.
Q. And are there any admissions in that statement of any kind?

MS. BARWICK: Your Honor, I'm going to object. If he wants to put his client on the stand, he can. But

otherwise, he can't get out his client's statement.

THE COURT: What's the purpose of your question as to the statement?

MR. DEJONG: I asked if he ever gave a statement.

THE COURT: And she responded about the content. Are you asking about the content of the statement now?

MR. DEJONG: Just asked if there was any admission in the statement?

THE COURT: I'm going to sustain the objection as the question is asked. I'll allow you to ask further questions about the statement.

Q. Thank you, ma'am.

THE COURT: Any redirect?

MS. BARWICK: No, sir, Your Honor.

MR. DEJONG: No objection to her being excused, Your Honor.

THE COURT: The State may call its next witness.

MS. BARWICK: Your Honor, the State would like, if Your Honor wishes, to give us about a five to ten minute break.

THE COURT: All right. Let's take a short break. Ladies and gentlemen, as you go back to your jury room what I would like for you to do, sometimes when you're back there, you may have a need that you need to take care of with us. You may have a question for me. You may have a

need from one of the jurors to make a phone call about picking up a child or adjustment on the thermostat or snacks or whatever it may be, we need to have a spokesperson, if you will, from your jury. I'm going to ask of the first twelve of you that a foreperson be selected.

What the foreperson does is merely that's a spokesperson. It doesn't mean that person has more votes than anyone else when it comes time to make your decision. But whatever communication you need, that foreperson would just write out the particular need or question that you have, give it to one of the bailiffs and we can accept it back here and get it to the appropriate person to respond to for you. What your foreperson will be is somewhat your presiding officer, your liaison with the Court and with the Clerk's office. When all the evidence is in and the case is concluded and I've instructed you on the law, the foreperson would be the one who will facilitate that discussion you have one with another to get everyone's input about the view of the facts, and on behalf of the fellow jurors write out the verdict form for the jury.

So if you would, from the first twelve just select a person, write that name out. If you would, give it to the bailiff while you're taking your break. That will give you a little job to do while we're out. When you come back in, the foreperson will occupy the seat on the front row closest

to the witness chair here. Sometimes when exhibits are offered into evidence, they're passed around if not shown on an overhead, and for the lawyers to give the document or the -- whatever the tangible exhibit may be to a juror, let the foreperson see it, pass it around to others. So that foreperson will occupy that seat as you've already done. Some of you may want to sit in the front row, some on the back row. The alternates have their designated seats, but the rest of you can sit anywhere you like. But we'll have a designated foreperson occupying that seat. So if you would select a foreperson. Don't discuss the case, of course, at this time. But we'll call you back in just a few moments when we're ready for the next witness. We'll take a short break.

(WHEREUPON, the jury exited the open court at approximately 2:55 p.m.)

THE BAILIFF: The door's closed.

THE COURT: We'll take a short break. How many more witnesses do you think the State will have?

MS. BARWICK: Your Honor, today the State anticipates two more witnesses. Then if the State can request a break, if we happen to finish up early, just because of scheduling issues, have Shauna Galloway in the morning and then the State would rest.

THE COURT: Okay. The witnesses that come this

afternoon, are they going to take up the rest of the day, you think?

MS. BARWICK: Your Honor, I believe the State will be done, except for Shauna Galloway, by four o'clock this afternoon.

THE COURT: By four. Ms. Galloway can't come this afternoon?

MS. BARWICK: Your Honor, just the scheduling issues.

THE COURT: Okay.

MS. BARWICK: We could get her here if absolutely needed.

THE COURT: Well, we'll see how it plays out. All right. Let's take a short break.

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

THE COURT: If they're ready you can have them come in.

(WHEREUPON, the jury entered the open court at approximately 3:15 p.m.)

THE COURT: All right. Solicitor, you may call your next witness.

MS. BARWICK: The State would call Savannah Mauldin to the stand.

THE CLERK: Place your left hand on the bible and

raise your right hand.

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

THE WITNESS: I do.

THE CLERK: Have a seat and state your name for the record.

THE WITNESS: Savannah Mauldin.

SAVANNAH MAULDIN,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Savannah, do you know [redacted] and [redacted]?

A. Yes.

Q. Are you related to them?

A. Yes, ma'am.

Q. How are you related?

A. They're my cousins.

Q. Okay. How old are you?

A. Twenty-two.

Q. So three years ago you would have been nineteen?

A. Yes, ma'am.

Q. Do you remember after the July 4th holiday back in 2008 going over to your grandmother's house?

A. Yes, ma'am.

Q. And who was over there?
A. Me, Victim 1, Victim 2, and my grandma and Tina.
Q. And who?
A. My grandma and Tina.
Q. Is Tina Victim 2 and Victim 1's mom?
A. Yes, ma'am.
Q. When you were over there, how was Victim 2 acting?
A. He was just not acting his self. He acted liked something was bothering him, kind of upset.
Q. Did y'all see any drawings that he had done?
A. Yes.
Q. Okay. What were those drawings of?
A. The one that I remember was a picture of Rick hanging by a tree.
Q. Okay. And where did you -- where did this drawing come from?
A. It was on the kitchen table.
Q. Okay. Was it laid out flat or wrinkled?
A. That one was laid out. There was another drawing.
Q. Okay. Tell me about that drawing?
A. I don't remember what that one had on it, but I know it was crinkled up and thrown in the garbage.
Q. Did you start talking to Victim 2 at all?
A. I did.
Q. Did you ask him about any sexual abuse that might have

happened to him?

A. I just asked him what was bothering him.

Q. Did he respond?

A. He did.

Q. Did he disclose any sexual abuse to you at that time?

A. Yes.

Q. Okay. Did he go into detail at all with you about it?

MR. DEJONG: Objection, Your Honor. She's asked the questions she can ask. There are others she can ---

THE COURT: Rephrase your question as far as what you're trying to elicit from the witness.

Q. Did he disclose everything to you?

A. No.

MR. DEJONG: Objection, Your Honor. How in the world would she know that. That calls for speculation.

MS. BARWICK: Your Honor, we're going to get to that point.

THE COURT: Okay. Rephrase your question again. I sustain the objection.

Q. Do you feel like he disclosed everything to you?

A. No.

Q. After y'all had that discussion, what did he do?

A. He started getting very upset, hyperventilating, pulling his hair. He went to the back, sat in the closet and just ---

Q. Which closet?
A. It was in the -- it's a bedroom/laundry room area. And he was just hyperventilating. Upset.
Q. Okay. Did [redacted] ever go into the room with him?
A. Yes.
Q. Were you in the room when she went in there?
A. I was standing right outside the room.
Q. Did you hear [redacted] talk about anything?
A. I did.
Q. Did she make a disclosure to [redacted] of sexual abuse?

MR. DEJONG: Your Honor, I'm going to object to that. This witness was not a party to that conversation. And not being a party to the conversation, I believe that is hearsay.

THE COURT: Well, did I understand that she was ---

MS. BARWICK: She was listening to the conversation. I'm not going to have her state what was said.

MR. DEJONG: She wasn't a party to the conversation. I'm sorry. Ms. Barwick, I interrupted you. She was not a party to that conversation.

THE COURT: I'll overrule your objection.

Q. Did you hear [redacted] make a disclosure of sexual abuse to [redacted]?

A. Yes.
Q. What did [redacted] do in response?
A. He told us more information about sexual abuse that had ---
Q. Okay. I'm sorry. Finish your sentence.
A. He just told us more things that had happened to him.
Q. More than what he had told you previous?
A. Yeah.
Q. Was it in more detail?
A. Yes.
Q. How was he acting?
A. Very upset. Hyperventilating.
Q. That upset?
A. Yes.

MS. BARWICK: That's all the State has for this witness.

THE COURT: You may cross-examine the witness.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. The people that were there -- do you remember what day of the week this was?
A. I'm almost positive it was Saturday.
Q. Do you remember what date?

A. It was around the 19th.
Q. All right. Now, did -- this was what has been, I guess, referred to as grandmother's house, right?
A. Yes, sir.
Q. Did you live there at that point in time?
A. No, sir.
Q. How did you come be there at that time?
A. I went to spend the day.
Q. Okay. And before this time, how much time did you spend with Victim 2 and Victim 1?
A. I used to go spend a lot of time with them.
Q. Pardon me?
A. I saw them a good bit.
Q. You saw them a good bit. How much time did you spend with them?
A. I don't know.
Q. All right. Now, these pictures you were talking about. Do you know when they were drawn?
A. Do I know what? I'm sorry.
Q. When they were drawn?
A. They were drawn the day that I was at my grandma's.
Q. All right. And do you know whether or not before this day Victim 1 had talked to Victim 2?
A. About?
Q. Her allegations?

A. She did not.
Q. But then as you say -- when you first started talking to him, Victim 2 was pretty calm, right?
A. He was calm, but, you know, something was bothering him.
Q. And then he talked to Victim 1 and he became more agitated, more upset, right?
A. No.
Q. After he talked to Victim 1 you said, I believe, he gave more detail. Is that what you said?
A. Yes.
Q. I'm sorry?
A. Yes.
Q. Okay. Did anyone suggest that you talk to Victim 2?
A. They were all sitting -- I mean, we were all pretty much around the same room.
Q. All being you, Tina, grandmother, Victim 1 and Victim 2, right?
A. Yes.
Q. Right?
A. Yes.
Q. And this was on the 19th?
A. I don't remember the exact date. I know it was around the 19th.
Q. And you were seventeen at the time?

A. I was about nineteen.
Q. About nineteen at the time. Okay. Twenty-two now?
A. Yes, sir.
Q. All right.
MR. DEJONG: One moment, please, Your Honor.
Q. When you were -- you said you were all seated in the room, I think, right?
A. We weren't all seated in the room. Me and him were seated.
Q. Okay. Where was Tina?
A. Standing in -- there's like a counter and she was standing behind the counter.
Q. Where was Victim 1?
A. I don't remember.
Q. That's a pretty small room you were in, right?
A. Yeah.
Q. And you said that Victim 1 didn't talk to Victim 2 before you talked to him, about her allegation, right?
A. Right.
Q. But you have no way of knowing that, do you?
A. That I know she didn't.
Q. Right. But you have no way of knowing that, do you?
A. He didn't know anything about ---

Q. No, ma'am. I'm sorry. I don't mean to be rude. My question is, you have no way of knowing that, do you?

A. No.

Q. Thank you, ma'am.

MR. DEJONG: Nothing further.

THE COURT: Any redirect?

MS. BARWICK: No, sir, Your Honor.

THE COURT: Thank you, ma'am. You may step down, Ms. Mauldin.

MR. DEJONG: No objection to her being excused, Your Honor.

THE COURT: You may call your next witness.

MS. BARWICK: The State would call Dr. Henderson to the stand.

THE CLERK: Place your left hand on the bible and raise your right hand.

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

THE WITNESS: Yes, I do.

THE CLERK: State your name for the record, please.

THE WITNESS: Nancy Ann Henderson.

NANCY HENDERSON,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Dr. Henderson, where do you work?

A. I work for Greenville Hospital System.

Q. And what's your position there?

A. I'm head of the section of child abuse and neglect at the hospital.

Q. Are you a medical doctor?

A. Yes, I am.

Q. Okay. Can you please tell the jury a little bit about your training?

A. Okay. I did my undergraduate training at Rutgers College of Pharmacy, which was a five year undergraduate degree. And then I went to Bowman Gray School of Medicine, which is in Winston-Salem, North Carolina. And that's where I got my medical -- did my medical school and I got my medical degree. And then I did my three year pediatric residency at T.C. Thompson Children's Hospital in Chattanooga, Tennessee. And then since then I've been boarded in pediatrics and sub-boarded in adolescent medicine and child abuse pediatrics.

Q. Okay. And what kind of specialized training have you done in doing medical exams on children?

A. Well, as I just was mentioning, I'm board certified in child abuse pediatrics, which required me to be practicing

in the field for five years and fifty percent of my practice involved in that area. And then in 2009 I sat for an exam with the board and passed that. And then that has to be re-certified every ten years.

Q. Have you testified as an expert in pediatrics before?

A. Yes, I have.

Q. How many times?

A. I've been asked to come to court probably about twenty to thirty times a year.

Q. Okay. And how many times do you think you've actually testified in court as an expert? Just a rough guess.

A. Probably the majority of those times.

Q. Okay.

MS. BARWICK: Your Honor, at this time, the State move her in as an expert in pediatrics.

MR. DEJONG: No voir dire, Your Honor.

THE COURT: All right. Any objection? Ladies and gentlemen, let me just explain to you about an expert witness. An expert witness is a person who, because of background or training or expertise in some field is qualified to give an opinion. Most of the time in a trial, a witness can testify to what that witness saw or heard or sensed in some way, but we have an exception for an expert witness who in that field of expertise can give an opinion and also give a basis of that opinion. The fact that an

expert is allowed to give an opinion that's evidence as all other evidence for you to treat as you see fit. You can use it any way that you think is proper, along with all the other evidence. You may continue, Solicitor.

MS. BARWICK: Thank you, Your Honor.

Q. Did you have a chance to examine Victim 2 [redacted]?

A. Yes, I did.

Q. And when -- do you remember the date of that?

A. Yes, it was July 31st, 2008.

Q. And who came to the exam with him?

A. His mom and dad.

Q. Okay. And before conducting the exam, did you speak with Victim 2?

A. Yes, I do. I talk to all the patients before I actually do the physical part of the exam.

Q. And what's the purpose of talking with the patients beforehand?

A. Well, when I talk to the patient I want to understand what's happened. I want to understand what concerns they have about their body. I want to make sure that they are safe where they are living. I need to know what's happened so I can understand and decide what kind of test, if any, are needed to look for sexually transmitted infections and things like that. And certainly, also, to make appropriate referrals based on that information.

Q. So a medical diagnosis?
A. Yes.
Q. In this case when you sat down with Victim 2, did he tell you anything about any complaints he had?
A. Yes, he did.
Q. And what complaints did he have?
A. Well, he initially shared about a lot of stinging he had in his genital area and because of that stinging he was really pulling at that area very, very often.
Q. Okay. And did he tell you what the source of that stinging was?
A. Well, after he shared about that, he had shared about what had happened to him.
Q. And what did he say happened to him?
A. He had said that he had been touched on his genital area and also had shared that someone had put his private part into his bottom, into Victim 2's bottom. And also that he had to touch that person's private part as well.
Q. Okay. Did that help you enable -- or did that enable you to determine what kind of tests to perform?
A. Yes, when there was -- because of the history of a -- the private part going into his bottom, it really increases the risk for a sexually transmitted infection. So because of that we went ahead and did -- I went ahead and did rectal cultures looking for sexually transmitted infections and

also recommended getting HIV testing and testing for syphilis.

Q. Were you able to do that HIV testing?

A. No. He really did very well for the interview part and for the medical exam, but at the end after he got dressed and concluded everything, we were getting ready for that blood work and that part was just so difficult for him that he just was unable to cooperate that day for it. So we just elected to -- I gave them a prescription and he was going to follow that up at his pediatrician's office to get the blood work done another day.

Q. Let's talk about the actual exam that you conducted on him. Can you tell the jury the procedures that you went through to conduct that exam?

A. Yes, ma'am. So what we do is when the child comes in, they come in with an advocate with them that often is the parent and I have a child life specialist who will go over the exam with them so that we understand body part names and exactly what's going to happen. We get them to just kind of feel comfortable with the medical equipment, the stethoscope and the otoscope to look in the ears and the mouth. And then for this type of exam we use a piece of equipment called a colposcope, which is not at all invasive, doesn't hurt the child, but it just allows for magnification, like a microscope with an excellent light source and allows us to

get a very good look at the genital area. So we have someone explain that, let the child play with it so that they feel comfortable with it. And then I do talk with the parents to find out what kind of behaviors and symptoms the child is having, then I talk with the child by themselves again to understand, you know, what's going on and what concerns they have. And then I do the physical exam, which is a complete head-to-toe exam, including looking at the genital area, with the colposcope as I had mentioned. And then for Victim 2 went ahead and did rectal cultures. Also had him go to the bathroom in a cup. It's another good way to look for urinary tract infections as well as sexually transmitted infections that way. And then let him go ahead and get dressed. And then we usually do the blood work and talk to the child and the family about findings that we have and then for recommendations.

Q. Does part of your history-gathering with the symptoms, what kind of symptoms was he exhibiting?

A. Well, the parents had shared that there were quite a few symptoms that he had been having. I think one of the things they were most concerned about was all the touching of his genital area, which had been going on for quite a bit over the summer. Mom had shared that he was having a lot of anxiety in her presence and had taken some medicine for that, also some melatonin to help with sleep. They also

shared about some bed wetting that had gone on in the past, not so much at the time that I was seeing him. He also had some episodes of soiling with bowel movement in his pants and a lot of stomachaches. And I think that those were the majority of symptoms.

Q. Are those symptoms consistent with a child who has been sexually abused?

A. Those symptoms are not specific at all for sexual abuse. We see that a lot in children when there is a lot of stress and anxiety. But certainly in children that are sexually abused, a lot of these symptoms often do go along with that.

Q. And tell me about this melatonin. What is that?

A. It's a natural product, very safe, and so it's one that I often will recommend. It's not addicting so it's often used with children who are having difficulty in sleeping and it's been pretty effective for them.

Q. Is it over-the-counter?

A. Yes, it is.

Q. Have you ever suggested somebody use it?

A. Yes, I have.

Q. Okay. And would you suggest its use in children?

A. Yes.

Q. So that's not something abnormal?

A. No, not at all.

Q. Okay. Are you paid to be here today?
A. No, I'm not.
Q. Is the Solicitor's Office paying you?
A. No, they're not.
Q. Okay. Are you here because you're in fact under a subpoena from the Solicitor's Office?
A. Yes, I am.
Q. That being said, thank you for your time here. I really want to talk about the positioning that [redacted] was in when you did this, the anal exam. Is that an appropriate terminology for this?
A. Yeah. Anal or rectal exam.
Q. A rectal exam. What position was he in for you to be able to do this?
A. So to do that part, which is usually the last part of the exam, we have the child -- they're on just a regular exam table and they're on their side, usually they're laying on their left side with their knees kind of tucked up toward their tummy and they have a sheet or cover over them. They usually -- we usually have them wear like a big sports T-shirt so they feel as comfortable as possible, and then usually the parent is on side and I am on the other side of the table, so I'm the only one at that part of the table. And I have the colposcope and that is kind of on one side and I am sitting down and I spread apart the buttock area to

get a good look using that light and magnification at the rectal area.

Q. And how long do you think this exam took?

A. The entire exam?

Q. Yes.

A. It probably takes about fifteen minutes, fifteen, twenty minutes.

Q. What were the results of the exam?

A. He had a little bit of redness covering the outer part of his buttocks area and he had a little bit of redness on the top part of his penis, but otherwise, his exam was normal.

Q. Okay. Let's talk about that a little bit. What kind of things are you looking for, you know, abnormalities? What kind of abnormalities would you expect to see?

A. Well, I look for everything, you know, because when I'm seeing a child, I'm looking at their overall regular medical health, so I'm looking for any kind of general pediatric problems. I'm looking for rashes, looking for unusual scars, bruises, things like that. In the genital area, I'm looking again for any kind of scaring, any kind of urethral discharge that could be a sign of infection. And in looking at the rectal area, I'm looking at the tone there. I'm looking for any scars, rashes, things like that.

Q. Okay. Let's talk about the rectal area. In [redacted], did

you find any abnormalities outside of that redness?
A. No, ma'am.
Q. Okay. Would you -- is it normal to be normal or is it normal to be abnormal in these kind of cases?
A. Well, in the majority of cases and where children are abused and where there is a history of penetration, penile penetration to the rectal area, it is actually very common that ninety percent or more of children will have normal exams, meaning not any tears, not any change in their rectal tone, when the exam is done.
Q. Okay. Would the length of time between the assault and the exam, how would that affect the results if it would at all?
A. Well, it could affect it. That rectal area has an extremely good blood supply so that small tears, lacerations can heal very, very quickly within hours to days so that if there was something and you didn't see a child right then and there, we might miss that because, again, it can heal so quickly.
Q. Would five hours be enough time for it to heal?
A. Well, it all depends on the depth, the depth of the injury. So if it's very, very superficial then within hours it can -- the skin can kind of get new cells on top and can heal.
Q. Right. And you said this happened -- that your exam

happened on the 21st of July?

A. It was the 31st of July.

Q. I'm sorry. The 31st of July.

A. Yes, ma'am.

Q. So just for hypothetical purposes, if the assault happened on July 6th of 2008, would you expect his rectal exam to be normal or abnormal?

A. Well, like I just said, it would be very common and, you know, in the information that [redacted] had shared, he did not share any bleeding that had occurred. So even if I had seen him right then and there, there is a very good chance that there wouldn't have been any evidence at that point either.

Q. And does bleeding always, you know, does bleeding always result during anal penetration?

A. No, no. It often will not because a lot of times what happens is that area, because of what its normal job is, it can stretch instead of tear. So a lot of times when things are inserted in the rectal area, as things come out, it often will not tear. So that is why the majority of time when children have things like this done, they do have normal exams.

Q. You said [redacted] had told you that there was no blood?

A. That's right.

MS. BARWICK: That's all the State has for this

witness.

THE COURT: You may cross-examine the witness, Mr. DeJong.

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So let me see if I've got this straight, Doctor. A normal rectal exam after allegations of penile penetration is consistent with penile penetration?

A. In a child that discloses penile penetration, it is consistent to have a normal exam, yes, sir.

Q. It's also consistent to have a normal rectum, anal exam if you have not been abused. Is it not?

A. That's true, yes, sir.

Q. Now, you work in a -- I believe what you called a child abuse ward, section or whatever, right?

A. I work at the hospital, Greenville Hospital.

Q. Well, what do you do for Greenville Hospital?

A. I'm a child abuse pediatrician and because of that job, I go out to the advocacy center and evaluate children.

Q. So what you're doing is you're dealing with children who are abused or who are alleged to be abused on a daily basis. Right?

A. Children are referred to me when there are concerns about abuse on a daily basis, yes.

Q. Now, is the Julie Valentine Center part of the Hospital

System?
A. No, sir.
Q. All right. So are you contracted to the Julie Valentine Center?
A. No, sir.
Q. Do you do that pro bono, for free?
A. I'm paid by the hospital and I just do my exams. These are exams that children would come to the hospital for. We just do it at the Julie Valentine Center because it's a child friendly environment.
Q. Well, my question was, does the Julie Valentine Center contract with the hospital to do this?
A. No.
Q. So that is not part of your normal duties at the hospital?
A. No, it is part of my normal duties. I am there three days -- two days a week as part of my normal job with the hospital system to do exams there.
Q. So you're at the Julie Valentine Center two days a week?
A. Yes.
Q. Now, when a child comes to you at the Julie Valentine Center, it's because there have been allegations of child abuse, right?
A. Yes.

Q. And you enter into an exam looking for child abuse?
A. Trying to evaluate what's happened to the child.
Q. Yes, ma'am. Now, let's -- hypothetical. Given an eight-year-old without allegations of any penile penetration, and you have the exam results that you've got in this case, could you say that there had ever been any child abuse?
A. If there's a child that comes in and makes no disclosure and has no behaviors that are concerning and has a normal exam, I do not have concerns about that they have been abused.
Q. Right. So now when you say, well, we have allegations of abuse, but this exam can still be consistent with allegations of abuse, right?
A. Yes.
Q. All right. So I guess you could say if there weren't allegations, that with his normal exam you could still say there was abuse.
A. We look at it, you know, it's just like other types of diseases, you have to look at kind of all the parts, your physical exam, your history, the behaviors, all of those things come together to make a diagnosis.
Q. Yes, ma'am. You found some redness on the, if I understood you, basically the buttocks, right?
A. Yeah. Kind of the distal part outside of the anal

area.
Q. All right. I'm not trying to be rude, but ---
A. A little further in.
Q. A little further in?
A. Yes.
Q. Okay. This was July the 31st of 2008. What was the temperature like, do you know?
A. I don't remember.
Q. It was in Greenville, South Carolina, right?
A. Yes, it was.
Q. Hot?
A. I don't remember what the temperature was.
Q. Okay. All right. Heat can create redness and rashes, can't it?
A. Yeah. There was a non-specific finding.
Q. Sure. And, indeed, you're not saying that that redness had anything to do with any sort of sexual molestation?
A. No.
Q. The same thing with you found some redness on the penis?
A. Yes.
Q. The same thing. You're not saying that was any indication of sexual abuse, are you?
A. That's true.
Q. That could have been as a result of any number of

things?
A. Yes, sir, that's true.
Q. Aside from sexual abuse?
A. Yes, sir.
Q. Okay. I was a little confused that -- plus, I'm hard of hearing. Did you say that Victim 2 complained of stinging in his genital area?
A. Yes.
Q. Stinging was the word you used, right?
A. Stinging.
Q. And when we're talking about stinging in the genital area, are we speaking of the penile scrotum area as being the genital area or are we speaking of the whole lower region of being that?
A. Well, he was referring to the whole region, but I think a lot of the front area as well.
Q. Okay. And, again, with regard to the front area, we'll refer to it as that, you found nothing other than this redness?
A. That's correct.
Q. That you cannot attribute to sexual molestation?
A. Right. To non-specific finding.
Q. Okay. Now, you said he said private part put in his bottom. Was that his words?
A. Yes.

Q. Okay. Well, did you find any discharge of any kind?
A. No, sir.
Q. And the reports of the behavior that you took, that was reporting by the parents, right?
A. That's correct.
Q. Both parents there?
A. Yes.
Q. Okay. Do you know the dates of the allegations when they allegedly occurred?
A. My understanding, they were about three weeks prior to me seeing him.
Q. On Victim 2?
A. Yes, on Victim 2.
Q. Okay. All right. Now, so you found no tearing and no scaring?
A. Yes, sir, that's true.
Q. And you said the rectum is basically designed to stretch, correct?
A. That's true.
Q. Okay. Designed to stretch from the inside out, right?
A. That's its normal function, yes.
Q. I'm sorry?
A. That's its normal function, yes.
Q. Right. Not necessarily designed to stretch from the outside in?

A. That's not the normal thing that happens.
Q. Correct. So to say that that is normal is not exactly accurate, is it?
A. That it can stretch?
Q. No. We know it can stretch, but I'm saying stretching from the inside out is normal?
A. That's normally what happens.
Q. Yes. Stretching from the outside in isn't normal?
A. We'll we're talking about the same area that's stretching so it's not something like going in your mouth or out of your mouth, it's the same process that's happening.
Q. Would it -- so basically, other than -- well, let me back up here. On these symptoms, did you see any anxiety in Victim 2?
A. Well, I did, especially at the end when it became time for the blood work he was extremely, extremely anxious.
Q. Well, blood work entails sticking needles in people, doesn't it?
A. Yes, it does.
Q. And a lot of adults don't like needles stuck in them, right?
A. Most kids -- actually, it's something I do all the time and most kids actually do fairly well. He was an extreme with that as far as the difficulty for him.
Q. But some of that nervousness could account for having a

needle stuck in you?

A. Sure. It could be hard for some people.

Q. Or maybe more than one needle. I don't know how many needles you all stick.

A. Just one time.

Q. Just one, okay. But the symptoms that -- well, what you and/or the Solicitor call symptoms, these things described by the parents, as you said, they are not child molestation specific, right?

A. That's true.

Q. You could have all of those, which you call symptoms, arising from many different things?

A. That's true.

Q. And stress could be one of those you said, correct?

A. Yes.

Q. And different people stress differently, correct?

A. It's severe stress, but everyone reacts differently?

Q. Well, a hypothetical question. Given two siblings, one of which is twelve years of age, one of which is eight years of age, who are very close, and the eight-year-old hears allegations of some inappropriate touching by his sister. Stress?

A. You know, I don't know. I don't know. I don't know how it was told to him. Every child is so different, I really could not -- I don't know how a child might react to

it.

Q. Other than the actual physical exam, your report is basically based on reports by other people, persons, right?

A. And the patient.

Q. Right.

A. It's based on the parents, the patient and my exam.

Q. Yes, ma'am. And even with all of that you found no abnormalities in this eight-year-old child?

A. On the physical exam none, other than what I already stated.

Q. With regard to tearing and scaring, an object going into an eight-year-old rectum, would the tearing and scaring have anything to do with the size of the object that went into the rectum?

A. A lot of times I think it could be related to the amount of force, the direction of the object going in. But as I said, sometimes, you know, size doesn't have anything to do with it because when you think of, at least for me in my area, think of the size of things coming out, it can let a lot of very large things come out. So the size in and of itself may not cause any scaring or tears.

Q. But this isn't things coming out. This is the size of something going in?

A. Yes.

Q. Thank you, ma'am.

THE COURT: Any redirect?

MS. BARWICK: No, sir, Your Honor. May she be excused?

MR. DEJONG: No objection.

THE COURT: Without objection, the doctor may be excused. Thank you. You may step down.

Could I see the attorneys here just for a moment.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the Bar.)

THE COURT: Mr. Foreman, ladies and gentlemen, normally we would not break this early, but based upon scheduling of witnesses and the length of witnesses who may be testifying, I think this might be a good time for us to just break today. We'll start back at nine o'clock in the morning. Let me remind you again not to discuss the case and not let anyone discuss the case with you. I remind you again about the importance of your fulfilling your oath and not doing any kind of independent research or checking anything or investigating words or terms that you've heard. That would be improper, would be against the rules of our Supreme Court, against my instruction to you. You're going to have everything you need to make a good decision in this matter based upon what's presented here in the courtroom and what you hear in this room and this room alone.

We'll be ready to start back at nine o'clock in the

morning. If you'll be back in your jury room then, we'll proceed with our next witness. Have a good evening ladies and gentlemen. I'll see you back tomorrow.

(WHEREUPON, the jury exited the open court at approximately 3:58 p.m.)

THE COURT: Yes, sir, Mr. Dejong.

MR. DEJONG: Your Honor, I would respectfully request that you reconsider your ruling on taking Mr. Beekman into custody.

THE COURT: I've considered it. Again, my standard of the law, I think it's pretty clear that he's not under bond anymore. I'll certainly be around this afternoon. If he wants to secure a bond, I'll be glad to revisit it but not on his recognizance. I'll deny your motion.

MR. DEJONG: Thank you.

THE COURT: All right. We'll be back ready to go at nine o'clock in the morning.

(WHEREUPON, the court stood at recess in this case for the day.)

JULY 27, 2011

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

THE COURT: Thank you. Please be seated, ladies and gentlemen. Yes, sir, Mr. DeJong.

MR. DEJONG: Thank you, Your Honor, may it please the Court. I have been informed by my client this morning, and Your Honor will recall when you took him into custody, Mr. Beekman is on short-term disability and part of that is, Your Honor, he takes medication for anxiety. His prescriptions were taken to Pickens County Law Enforcement Center. His anti-anxiety medication is prescribed to be taken three times a day. The jail would not give him his anti-anxiety medication this morning. I am not a doctor, but I certainly know that a lot of these medications have to be taken on schedule to be and remain therapeutic. Obviously, this is a very stressful day for Mr. Beekman. To deny him his medication, Your Honor, is pretty close to the denial of his Fourteenth Amendment Rights to due process. I don't know if Mr. Beekman is going to testify or not. We have discussed that. He gave me an indication yesterday that it was his desire to testify, which certainly that is his decision. And I will ask for a break after the State rests to further discuss that. But especially, Your Honor, if he testifies, to be denied this medication, which it's my understanding he is to take it three times a day. Is that correct, Mr. Beekman?

MR. BEEKMAN: Yes.

MR. DEJONG: And that is your anti-anxiety medication, right?

MR. BEEKMAN: Yes.

MR. DEJONG: If that is the case, Your Honor, to put this man on the witness stand without taking his prescribed medication, I think is a violation of due process. I think it almost gets paramount to cruel and unusual punishment under the Eighth Amendment. I understand the jail has to have rules and regulations. This is a pre-adjudicatory detention, for want of a better term. He is being denied his medication as prescribed by a physician. So I make the Court aware of that at this point in time. I may ask to revisit that issue after we make the decision as to whether Mr. Beekman desires to testify.

THE COURT: Well, if he needs his medication, whether or not he testifies, he needs to be alert to assist in your defense of his case. Did he have his medication yesterday?

MR. DEJONG: Will you stand up, please, Mr. Beekman. I don't know the answer to that question. Did you have your medication yesterday, sir?

MR. BEEKMAN: They didn't give it all to me.

THE COURT: All right. If you take your medication now, does it need any kick-in time or does it take effect pretty soon after you take it?

MR. BEEKMAN: It takes effect pretty fast. They also didn't give me my blood pressure medicines.

THE COURT: All right. Let's see if we can't get -- let's get his medicine up here. Any other matters?

MR. DEJONG: No. Well, ---

THE COURT: All right. I understand that one of the jurors called the Clerk's office today with food poisoning, was what she said, talked to the clerk personnel and said she couldn't be here. I did not demand a doctor's excuse. I had my law clerk call her and tell her to take care of her health. So that was juror Jackson. So we certainly don't need an incapacitated juror here. We went through a laborious process to get an alternate just for this occasion. I ask Counsel, again, if there's any objection to the Clerk randomly drawing the name of one of the two alternates to serve as the twelfth juror now? Any objection from either side?

MS. BARWICK: Not from the State, Your Honor.

MR. DEJONG: None on behalf of Mr. Beekman, Your Honor.

THE COURT: We'll sit tight until the medication -- it shouldn't be but a few minutes until we have it here. Could I see the attorneys just for a moment up here as far as scheduling.

(WHEREUPON, Ms. Barwick and Mr. DeJong approached the bar.)

(WHEREUPON, the court stood at recess for a short

break.)

THE COURT: All right. Has your client had his medication that he needs for ---

MR. DEJONG: There's still some issue according to him, Your Honor, with regard to the Klonopin. My understanding, he says he takes that three times a day. Apparently, the jail said they gave it to him at nine o'clock last night, but he hasn't had anymore today. I haven't seen the bottle.

THE COURT: What has he had today?

MR. BEEKMAN: Welbutrin and Atenolol.

THE COURT: And what are those for?

MR. BEEKMAN: One's an anti-depressant. One's a blood pressure medicine.

THE COURT: Is that what you wanted for today, the anti-depressant?

MR. BEEKMAN: I need the Klonopin.

THE COURT: And how often do you take it?

MR. BEEKMAN: I take it three times a day. Part of the problem, Your Honor, is that the doctor writes a prescription and if it doesn't work right, he changes the way you take it after he writes it.

THE COURT: So are -- do you have the medication you need now to proceed?

MR. BEEKMAN: No. But let's just, let's just do

whatever.

THE COURT: If you need more we'll try to figure this out. If you need more medication later, we'll try to work that out. You're ready to proceed then?

MR. BEEKMAN: I think so.

THE COURT: All right. Is the State ready to proceed?

MS. BARWICK: Yes, sir, Your Honor.

THE COURT: All right. All right. If the jury's ready, you can have them come in Mr. Teal.

(WHEREUPON, the jury entered the open court at approximately 9:51 a.m.)

THE COURT: Mr. Foreman, ladies and gentlemen, thank you for your patience with us. We've had some matters we needed to take care of outside of your presence. We also have one of your jurors who was unable to be here today so we've -- going to have to have one of those alternates serve after all. The process by which we go when we have two alternates is to randomly select one of those alternates as the juror. That's what the law requires us to do. We've gone through that process as well, plus checking on the welfare of your juror who called in sick today, along with other matters. So you don't need to move right now, because as I've told you all along, the alternate needs to be paying attention just as much, but the alternate who was randomly

selected among the two was Ms. Stone. So she'll be the juror who'll be serving. The remaining alternate, Mr. Ashes, will stay in that capacity as we proceed. So, again, you don't need to switch seats around now, but that'll be the process we'll follow.

We're now ready to have our next witness testify. Solicitor, you may call your next witness.

MS. BARWICK: The State would call Ms. Shauna Galloway-Williams.

THE CLERK: Place your left hand on the bible and raise your right hand.

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

THE WITNESS: Yes.

THE CLERK: State your name for the record, please.

THE WITNESS: Shauna Galloway-Williams.

SHAUNA GALLOWAY-WILLIAMS,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARWICK:

Q. Ms. Williams, where do you work?

A. I'm the Executive Director of the Julie Valentine Center.

Q. And did it used to go by a different name?
A. It did. We used to be the Greenville Rape Crisis and Child Abuse Center.
Q. And what is the purpose of the Julie Valentine Center?
A. The Julie Valentine Center provides services related to child abuse and sexual assault recovery. So we provide a full range of services from investigation and treatments, advocacy related to anything, child abuse related or sexual assault, including prevention and education.
Q. And what is your role at the Julie Valentine Center?
A. As Executive Director, I'm responsible for oversight, fiscal oversight, administrative oversight of the entire center, but I also still provide clinical services and have clinical responsibilities, which means that I still conduct forensic interviews, which I've been doing there for about seven years.
Q. Is your role as a supervisor?
A. Yes.
Q. And can you tell the jury any specialized training you had in child counseling and conducting forensic interviews?
A. Yes. Well, first of all, I have my bachelor's degree in psychology. I also have a master's degree in counseling, and I'm a licensed professional counselor in the State of South Carolina. I've provided child and adolescent mental health treatment for about eleven years. And during that

time I've conducted forensic interviews for seven of those years. During that period of time my specialization has been in working with children who have been abused, neglected or have witnessed some sort of trauma, and more specifically child sexual abuse.

Q. What kind of education have you had in relation to these two topics, the forensic interviewing and the child counseling?

A. Well, in addition to my degrees, my master's degree and being licensed and my actual experience, I have also participated in two nationally recognized trainings in the area of forensic interviewing. One of those was with the national children's advocacy center and the other was with the national child protection training center. That one's also -- was referred to as Finding Words, but it's now called Child First.

Q. And are there any Boards that you have to go through or any peer review processes?

A. As a forensic interviewer?

Q. Yes, ma'am.

A. We do participate in peer review. In fact, our center this year participated in a national peer review where we, through video conferencing, would share our interviews and have them evaluated by other centers, and then they would then share their interviews with us. We also do an internal

peer review where we will at times have another staff member observe our interviews and review our reports before they go out to the referring agencies.

Q. Have you ever testified in either Family Court or a Court like this, in General Sessions, in regards to being an expert in either forensic interviewing or child counseling?

A. Yes.

Q. And how many times have you done that for forensic interviewing?

A. In General Sessions or in Family Court?

Q. We'll say both together and then we'll separate.

A. Okay. Well, together it would probably be about forty times. In General Sessions, I've been qualified as an expert ten times, and then in Family Court at least thirty or more times.

Q. And what about in child counseling? How many times as an expert in both Family and General Sessions?

A. Generally, I'm qualified as both, an expert in forensic interviewing as a licensed professional counselor who specializes in working with children who've been abused.

Q. So it would be about the same number, about forty?

A. Right. Right. There might be a few times when I wasn't qualified as both and maybe just as a counselor or just as an interviewer, but in general, it's both.

MS. BARWICK: Your Honor, at this time, the State

would like to introduce her as expert in forensic interviewing and child counseling.

THE COURT: Any voir dire from the Defense or any objection?

MR. DEJONG: A little Voir Dire, please, Your Honor.

THE COURT: Yes, sir, you may ask some questions of the witness.

MR. DEJONG: Thank you, Your Honor.

VOIR DIRE EXAMINATION

BY MR. DEJONG:

Q. Now, Ms. Galloway-Williams, counseling and forensic interviewing are two different things, aren't they?

A. They are. There are some differences between the two.

Q. And in one sense counseling that you were involved in deals with persons who have been found to be victims, correct?

A. Sometimes. Sometimes we're counseling children where they might have behavioral or emotional problems and we're not sure why they're having those. There may be some suspicion that they were abused or neglected.

Q. Okay. Let's get away from the counseling aspect to the forensic interviewing. When did you get your training in forensic interviewing?

A. The first training I went to was in 2004.

Q. And you say first, was there a second?
A. Yes. Of the two that I spoke of, the national protocols. I've had additional forensic interview training but those two are really the core courses related to interviewing. So in 2004, I went to the national children's advocacy center for forensic interview training, and then in -- just a second. Let me refer to my CV. I'm sorry. There's a lot of training on here. I completed Finding Words South Carolina in 2007. That's now called Child First and was presented by the National Association to Prevent Child Abuse of Children, the National Child Protection Training Center and Cornerhouse.
Q. So as far as forensic interviewing goes, your last training was in '07.
A. No. That was the last sort of core training that I went to. The last training that I went to in forensic interviewing or related to forensic interviewing would have been in June of this year when I went to the National Child Protection Training Center in Winona, Minnesota and attended a training called From Crime Scene to Trial. And although we weren't actually conducting forensic interviews there, the core of it was related to the investigation and prosecution of child abuse cases. And that was June 15th through the 17th of 2011.
Q. Thank you, ma'am.

MR. DEJONG: Nothing further, Your Honor.

THE COURT: All right. I find the witness is qualified in the field of child counseling and forensic interviewing and will allow her to give her opinions.

Again, ladies and gentlemen, I explained to you yesterday about expert witnesses are allowed to give their opinions. The fact that they can do that doesn't mean you have to accept the evidence. You're going to be the judge of all the evidence in the case, that of the expert witnesses and other witnesses and other matters as well, but she will be allowed, as an expert, to testify to her opinion.

You may continue, Solicitor.

MS. BARWICK: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. BARWICK:

Q. Ms. Williams, will you explain to the jury what a forensic interview is?

A. Sure. A forensic interview is basically a fact-finding interview. The point of it is to gather information from children without leading or suggesting them. So that means we're very careful about the type of questions that we ask. We're also very careful to pay attention to a child's developmental level. We're trained in understanding child development. Clearly, a child's developmental and

communication skills change with their age. So, for instances, a five-year-old might communicate differently in an interview than maybe a twelve-year-old. And what I would expect a child to be able to share with me at different stages would be different. The forensic interview is videotaped. At our center we videotape every single interview that we do. Prior to the forensic interview we gather background information. Most of our interviews are referred to us from either law enforcement or the Department of Social Services, because most of the interviews are investigative in nature. Part of the process involves gathering that background information from a primary care giver. So when a child is brought to our office for an interview, generally I meet with the mom or dad or guardian, whoever brings the child there, and gather background information about their child, their family and essentially why they're there to talk to me that day. That information is gathered just with that care giver. The child is not present during that time, in the same room. Once I've gathered that information, then I ask the child to come back to the interview room with me. And at that time, the care giver or the parent is not with us. So it's just a conversation that I'm having with a child that is videotaped and audiotaped. And the parents are not observing. The only individuals that are allowed to observe at that time

are law enforcement or DSS if they're present for the interview.

Q. Is the child made aware of who's observing?

A. Yes. One of the first things that we do when we bring the child into the interview room is I give them an explanation, sort of like what I just told you. I let them know that it's my job to ask questions and to talk to kids and that there's a video camera and a microphone in the room, and I let them know if anybody's observing. And if there's not anyone observing, I let them know that as well.

Q. And how many forensic interviews do you think you've conducted in your professional career?

A. At least seven hundred.

Q. And what about -- how many children do you think you've counseled in your professional career?

A. Just counseling or counseling and forensic interviews?

Q. Just counseling.

A. I would say I've seen over seven hundred children for counseling as well.

Q. I understand. Can you explain to the jury what RATAC is correct me if I'm not pronouncing it right.

A. Okay. When we're conducting forensic interviews, we're following what we refer to as a protocol. Basically, instructions or sort of the format that we're going to conduct our interview. And as part of -- one of those

protocols, we use the acronym RATAC, which is a funny name, but it stands for rapport, anatomy, touch, abuse scenario, and closure. So those are the five key elements that you're looking for in any forensic interview that's being conducted. I've been trained in two different types of protocols, one that primarily uses that RATAC model, and then the other one, which is a looser protocol of that. So what you basically are doing is looking for those five core components in the interview. And they may follow in that order, they may follow in that RATAC order or you may kind of go back and forth between them. So what that means is the R, the first thing that we do with the child is establish rapport. It's a very unusual situation to have a total stranger asking you to come back to a room and ask you questions and be on videotape. So the first thing that we do is try to make the child feel comfortable and establish rapport by asking them general questions, who they are, what they like to do, who they live with. And just start that conversation. Then we also want to identify anatomy. So at some point in the interview the child is going to be presented with anatomically correct drawings and asked to identify all the parts of the body from head to toe. We also will do a touch inquiry. If a child comes back into the interview room and they go ahead and start talking about some kind of touch that they've gotten, then we'll ask them

questions about that. But if not, we might ask them about different types of touches. Good touches, bad touches, general types of touches, hugs, kisses, tickles, spankings, and then even asking about inappropriate touches, touches that they didn't like, touches to the private parts, those kind of things. And then we also get to the abuse specific questions. So if the child makes a disclosure or makes a statement then we'll ask more focused questions, ask them to tell us more about what they're talking about. And then rather than sending the child out of the room with all of that still up in the air, we always close the interview. So it kind of starts and ends the same way. You want them to be comfortable when they come in the room. You want them to be comfortable when they're leaving and so we return to sort of general topics before they leave the room.

Q. And how do you address the issue of whether these children are competent to tell you these things?

A. Well, one of the things that we do is, again, we're skilled in understanding children's developmental level. And so when I'm asking them the general questions about what they like to do, where they go to school, I'm paying attention to how they answer questions like that. And so when they answer questions about any specific abuse-related information, I compare how they answer those questions. And there may be differences or similarities and that can be

explained based on the information that they're sharing.

Q. Do you have any discussions with them about, you know, the difference between the truth and a lie?

A. Sometimes I do. You know, we let children know that it's important to tell the truth. We may, if there's an opportunity during the interview to introduce that, you know, if they start talking about something that is clearly, you know, Sponge Bob related, we let them know that, you know, we're there to talk about things that are true and real. Generally, beyond the age of seven, though, there's sort of the assumption that a child is competent. There's a truth/lie task that we used to use in interviews where we asked children to identify the difference between the truth and a lie and that's used with children who are seven and under.

Q. I understand. What kind of questioning format do you use in these interviews?

A. Well, we use a range of questions, but what we're trying to use more of during the interview are non-leading and non-suggestive questions. Obviously, you can't have a conversation or conduct an interview with entirely non-leading non-suggestive questions. At some point, there have to be some focus questions or maybe some multiple choice questions. But the goal is to ask as many non-leading questions as possible so that essentially you're having the

child give you information rather than me giving information to them, which is, again, sort of an unusual situation for children because usually we, as adults, are telling them everything and they're just supposed to be taking it in. So it's a really different kind of communication for most kids.

Q. And during these interviews how do you make sure that they have a firm knowledge of their anatomy?

A. Again, we present anatomical drawings. So these are drawings of a boy and a girl without clothes on, and we ask them to identify the different parts of the body. Sometimes a child may go ahead and start talking about their body, may go ahead and identify a body part, and if that's the case before I've brought the drawing out, then I'll bring a drawing out and say, well, is there one of those parts here? And then we'll go through and name all the parts. But I do like to find out what each child calls their own body parts because it's very different in different households. Some children have the correct anatomical names for body parts, but most of them don't. And so it's important to know what they're calling the different parts of their body.

Q. Do you ever actually use dolls that show the different parts?

A. Yes. If a child has made a disclosure, if they have made a statement about having been abused during a forensic interview, then we will use anatomically correct dolls. And

what we'll do is let -- instruct the child that these are dolls. We don't play with these dolls. They're just dolls that we use to demonstrate, and then we have the child demonstrate with the dolls what they have already told us. But I only introduce those dolls once the child has made a statement that something has occurred.

Q. Can you talk to the jury a little bit about grooming and what it is?

A. About grooming?

Q. Yes, ma'am.

A. Essentially, grooming is what we refer to as sort of preparing a child or sort of testing the waters with a child to see how far someone might be able to go with them if they're going to abuse them. For instance, sometimes we consider giving extravagant gifts, giving a lot of extra attention, spending a lot of extra time, sort of showering a kid with things that they would like in exchange for other behaviors. It also may involve sort of testing the waters with different kinds of touches. One of the things we see with grooming is that sometimes those who abuse children may introduce touches that could be confused between a sexual touch or an inappropriate touch and a normal touch. And they progressively move from those sort of normal confusing touches to more inappropriate touches, just to see how a child's going to respond to that. And, also, to sort of add

to the confusion that a child might experience about that touch. So what I mean by that would be sort of a touch like in the area of care giving. So someone who's grooming a child might assist a child in cleaning their private parts or doing something to their body, which might seem normal, with the exception of the fact that maybe that child's too old to need that kind of care, or if it makes the child feel uncomfortable. And so the person who's doing this sort of grooming behavior might wait to see how the child responds before they then move on to a different type of touch.

Q. In your experience have you seen a lot of the kind of escalation of touching as to the severity of it?

A. In some cases, yeah. You'll see, you know, that it moves. As children start telling more and more about what's happened they might begin to identify sort of innocuous touches that then move into more specific kind of touches and then progress. It doesn't always go that way, but you do see that sometimes.

Q. And let's talk a little bit about the child's memory. When children are younger, can you kind of explain that to the jury, how they remember things?

A. How children remember things?

Q. Yes, ma'am.

A. Well children, like adults, remember things that are meaningful to them. A lot of times they remember things

that, you know, they attach things to those memories. They might remember going to a specific place because they had a really good time doing it. They might remember something because they had a really bad time doing it. And a lot of times they will remember significant events and they may be able to tell, you know, sort of core details about what has happened, but may not be able to give all the specifics. And when they're reporting information, just like you and I would be reporting information, they might tell a story and tell that same story over and over, but might lose a detail or change a detail, but basically stick to those same core pieces of information that they're sharing.

Q. I'm sure you would agree, kids sometimes lie, right?

A. Yes.

Q. Can you tell the jury a little about when children lie and the sophistication of it?

A. Well, that's really the way I generally explain it is that children lie, adults lie. Children generally lie to keep themselves from getting in trouble if they've done something they know they shouldn't have done. But children aren't very sophisticated liars. And what I mean by that is when they lie, they're saying something to keep themselves from getting out of trouble most times. And they're not able to -- they don't have the forethought or foresight to know what they're going to have to do to continue covering

that lie up. If the child tells a lie, they're not necessarily going to be thinking about all the contextual issues that may be asked of them about that lie later. They're just telling, generally telling a lie to get themselves out of trouble or to keep somebody else from getting out of trouble or something else like that.

Q. Do you have an example for the jury as, you know, the kind of sophisticated lie that you're talking about?

A. Well, I mean, in general the -- you know, my children lie when I say have you done such and such, which is a silly question for me to ask when I already know the answer that they have done it. You know, like the kid going to the cookie jar and you say, have you eaten a cookie? And the kid has crumbs on their face and, of course, they've eaten a cookie but they say, no, I have not eaten a cookie. Okay, that's not a very sophisticated lie. You know, if the child continues -- if I continue to pursue that and they said, well, these cookie crumbs that you see on my face came from such and such, and this one came from here. And then they continue to keep that up. And then I ask them a few weeks later or over time that same question, they continue to keep that up, it's really the idea that a more sophisticated liar is going to be able to think ahead of what the next step is and how they're going to cover their lie and continue that lie. And children just -- particularly younger children,

just don't have that developmental capacity yet to do that. A lot of adults don't have that capacity either.

Q. Right. I understand. As far as Victim 2 goes, did you conduct a forensic interview on him?

A. I did.

Q. And what was the date of that forensic interview?

A. I conducted a forensic interview with Victim 2 on July 29th, 2008.

Q. What about Victim 1, did you conduct one on her?

MR. DEJONG: Objection, Your Honor.

THE COURT: Let me see the attorneys here just for a moment.

(WHEREUPON, Ms. Barwick and Mr. DeJong, approached the Bar.)

THE COURT: Mr. Foreman, ladies and gentlemen, we've got a legal matter we need to resolve outside of your presence. If you'll just go back to your jury room just briefly, we'll get this resolved. Don't discuss the case and we'll call you back just as soon as we can.

(WHEREUPON, the jury exited the open court at approximately 10:17 a.m.)

THE BAILIFF: The jury's secure, Your Honor.

THE COURT: All right. What's your objection, Mr. DeJong?

MR. DEJONG: Your Honor, apparently, she -- Madam

Solicitor is trying to get into the forensic interview of [redacted]. As I read the statute, there's nothing admissible about a forensic interview if at the time of the forensic interview, the person being interviewed was twelve years of age or older. Now, the Solicitor wants to raise an issue on questioning that I did on cross-examination yesterday. Under the statute, I don't think that makes any difference. And number two, it doesn't open the door for her to get into a forensic interview that she's not entitled under the statute to get into. As I read the statute, it's totally barred.

I disagree with her even bringing out the fact that there was a forensic interview for a couple of reasons. Number one, it's not relevant under the statute. It is not admissible under the statute. Number two, it only leads to speculation or conjecture on the part of the jury about something that they're not entitled to have anyway. Quite candidly, Your Honor, I would move at this point in time for a mistrial for that question being asked in the presence of the jury. It's not appropriate. Madam Solicitor knows the law.

MS. BARWICK: Your Honor, I'm going to object to him making me sound like I'm being unethical here.

MR. DEJONG: I'm not saying you're unethical. I'm saying the law is the law. It's not a personal attack, Ms.

Barwick. It's what the statute says, Your Honor. That's what the legislature says. It is not admissible. We've argued and argued whether they should be admissible at all. The Court of Appeals and the Supreme Court have ruled on that. But on the non-admissibility, it is totally inadmissible and she should not be allowed to go into it. She has gone into it, and I respectfully move for a mistrial.

THE COURT: All right. Solicitor, I'll be glad to hear from you on both issues.

MS. BARWICK: Your Honor, I'm kind of confused as to what law Mr. DeJong is talking about. The law on forensic interview, 17-23-175, just lays out the groundwork to admit statements that are done in a forensic interview. Nothing in the law indicates that the State can't mention that a forensic interview was done or any opinions that Ms. Shauna Galloway-Williams came with from the disclosure. She's been qualified as an expert. She can say whether disclosure was compelling or not. The State is not seeking to introduce Victim 1's forensic interview tape. The only statement that the State wishes to bring in from that forensic interview as to proof of prior consistent statement. Because when Mr. DeJong cross-examined Victim 1, Victim 1 said on direct my pants were pulled down and he touched me on my privates. Mr. DeJong said, but you have

told someone before that he touched you under your clothing, under your -- you know, under your clothing.

Ms. Shauna Galloway-Williams will say, and this is the only statement I will elicit from her, that [redacted] said, he had his hands in my pants. And then after she made that statement, she said that her pants, panties and bloomers were all pulled down. That just is to show a prior consistent statement to address the defense putting into the mind of the jurors an inconsistent statement.

THE COURT: Solicitor, why should a mistrial not be declared?

MS. BARWICK: Your Honor, there's nothing in the law that says that we can't make up or mention -- we cannot bring up or mention a forensic interview. The only thing that the law says is that if I want to introduce the actual statements, then I have to go through these factors set out by 17-23-175.

THE COURT: But the definition -- she's not a child for purposes of the section.

MS. BARWICK: That's correct, Your Honor.

THE COURT: So what in the section is applicable to her?

MS. BARWICK: Your Honor, this section about forensic interviewing talks about its admissibility of out-of-court statements of a child under twelve. I'm not

seeking to admit any out-of-court statements, other than the one solely to refute any inconsistent statement.

THE COURT: But doesn't say the entire section ---

MS. BARWICK: I'm sorry, Your Honor?

THE COURT: The section refers to 17-23-175, correct?

MS. BARWICK: I'm not following Your Honor.

THE COURT: For the purposes of this section ---

MS. BARWICK: Okay.

THE COURT: --- would you agree that that's the law. Section means this law?

MS. BARWICK: I'm still not following Your Honor's question.

THE COURT: Okay. You see -- the statute applies to children, correct?

MS. BARWICK: Yes, sir.

THE COURT: Is that the only time the statute applies to children?

MS. BARWICK: This statute says -- puts the factors, and it lays out the factors if I want to introduce that child's statement. I am not seeking to introduce the child's statement. I'm not.

THE COURT: I understand. Well, you are. Through your examination you're trying to get a statement from the child into evidence, aren't you? Isn't that the purpose of

this?

MS. BARWICK: Your Honor, I believe that we need to look at these as two separate things.

THE COURT: Well, that's my very point. If you're wanting to get testimony of what the child said in through this witness, there's rules about hearsay and so forth. What significance does having a forensic interview have to do with that?

MS. BARWICK: Your Honor, all right, let's say the State doesn't even want to introduce what the child said. Say that's off the table. If that's off the table, there's nothing preventing the State from asking if a forensic interview was done, if something was disclosed and what was her opinion about that disclosure.

THE COURT: And what about hearsay rules?

MS. BARWICK: She's not going to testify to what the child said.

THE COURT: Oh, she's not going to testify to what the child told her?

MS. BARWICK: That's how I'm starting it ---

THE COURT: I thought I understood that you wanted to have her say what the child said.

MS. BARWICK: Your Honor, Your Honor has asked me why we shouldn't have a mistrial. The State has not elicited any testimony from Ms. Shauna Galloway-Williams at

this point as to what that child said.

THE COURT: Okay. All right. Let's move beyond mistrial now. What is the purpose of your interrogation, this line of interrogation to the witness?

MS. BARWICK: To see if she spoke with the child, when the forensic interview occurred, was she competent, did she follow the guidelines and safeguards discussed, did she disclose.

THE COURT: All right. But wait, wait, wait. Why are we asking her those questions? The statute's -- you're asking questions about the statute, correct?

MS. BARWICK: Your Honor, ---

THE COURT: You're going through the line-up of the statute?

MS. BARWICK: Yes, sir.

THE COURT: The statute says, this statute only applies to children.

MS. BARWICK: I am not seeking to introduce any statements.

THE COURT: Well, but the statute is not applicable. You don't have to follow those guidelines if it's not applicable to who she's interviewing.

MS. BARWICK: Yes, sir, I don't have to, but I'm choosing to as part of my strategy.

THE COURT: Well ---

MS. BARWICK: And, Your Honor, if I can finish. I want to ask her if the child disclosed, if [redacted] disclosed, did she disclose the time and place where the assault occurred and did you find her -- how did you find her disclosure? She can say, as I anticipate, compelling. And then the State will leave it at that. The State's not going to introduce any statements. And nothing in the statute about forensic interviewing says that we can't bring up a forensic interview. It just says we cannot bring into evidence any out-of-court statements.

THE COURT: All right.

MS. BARWICK: Now, if we can just ---

THE COURT: So all you're asking for is for her to say that she interviewed her and she stated that she was abused and a time and a place?

MS. BARWICK: And if ---

THE COURT: Or disclosed it.

MS. BARWICK: Yes, sir. And if the disclosure, if she found -- how did she find the disclosure?

THE COURT: Just like with -- how did she find the disclosure? Okay.

MS. BARWICK: What was the resulting ---

THE COURT: Well, then -- all right. Mr. DeJong, you understand the purpose of the questions now?

MR. DEJONG: I understand the purpose of the

questions, but it hasn't changed my objection.

THE COURT: Well, I understood the questions were a little more broad at the bench here. Why should this witness, as any other witness investigating a case, not be allowed under 801(d) to state time and place of what was reported?

MR. DEJONG: Well, I think you do have to narrow it down to 17-23-175, the forensic interviewer. Now, she said I don't want to get any statements that were made by the alleged victim in, but she's doing that through the back door.

THE COURT: How's that?

MR. DEJONG: How can this witness make a statement that she made a compelling disclosure ---

THE COURT: Well, let's go a step at a time. Let's don't go to the end.

MR. DEJONG: Okay.

THE COURT: I did conduct a forensic interview. She disclosed to me, time and place. Is that objectionable in your view?

MR. DEJONG: I still think it is, Your Honor, because the whole purpose of 17-23-175 was to get in out-of-court statements. She is a forensic interviewer. She has been qualified as that. If they want to call it a forensic interview, it's a forensic interview, period. And under

forensic interview, under the definition of child, this alleged victim does not fit.

THE COURT: Well, are you saying that because this witness has an expertise in forensic interviewing that she is disqualified then to be a witness as to time and place under Rule 801?

MR. DEJONG: I think under forensic interviewing, yes. It's still a statement, out-of-court statement. That's what the whole 17-23-175 goes to, out-of-court statements on forensic interviewing. And the only exception under the forensic interviewing is under the definition of the child.

THE COURT: But how about the exception under 801(d) that we've already had other witnesses testify to that they could report that there had been sexual conduct where that person was the alleged victim and that the statement is limited to the time and place of the incident. Why is this witness disqualified to say that?

MR. DEJONG: I'm sorry. Which rule is Your Honor ---

THE COURT: Well, it's the same one that the deputies testified to, time and place. Haven't we had two or three witnesses on that already?

MR. DEJONG: We've had several witnesses testify.

THE COURT: Right. Why can this witness not

testify to the same parameters, because this witness talked to her.

MR. DEJONG: Okay. If you want to take it by that step, but I still -- it comes in as a counselor. But I still don't think -- I may be quibbling over words here, what you call tomato and I call tomato, but I'm saying it can't come in under the forensic interviewer.

THE COURT: All right.

MR. DEJONG: And I don't think there should be any discussion about a forensic interview with the alleged victim, Victim 1 [redacted]. Period.

THE COURT: All right. I understand your objection to the question, but are you saying that this witness cannot testify to time and place?

MR. DEJONG: She can testify to time and place, but I don't think as a forensic interviewer.

THE COURT: All right.

MR. DEJONG: And, Your Honor, not to interrupt, but I think in this case it compounds the issue because the jury is going to see a forensic interview presumptively, if Your Honor makes that final ruling, they're going to see a forensic interview of Victim 2 [redacted], one of the alleged victims. Now, they're not going to see a forensic interview of Victim 1 [redacted]. And that, in my opinion in this case, is going to create confusion and conjecture on the part of this

jury, especially in light of when we're calling it a forensic interview. Why can't we see the forensic interview of Victim 1 [redacted]?

THE COURT: You sound like the Solicitor two days ago.

MR. DEJONG: On which part?

THE COURT: That the confusion of the jury because one's played and one's not. But the Solicitor chose to ask the question for the reason that she did.

All right. Anything else? Yes, Ms. Barwick?

MS. BARWICK: Judge, I was just reading over the statute again. It says, in a General Session Court proceeding or delinquency proceeding in Family Court, an out-of-court statement of a child is admissible if the statement was given in response and audio and visual recording of the statement, the child testifies at the proceeding and can be cross-examined on the out-of-court statement, circumstances surrounding the making of the statement. This statute doesn't apply to us because we're not introducing any statements.

THE COURT: Well, the statute applies to children as I read it, Section 3. For purposes of this section, a child is somebody under twelve. So this section has no applicability whatsoever to anyone that's twelve or older.

MS. BARWICK: Right. And the statute has no

application whatsoever because I'm not trying to introduce an out-of-court statement?

THE COURT: Well, that's -- well, I understand now you're not.

MS. BARWICK: And I'd like to argue on the other if I can.

THE COURT: And what's the other?

MS. BARWICK: The other is if Your Honor decides that that line of questioning is reasonable, the State would also like to introduce a prior consistent statement because the Defense has already alleged an inconsistent statement. To not allow the State to ---

THE COURT: Well, okay. I thought you just a while ago said you weren't going to ask for that.

MS. BARWICK: No, I said let's look at this by itself and then once we're able to look at that, if I could continue ---

THE COURT: I feel like I have a moving target here. You're wanting this witness to testify that the child, the twelve-year-old child, gave her a statement as to time and place about an abuse, correct?

MS. BARWICK: Yes, sir.

THE COURT: And then I understood earlier you wanted her to be able to say that I thought that was a credible statement. And I thought that's what you said was

all that you were seeking to offer.

MS. BARWICK: Yes, Your Honor.

THE COURT: Have you changed your mind?

MS. BARWICK: No, sir.

THE COURT: All right. So is that all you're seeking to offer?

MS. BARWICK: If Your Honor says that that line of questioning is appropriate to ask about the forensic interview, if a disclosure of time and place and the compelling, I would also like to get that out that there was a prior consistent statement.

THE COURT: Under what basis?

MS. BARWICK: Under the rules of evidence. He opened the door. He mowed down the door by trying to say that this child made an inconsistent statement in her testimony yesterday.

THE COURT: Do you have an objection to that, Mr. DeJong?

MR. DEJONG: I'm sorry. I was trying to read the rules of evidence. As to the prior consistent statement?

THE COURT: Yes, sir.

MS. DEJONG: I don't think just because there's a prior inconsistent statement -- I'm trying to remember the law on that right now, but I don't think a prior consistent statement is allowed in unless there is a showing that there

was a recent reason for the person to change their story. I don't think the rule on prior inconsistent statements and consistent statements is the same. I thought there was a rule on prior consistent statements. That's what I was trying to find. I know there is a rule on prior inconsistent statements and what we have to go through on prior inconsistent statements. But the problem I think -- and, again, I did not anticipate having to argue this issue. I don't have the law in front of me, but ---

THE COURT: Let's look at 801.

MR. DEJONG: 801?

THE COURT: (d). Is that what you're relying on Solicitor? You said the law. Tell me which law you're relying on.

MS. BARWICK: Your Honor.

THE COURT: Yes, ma'am.

MS. BARWICK: 801(d)(1)(b) says consistent with the declarant's testimony is offered to rebut an expressed or implied charge against the declarant of recent fabrication or improper influence or motive.

THE COURT: So you're trying to put testimony in that's consistent with the testimony of the child?

MS. BARWICK: Yes, sir. Because yesterday on cross-examination the Defense implied that she had recently fabricated that her pants were pulled down and tried to say

that she'd earlier said that he'd just reached under her pants.

MR. DEJONG: Your Honor, I take issue with that. Nothing in that prior inconsistent statement was any inference or implication of a recent fabrication. And I think the recent fabrication is what opens the door for that. This is an old, old, old inconsistent statement.

Maybe to refresh the Court's memory, on July the 14th of 2008, she told the police officer one thing. And on July the 15th, 2008, she told the Detective Teddi Palis something different. That is not an inference or whatever the other word is in there.

THE COURT: And her testimony in Court was consistent with one of those?

MR. DEJONG: Her testimony in Court was consistent with the second statement she gave. It was inconsistent with the first statement she gave. And that was the prior inconsistent statement I'm bringing -- was bringing out. There was nothing in my opinion that would indicate that it was a recent fabrication or improper inference. I simply asked about a prior inconsistent statement.

THE COURT: All right. Mr. DeJong, your motion for a mistrial is denied. I believe the mention of a forensic interview is not fatal to the trial of this case in anyway. The fact that it's not admissible under the

statute, because of the age of the child does not create a valid mistrial for the question being asked.

I will allow the State to ask the question as to time and place under rule 801(d) as far as this witness. I don't think because she's an expert witness negates her ability to testify to that. So I will allow that. But I will not allow any evidence as to the prior consistent or inconsistent statement. I don't think that overcomes the rule against hearsay, unless you can give me some other argument to change my mind, Ms. Barwick. But I believe the rule prohibits her, as it would anybody else, to say that she made an inconsistent statement or a consistent statement here.

MS. BARWICK: Thank you, Your Honor, for your ruling. Just so I can be clear when the jury comes back out, can I rephrase my question to say, did you have a chance to meet with Victim 1? How do you want me to address that?

THE COURT: Well, do you need to rephrase it? My ruling is that his objection to the question has been overruled.

MS. BARWICK: Okay.

THE COURT: But by that ruling, it doesn't mean you need to pursue asking about forensic interviews with the child, with the young girl.

MS. BARWICK: Okay. Yes, sir. I'll just ask her when she met with the child.

THE COURT: And did she talk about an abuse and time and place.

MS. BARWICK: Am I able to ask about whether her disclosure was compelling in her expert opinion?

THE COURT: What about that Mr. DeJong?

MR. DEJONG: Well, again, Your Honor, I object to that because that has got to be based on forensic interview statements made by a person twelve years of age or old and we're just back to ---

THE COURT: So you can't have a forensic interview -- can you have a forensic interview outside the statute? Can you have a forensic interview of an adult?

MR. DEJONG: Well, sure you can have a forensic interview of an adult.

THE COURT: So how does the statute prohibit her from giving that opinion?

MR. DEJONG: But on a forensic interview of the adult, I don't think you can bring in out-of-court statements because that's what this statute says. The out-of-court statements cannot be brought in.

THE COURT: But she's not -- I gather from what she said she's not saying what she said, she's just saying the deception of what she said or was it credible, based on

her expertise as a child counselor that -- she's talked already about how children deceive and so forth. Do you believe she, as an expert in that field, cannot say -- still not give an opinion as to whether or not that was credible information that she gave her as to time and place? That's what we've got down.

MR. DEJONG: The time and place ---

THE COURT: Well, that's all she's going to be asking.

MR. DEJONG: But now she wants to go on and get the opinion. And I think Your Honor said the magic word there, to say that she's credible. That is simply this witness vouching for the credibility of another witness, Your Honor, and that's improper.

THE COURT: How do you intend to ask that question and how do you intend to allow that to be a proper question, Solicitor, as to whether or not she found her to be -- what phrase did you say?

MS. BARWICK: Compelling.

THE COURT: Compelling?

MS. BARWICK: And I don't want it to sound like a leading question because I know I'll draw an objection on that. I will simply ask her after her forensic interview with [redacted] did she make any findings as to her disclosure? What were those findings?

THE COURT: Any objection to that, Mr. DeJong?

MR. DEJONG: Your Honor, I don't want to be repetitive and I mean no disrespect. My objection is based on the forensic interview, out-of-court statements of a child twelve or older. And, according to the Solicitor, this witness is going to say it was a compelling disclosure.

THE COURT: Well, I -- based on what I have now, I'm going to deny you your request to ask that question, Ms. Barwick. All right.

MS. BARWICK: Do I need to just phrase it differently? And I don't mean any disrespect.

THE COURT: No, ma'am. No.

MS. BARWICK: I thought Your Honor had ruled ---

THE COURT: What I have on the record so far, I will not allow the question.

MS. BARWICK: Yes, sir.

THE COURT: Time and place only.

MS. BARWICK: Thank you, Your Honor.

THE COURT: How much longer do you expect the direct examination of this witness to be, not counting the video?

MS. BARWICK: Not counting the video, probably about ten to fifteen minutes.

THE COURT: Mr. DeJong, do you intend to cross-examine this witness before the video is played or ---

MR. DEJONG: No, sir, after the video is played.

THE COURT: After the video.

MR. DEJONG: And I'm not asking this. We've got a witness on the stand, but maybe between -- at some point in time could we take a little down the hall break?

THE COURT: Well, that's what I was trying to do. If you're going to delay your cross examination until after the video is played, let's take our break now.

Ms. Galloway-Williams, let me remind you while you're on the stand not to be discussing your testimony with anyone.

Let's take about a ten minute break and then we'll be ready to complete the direct and show the video.

MR. DEJONG: Thank you, Your Honor.

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

THE COURT: Thank you. Please be seated. All right. I understand we are ready to proceed so we won't have another break. I just wanted to reaffirm on the record that I'd made a finding of the admissibility of the videotape. Certainly, you can object to it again if you need to, Mr. DeJong, I'm not hampering you there in anyway, at the appropriate time or you can make your objection now. I presume that that's going to be offered fairly soon. But if you want to object otherwise, my ruling has been made on

the admissibility of it.

MR. DEJONG: I understand that, Your Honor. But I think I'm going to have to object to the video at the time the State offers it.

THE COURT: That's what I'm telling you.

MR. DEJONG: Yes, sir.

THE COURT: I just wanted to reaffirm what I've said. I'm not sure -- I tried to state all the factors I used in looking at that, but certainly the factors that I stated before, guaranteed the trustworthiness of the statement based upon the techniques used by the interviewee and the internal coherence of the detailed account that was given. And I have determined, having reviewed the tape two days ago now during lunch, that it was within the standard of trustworthiness under the statute. So we will -- I'll not have to put that back on the record again. All right.

If the jury's ready, Mr. Teal, you can have them come in.

(WHEREUPON, the jury entered the open court at approximately 11:08 a.m.)

THE COURT: Thank you, ladies and gentlemen. You've been patient. We're now ready to proceed with the examination of this witness.

Solicitor, you may continue with your examination.

MS. BARWICK: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY MS. BARWICK:

Q. When you met with [redacted], did she make a disclosure of sexual abuse?

A. Yes.

Q. And did she disclose where and when it happened?

A. Yes.

Q. And what did she say? I'm sorry. No, not that question and not that answer either. All right. And did you also have a forensic interview with [redacted]?

A. I did.

Q. And you said the date of that was?

A. The date of his interview was July 29th, 2008.

Q. Okay. Did he also make a disclosure of sexual abuse?

A. Yes, he did.

Q. And did he disclose the time and place?

A. Yes.

Q. Okay. And where did he say it happened?

A. He said it happened in the home where he was living with his mother, sister, and stepfather.

Q. And did he say how old he was when it happened?

A. He said he was eight years old when it happened.

Q. Thank you. Let's talk about disclosure a little bit with the jury. Do children disclose in every case?

A. No. What we know statistically is that most children

don't tell. And most children don't tell right away. The research that's been conducted with adults who've been asked as adults if they ever disclosed childhood sexual abuse, indicates that somewhere around seventy percent of adults never disclose. And so we know that there is a large number of children who don't disclose abuse.

Q. Can you tell the jury a little bit about delayed disclosure?

A. Delayed disclosure refers to the fact that most children don't tell right away after an incident of abuse has occurred. There are lots of reasons for this, explanations for this. The main reason that I hear from children and that the research shows us is fear. Children fear that they're going to get in trouble if they tell. They fear what's going to happen to themselves, what's going to happen to someone else. They fear what's going to happen to their family. They may fear that something's going to happen to them because they've actually been threatened or it could be that they fear something's going to happen to them because they've seen violence and that's threatening. But it may also just feel threatening to a child because the person that committed this act is an adult. They're bigger, they're stronger, they're the ones who are sort of in control of things. And so just by virtue of an adult committing this act on a child, that has sort of a

threatening effect on a child and may keep them from telling. Other reasons that children don't tell, you know, a lot of times when children are abused, probably about eighty percent of the time, children are abused by someone that they know, they love and they trust. Whether that's a family member, a family friend, a teacher, a mentor, it's someone that they have a relationship with. And so a lot of times that makes it even harder for them to tell that something's happened. It's that whole idea of loving someone and caring about someone, but not liking what they're doing. A lot of us tolerate those kind of relationships and we have to just because that's the nature of relationships with people. But that has a strong impact on whether a child will disclose what's happened to them. The other things that may cause a child not to tell are just the idea that they aren't going to be believed. Children just don't think that -- children are often called liars and are often questioned about the things that they say. And so a lot of times, they just don't think that if they told anyone that anyone would believe that this really happened. Other times, children just don't know that it's -- they know something's not right but they really can't put it to words and don't really know what's going on, which was really why the name Finding Words was given to one of the forensic interview trainings.

Q. Do you think shame or guilt might play a role in any of that?

A. Certainly. I know when we're looking at child sexual abuse or adult sexual assault, shame and guilt play very heavily into that. We're talking about sexual acts, things that most of us aren't comfortable talking about with our closest friends. We're not comfortable talking about it in public. And so it just has this element of shame just associated with it, particularly for a child. And depending on their age and whether they even realize that, you know, what's happening to them, it can be even more shameful for them. Kids from a very young age know that they're supposed to keep those parts covered. I mean, even our very young children we tell them to, you know, keep their clothes on even when they want to rip them off and run around the house naked.

Q. Do you think children have an easier time or a harder time speaking about it when it's the same sex abuse?

A. I think that can have an impact. I mean, statistically, we say that one in four girls and one in six boys are going to be sexually abused by the age of eighteen. You know, what we see in treatment and in disclosures that come out is that a lot of times boys, it's harder for them to tell. They're less likely to tell. We know that it's happening to boys, but for numerous reasons it's harder for

them to tell. And I think that what I've seen from my clinical experience and what some of the research shows is that sometimes that's related to the fear of homosexuality or being perceived as being homosexual if the act has been committed by an adult male or another male. And that can have a pretty significant impact on whether a young boy discloses or not. And I see that a lot. I've seen that a lot in counseling.

Q. You kind of touched on living with the perpetrator, how does that affect disclosure?

A. Well, certainly, you know, if you're living under the same roof with the person that's committing this act as a child, this may be the primary care giver. They may come to understand that if I told about what was happening, we might not have someone to pay the bills. We might not have someone -- a place to live. It really sort of strengthens that fear and anxiety around telling. You know, sometimes disclosures are delayed until a child has been removed or is away from that person that's committing the abuse. So that's another reason why sometimes, you know, a child may have been abused and then three to four years later they're disclosing because maybe they haven't had contact with that person and it's that, you know, the idea that they may feel safer and may be safer to tell.

Q. Let's talk a little bit about some of the things that

you are looking for in a forensic interview.

A. Some of the things that we're looking for?

Q. Yes, specific things.

A. Specific to the disclosure?

Q. Yes.

A. Really what we're looking for are details and the type of details that a child is able to give within their developmental level. So, you know, for instance for a child who's seven or eight, we'd expect that they'd be able to tell us who, what, when, where, and probably how something happened. For a younger child, they may not be able to tell all of those things. For a child who's twelve and over, we would expect that they could tell us all of those things. Those are sort of the core details. What happened, where did it happen, how did it happen, the basics. And then we're also looking to see if they can give us what we call contextual details or sensory details, things that would really distinguish what they're saying as something that they might have been told versus something that they experienced. So a contextual detail would be one of those sensory things, what did it feel like, what did it smell like in the room, what do you remember, any of those things that your five senses would have brought to you. When a child can share those types of details, it certainly sort of adds to the -- whether or not their statement is compelling

or not.

Q. And I apologize. I know I feel like I'm jumping around with you a little bit. When you spoke with Victim 1, did she say where the abuse occurred?

A. Yes.

Q. And where did she say that abuse occurred?

A. In the home where she lived with her mom and step-dad and brother, in the living room.

Q. Okay. And when did she say it occurred?

A. It occurred -- she didn't give me a specific date, which again in child's terms when I'm looking for a time frame, I'm not necessarily looking for month, day and year. I'm looking for a time to attach it to. So she said that it happened after they had come back from a vacation in Charleston and that it happened, and she told her mom later that day.

Q. I understand.

A. So it was in the same day of, you know, when the report was made.

Q. Yes. Now, let's move over to Victim 2's forensic interview. When he made a disclosure, how did you find that disclosure? Do you have an opinion as to that disclosure?

A. Yes. I described Victim 2's disclosure as a compelling disclosure because he was able to provide both those core and contextual details about what he was describing. He was

able to say who, what, when, where, how. But he also gave a lot of pretty vivid description about what it felt like. Probably one of the most compelling details that he shared was related to his body positioning, how he was positioned when this incident occurred and how Rick was when he performed this act, as well.

Q. Do you recognize this?

A. I do.

Q. And what is it?

A. It's a copy of the forensic interview that I conducted with Victim 2 [redacted] on July 29th, 2008.

Q. And would it be a clear and accurate depiction of how that interview happened?

A. Yes.

MS. BARWICK: Your Honor, at this time, the State would like to introduce State's Exhibit Number 5 into evidence?

THE COURT: Any objection?

MR. DEJONG: And I object, Your Honor.

THE COURT: All right. I overrule your objection. You may -- the exhibit is admitted into evidence and may be published.

(WHEREUPON, State Exhibit Number 5 was admitted into evidence.)

MS. BARWICK: I apologize, Your Honor.

THE COURT: Mr. Foreman, ladies and gentlemen, as this is played if you have difficulty hearing volume-wise, please let us know so that the volume will be at the right level for you to be able to hear everything. If it's too loud, let us know, we'll certainly have the player tone it down.

While they're working on the equipment if you need a stretch break, feel free to stretch. I'm sure they'll have it working soon.

(WHEREUPON, State Exhibit Number 5 was published in open court.)

MS. BARWICK: Your Honor, the State has no further questions for this witness.

THE COURT: You may cross-examine the witness, Mr. DeJong.

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

CROSS-EXAMINATION

BY MR. DEJONG:

Q. So you're basically an investigative arm for law enforcement. Is that right?

A. Actually, we're not an arm of law enforcement. A lot of our referrals come from law enforcement or DSS, but as a children's advocacy center, we view ourselves as a neutral party, sort of a liaison between the community partners that

are involved in investigating, prosecuting and treating children.

Q. Okay. And you're the Executive Director of the Julie Valentine Center, right?

A. Yes.

Q. Who hired you?

A. Who hired me?

Q. Uh-huh (affirmative).

A. I was initially hired by a former executive director when I was working as a clinical -- well, actually, I started out working as a forensic interviewer on a contract basis and through my private practice at the Greenville Rape Crisis and Child Abuse Center. And that was -- I was hired by Donna Roy who was the executive director at the time. I was then hired by the Board of Directors. That's who selected the Executive Director.

Q. How many members sit on your Board?

A. Right now I have nineteen Board members.

Q. One of which is an Assistant Solicitor for the Thirteenth Circuit, right?

A. That's correct.

Q. And one of which is a police officer for Greenville County, right?

A. That's correct.

Q. Okay. Now, you say that you have peer review and

people look at your forensic interviews, right?

A. Yes.

Q. And I guess you do the same thing for other people, right?

A. Yes.

Q. How do you develop this -- what are you looking for on peer review?

A. Well, when we review each other's interviews, we look to see if the interviewer is following protocol. When we're doing our national peer review, it's pretty interesting, because not all of the children's advocacy centers follow the same protocol. So sometimes we're looking at interviewers who conduct interviews different from ours. But, essentially, you're looking for the same type of thing. Are the interviews being conduct in a forensically sound manner? Are the interviewers asking neutral questions or leading questions. And that's pretty much what we're evaluated on, based on protocol.

Q. What is your error rate?

A. What do you mean by that?

Q. Well, I suspect if you're being reviewed you could make errors, right?

A. Yes.

Q. What is your error rate on your peer review?

A. Well, we don't track any sort of statistic error rate

if that's what you're asking. When we do peer review, we're basically looking for feedback on the interviews that you're bringing in. And most of us bring in interviews where we really think we've done a bad job, essentially, because we want to know how to do those interviews better. So, yes, we do all make mistakes. And it's a learning opportunity both for the interviewer and for the other interviewers who are reviewing.

Q. So peer review is basically for somebody to maybe share with you that you're not doing it quite right, correct?

A. Well, they share with you what you're doing well and what you're not doing well.

Q. Right. But it's not a peer review where you fail or you don't fail or whatever, right?

A. We're not being graded. That's not part of the peer review process. That's not really one of the standards. I can't imagine any groups that are doing forensic interview peer review where they're giving a letter grade or a pass/fail. I don't know of any.

Q. Well, how many different protocols are there?

A. Well, the main two that are recognized nationally are the National Children's Advocacy Center Protocol, which I've been trained in. And then Child First, which was formerly Finding Words and also referred to as Cornerhouse. But there's also APSAC, NHIC, and I'm not really sure what that

stands for. But those are two additional protocols that I can name. South Carolina recognizes Finding Words. We consider ourselves a Finding Words state and we were actually one of the first states nationally to implement that as a training. It's a pretty big deal for South Carolina.

Q. So with all of these different protocols, is peer review based on somebody that may be an NHIC peer reviewing you that uses -- whatever that strange name is. I don't -- do they peer review you, even though you're using something else?

A. It depends. If we're doing the National Children's Advocacy Center peer review, where we're doing that by closed circuit and we are being reviewed by other interviewers that are in other centers across the nation, they may be using a different protocol there. But essentially, the components of all these protocols are the same. I'm looking for investigative interviews. We're using non-leading, non-suggestive questioning. Almost all the interviews contain a section of the interview where you're doing anatomy identification, touch inquiry, and you're using questions in such a way that you are eliciting information from a child rather than giving them that information. So even though the protocols may have things that are different about how you're actually conducting the

interview, the components of it are essentially the same.

Q. Well, I understand leading questions, but there's such a thing as positive reinforcement also, isn't there? Aside from the leading question, you can positively reinforce the child, right?

A. Explain what you're asking me, please.

Q. Well, for example, I see on the video that when you asked Victim 2 initially, he said wee wee and bottom, right? Then you follow up on that. He says, well, it felt like that. He didn't say it the second time. It felt like that. You positively reinforced, saying, when he put his wee wee in your bottom, right?

A. I restated the statement that he had made in my interview.

Q. Yes, ma'am. But you restated it after he changed somewhat what he had initially said.

A. It's a focused narrative question where I use a statement that he's already made and ask him to explain in more detail about that.

Q. Yes, ma'am. When Ms. Barwick was asking you questions, you readily agreed that children lie, right?

A. Yes.

Q. And actually, the fact that children lie came out of the studies from the California Child Daycare cases a few years ago, right?

A. That's one of them.
Q. Yes, ma'am.
A. Certainly.
Q. There were two big cases in California and up until that point in time everybody said all kids can't lie basically, right?
A. Yes. I'm sorry. I was nodding.
Q. And after the California Daycare Center cases, they said, oops, kids really can lie, right?
A. Yes. After those cases, they said kids can lie. And since then there's been a lot of research on how children tell and what influences children to lie. And basically, it's all about suggestibility.
Q. Yes, ma'am. And not only suggestibility, but as you move down the road on these allegations these children can embellish, right?
A. Can children embellish?
Q. Right.
A. When children are lying they could embellish their lie.
Q. Yes, ma'am. And, again, that came out of the California Daycare Center cases where there were a lot of bizarre allegations made, right?
A. And those were related to how the children were questioned about those allegations. It was an interviewer error, which is why we ask questions in a different way than

those interviews did in the eighties. We were able to learn from other's mistakes.

Q. And in part, it was also the repetition of the interviewer, was it not?

A. There were a lot of errors that those interviewers were making. They were making -- they asked leading questions, suggestive questions. And by a leading question, that's putting part of the answer in the question when you ask it. They also -- and they also did repeatedly interview. There were lots of things that were going on with those. If you're not familiar with these cases, which I don't know that everyone is, there was a daycare case. There were children that multiple interviewers began interviewing multiple children and it really kind of got out of hand to the extent that they weren't sure what had really happened at this daycare. And some of the allegations were very bizarre. And it really shed light on the fact that we needed become more scientific about how we were asking questions and interviewing children and that it was not just going in there, talking to an adult. You really had to be careful about how you were asking questions of children.

Q. Well, with all of this science now that you're talking about, that certainly has not done away with false allegations, has it? There are still false allegations?

A. Certainly. I think the research says statistically

they're about two percent.
Q. That would depend on which research you read, I guess.
A. Certainly.
Q. But that would be on the low side ---
A. Yes.
Q. --- according to your testimony, correct?
A. Well, the research shows that between two and four percent of allegations are false.
Q. Yes, ma'am. And we don't know how those false allegations arise, do we?
A. Well, what we see more of are false denials, like where there's actual evidence that a child has been abused, which is very rare, but in cases where maybe a child has a sexually transmitted disease or someone has actually seen something occur and a child denies that, that's where some of those false allegation numbers come from. So it's like a false denial.
Q. Yes, ma'am. There are false allegations made by children, the allegations never happened, right?
A. There are some false allegations made by children.
Q. Yes, ma'am. And there's no specific way of knowing where or how those false allegations arise? No science on that?
A. In assessing how those allegations arise? That's why it's so important that we find out where a child and the

circumstances around how a child discloses. You know, I talked about earlier that most children delay disclosure. I don't know if we mentioned this earlier or not but most children don't purposefully disclose abuse. The majority of children don't purposefully set out to say they're going to disclose abuse. They usually have what we call an accidental disclosure or a tentative disclosure where either they have said something that concerns someone and they start asking questions about it or someone sees a concerning behavior. And so what I'm saying is the circumstances around how a child discloses are always important pieces of information for us. I mean, that's sort of the scientific part of it, is gathering all that information. In most child abuse cases, the only evidence we have is that child's statement, which is why we conduct a forensic interview.

Q. That's exactly where I'm going.

A. Right. And so exactly what I'm saying is that those -- what happens just before a child discloses, what happens after the child discloses and what happens during that disclosure is important information and would help us to understand or to find out if an allegation might be false.

Q. Well, ---

A. Or true.

Q. I'm sorry, ma'am. I didn't mean to interrupt you.

A. That's okay.

Q. When a case comes to you there are certainly allegations of abuse, right?
A. There's either been -- yes. There's an allegation of abuse. There's an investigation, concerning behavior or a statement that's been made.
Q. And you're looking for abuse?
A. No. I would much rather find out that it is something that did not occur. In my opinion, I would rather every child not have been abused. So I'm not looking for abuse. I'm looking to identify what has happened. You know, we go into it with hypothesis, this could have happened. This could have not happened. You know, it's not my job to go in there and say, check off, this kid was abused. And we don't always find that a child was abused.
Q. Of the seven hundred cases you did forensic interviews on them, how many did you find there was not abuse?
A. I don't know statistically. I don't have a number, an exact number. Of the cases that I've done, when I render an opinion I either say that the child has made a compelling disclosure, no disclosure or problematic disclosure. We track that information now in our database. We haven't always done that. So I don't know exactly how many. But, you know, there certainly have been cases where children have come in and have given a problematic statement of abuse where I don't know what happened and I don't know whether,

you know, we don't know the exact circumstances of the disclosure. And then there have been some where children come in and they don't make a disclosure. They've made a statement to someone else and they come into our interview and they don't share any information at all. And then there are those cases where there's been a disclosure and we do find out that it wasn't abuse, that maybe it was touching that happened in a care giving sense, you know, someone giving someone a bath or, you know, changing a diaper or something like that. Those are the rare cases, but we have had some of those too.

Q. Of the compelling disclosures, how many of those were false allegations?

A. How many of the compelling disclosures were false allegations?

Q. There's no way to know, is there?

A. I mean, I don't know. I mean, if ---

Q. Absolutely. Because what you find on a compelling disclosure is subjective to you, correct?

A. What I find out, a compelling disclosure is based on our protocol and how we evaluate the information the children shared during our interviews. That's what makes it a forensic interview versus a conversation or an interview that I would have with someone else. It's all based on the protocols that we follow and the research behind how to talk

to children and ask them questions.

Q. And how you evaluate it? That's what you said, right? How we evaluate it?

A. The interview that I conducted and the information that I've gathered and -- yes. The report is a -- the report has my signature on it and it is my recommendation and conclusion.

Q. And that is subjective to you based on what you say is your protocol, right?

A. It's based on the education, experience and protocols, yes. In the same way -- it's not really like a diagnosis. I don't want to say that it's a diagnosis, but it's in the same -- I would equate it to, you know, kind of like when you go into the doctor and the doctor asks you what your symptoms are. It may not be something that you can actually see and lay your hands on, but the doctor's going to check off those symptoms and if you meet most of those, then he's going to give you a diagnosis. That's kind of, you know, in some ways what we're looking at here. You're gathering information and does this information meet this criteria or this criteria? You know, I've got this hypothesis or this hypothesis that this has happened and which way -- which one holds more weight.

Q. Well, in the gathering the information, you gather that information from more than one source, correct?

A. Yes.
Q. And one source that you gathered the information from is law enforcement?
A. Yes.
Q. Or DSS?
A. Yes.
Q. Either case. And certainly the information you are gathering from them is either -- well, abuse, it may be physical abuse in a DSS case, sexual abuse in a criminal case, correct?
A. Usually, they haven't made a finding at that point. So I'm reviewing either an incident report or an intake form that's been completed by the Department of Social Services. So they're investigating an allegation that's been made.
Q. But you're reading the reports of law enforcement officers?
A. Which are generally the statements made by the child or parent that has made the report. But they are -- yes, I review the incident report that has been completed by law enforcement. In these particular case, those contain statements made by the children, as well as their parents.
Q. And when you read those statements you don't know at that point in time who the child has talked to, how many times the child has talked to somebody about these allegations or how many people they have talked to, do you?

A. When I just read the incident report or get the intake?
Q. Yes, ma'am.
A. No, I don't know that until -- hopefully, I can gather that information from the child or from their family. At that point, though, I generally know whether they have talked with law enforcement, DSS, if they've had another interview, if they've had a medical exam at the emergency room. Sometimes we get referrals from children who are already in counseling so they may have been questioned by their counselor.
Q. Well, that's where new allegations arising from their counseling, if I understand your answer correctly, right?
A. Sometimes. New allegations might arise while they're in counseling. They may be in counseling for some behavioral problems or emotional problems and come to find out that the source of that is the child abuse that they've never disclosed.
Q. All right. Children can lie, they make false allegations. Children can also be manipulative, can they not?
A. Yes. Children can be manipulative.
Q. Very manipulative?
A. Mine are very good at it.
Q. Yes, ma'am. And they know how to manipulate adults? They have learned that?

A. They do.
Q. And children are subject to all the emotions that we adults are and one of those devastating emotions is anger, is it not?
A. Yes. Children experience anger.
Q. Yes, ma'am. And children can experience a desire for revenge for whatever reason?
A. They can be angry and want -- yes. I guess I can agree to that.
Q. And children also can be very attention-seeking, can they not?
A. Yes. Children enjoy attention.
Q. And where you have siblings, where one sibling may be getting greater attention than another, or their perception of that, they might do things or take actions to get more attention? That wasn't a very clear question, but I don't know if you followed it or not. I'll restate it if you want me to.
A. So you're asking if children will do things to seek attention?
Q. Yes, ma'am. Basically. Bottom-line.
A. Yes. Children do things to seek attention, positive things, negative things.
Q. And children, as I believe you have already said, basically -- not all, but most I think we would say, want to

please adults?

A. Yes. Most children want -- yes, they want to please adults. They want to be liked just like most adults want to be liked by others.

Q. So in terms of that, the allegations are made to a police officer, to a parent, to a teacher, now this child wants to please adults and continue those allegations, correct?

A. I think that's taking a huge leap from agreeing that children are manipulative and lie and all these other things I agreed with, to say that they would then make sexual abuse allegations, because most children don't want -- even if they're, you know, very attention seeking and want the attention of someone they love very much that they're not getting, most of them aren't going to put out there that they've been sexually abused, particularly not -- not if they've been sodomized by someone, and more likely not a boy. It just is very uncommon that that would happen.

Q. Well, I was fascinated watching this video. Victim 2's initial desire to talk to you was more about the allegations of abuse to his sister than to himself. Do you agree with that?

A. He came in talking about the allegations about his sister as well as himself.

Q. Okay. And with regard to the allegations to his

sister, he exhibited a certain amount of anger over that?
A. Yes. He was very angry that that happened to his sister.
Q. And talked about that on several occasions during this particular interview?
A. Yes. Very protective of his sister.
Q. Very.
A. And had he known that that was happening to her -- I think that he said that a couple of times. Had he known that was happening to her, he would have done something.
Q. Right. I am not sure and I may have missed something when Ms. Barwick was asking you questions, you said part of the -- if I understood you, part of your protocol was basically to determine or share with or make a determination that a child knew the difference between telling the truth and lying. Is that correct?
A. Well, like I said before, generally with children who are seven and under, we used to do -- at this time, in 2008, we were still doing a truth/lie task where we actually asked children -- I'm doing this because it was a flip chart, and we asked children to identify whether this child was telling the truth or telling a lie. With children who are over the age of seven, we don't normally assess whether they understand the difference between truth or lie, but we do let them know that in the interview we expect that we only

talk about things that are true and real.

Q. On your interview, a couple of things. I noticed you used the anatomical drawings with [redacted]. Is that correct?

A. Yes.

Q. And then after you used the anatomical drawings, you come back in and use the anatomical dolls?

A. Yes.

Q. Now, you already had at that point in time the disclosure, to use your word, okay? I call it allegations. You call it disclosure. Tomato/tomato, I guess, okay?

A. Right.

Q. But you've already had the allegations made to you at that point in time with the anatomical drawings, correct?

A. Yes.

Q. Now you come back and reinforce that with the anatomical dolls?

A. Well, it's not reinforcing it with the dolls. It's giving the child an opportunity to demonstrate. What the child can show with an anatomical doll is much different than a drawing. A drawing is a drawing, it's flat. There's no real -- there's no dimension to it at all. You can't take clothes on and off. You can't demonstrate how body parts are moving and what they're doing, but with a doll you can manipulate all of those features, the body parts, the clothing. And in his particular interview, that's where he

was able to share such compelling information about body positioning and how he was during that disclosure that he'd made.

Q. I believe he said in the body positioning in his -- the video that he was laying on the bed, straight out, correct?

A. He said he was laying -- yeah. He was laying straight out, flat.

Q. With his bottom in the air?

A. With his bottom in the air.

Q. Okay. This case, with regard to time element, the only time element you have on this case was eight years of age. Is that correct?

A. Yes. He was eight when this happened.

Q. Did you ever attempt to use birthdays, anything other than the 4th of July. And I don't recall you really ever used that. Did you use anything to try to get a better idea of when these dates were?

A. Due to his age I didn't get anything really specific. I mean, I would not expect that he could give me a day, month and year. He was eight years old. His birthday had been in November. So when I saw him, you know, he was about half-way between nine. So it happened somewhere November and July when the allegations were made or the disclosure was made.

Q. Correct. Roughly eight month time frame?

A. So there was eight months where those incidents could have occurred.

Q. Now, in this case you asked [redacted] if he had ever seen anything done to his sister, correct?

A. Yes.

Q. All right. And then at some point in time -- and I believe he said, no?

A. Correct.

Q. And then later on in the interview or at some point in the interview he said he grabbed me like he grabbed my sister, correct?

A. Yes.

Q. Now certainly that would indicate that there had been discussions somewhere along the line of what had allegedly happened to his sister and what he now says allegedly happened to him. Would you agree with that?

A. Yes. He had some knowledge of what had happened to his sister.

Q. And it had to come from someplace?

A. Sure.

Q. Right. And you've talked about grooming. I don't want to go back over grooming. But children can be scripted too, can't they?

A. Can be scripted?

Q. Yes, ma'am.

A. You mean coached?
Q. Yes, ma'am.
A. Children can be coached. But that's one of the things we're also looking for in interviews and that's why it's so important that we identify those contextual details and get more than just the who, what, when, and where when an allegation is brought to light.
Q. Well, in this case you asked Victim 2 about when this allegation of this anal penetration was over, what happened next. First he drifts off down to a different area and then you bring him back. And then at first he can't remember, then he ran. Is that right?
A. He said he ran, yes.
Q. All right. And then he ---
A. And then waited for his mom to get home.
Q. And then I think later on in the same context he said he went to his bedroom and watched the Disney Channel, right?
A. Yes. He said after watching the news he went to his room and watched the Disney Channel.
Q. And that was all arising out of the same incident. That was the allegations of the penile penetration, right?
A. Right.
Q. Now, Victim 2 said he had certain fears during this video, right?

A. Yes.
Q. But as I understood the video, he never said that Mr. Beekman ever said anything to him about harming him, the family or anybody else?
A. Right. He did not identify that he had made any verbal statements to him about harming him. But as I mentioned earlier, a lot of times there are other things that feel threatening and make children feel afraid.
Q. And I think it was in the area of where you were talking about -- generally about living with Rick, he said he didn't like him because he would lie and get us in trouble. Is that correct?
A. Yes. That is correct. Something to that effect.
Q. And that time frame you did not narrow down either. That could have been from day one or at some later point or after some time these allegations were made, right?
A. Well, I would assume it wasn't after the allegations were made because they weren't in the same household.
Q. I'm not asking what you assume. I'm asking you if you know?
A. Well, I asked him the question about what it was like living with him. So it would be based on the time period that they were living together.
Q. Do you know how long that was?
A. He said they'd been there about three years. But I can

look back in my notes to find out exactly what mom and dad reported. He said three years.

Q. Towards the end of the interview you leave the interview room and I believe you went out and talked to Teddi Palis. Is that correct?

A. Correct.

Q. She was the law enforcement officer on this?

A. Yes.

Q. Now, before you left to do that, you had already used the anatomical dolls, correct?

A. Yes.

Q. And now you come back and use the anatomical dolls again ---

A. Yes.

Q. --- after you talked to Teddi Palis?

A. Yes.

Q. Now, children like to please, right?

A. Yes, children do have a tendency to want to please.

Q. Right. This child had already shown you with the anatomical dolls what had happened, right?

A. Yes. He'd already used the dolls to show what had happened.

Q. And now you come back and ask him again to show and he gets more graphic in his detail.

A. He provided more detail the second time, yes.

MR. DEJONG: One moment, please, Your Honor.

THE COURT: Yes, sir.

MR. DEJONG: Thank you, ma'am.

THE COURT: Any redirect.

REDIRECT EXAMINATION

BY MS. BARWICK:

Q. Your board members, are they paid or are they volunteers?

A. They are all volunteer.

Q. And what about you, has the Solicitor's Office paid you to be here?

A. No.

Q. And are you here because you're under a subpoena to be here?

A. Yes. I'm here because I was subpoenaed.

MS. BARWICK: Nothing further, Your Honor.

THE COURT: All right. Thank you. You may step down, Ms. Galloway-Williams. Any objection to this witness being excused?

MR. DEJONG: No objection, Your Honor.

THE COURT: Thank you, ma'am.

Mr. Foreman, ladies and gentlemen, this would be a good time, I believe, for us to take a lunch break. I remind you again not to discuss the case while you're out and about. Be sure that you protect yourself from any untoward

information of any kind in the hallways, on the streets or restaurants or anywhere else. We've come a long way in the trial. We need to maintain that purity that we've had so far. So have a good lunch. If you will be back at two fifteen. I don't want to delay you back there, but hopefully we'll be ready to start back at two fifteen. We've got some matters we need to take care of, but if you'll be back at two-fifteen, we'll be ready to start, hopefully, then. Have a good lunch, ladies and gentlemen.

(WHEREUPON, the jury exited the open court at approximately 12:25 p.m.)

THE COURT: I'm assuming the State's ready to rest. I didn't know if all the exhibits were marked and properly in and everything, so I'll just let you rest after our lunch break.

MS. BARWICK: Yes, sir.

THE COURT: Could we take a brief moment just for me to talk with your client before we take a break?

MR. DEJONG: I would like that, Your Honor, and then I can talk to him over lunch.

THE COURT: Over the lunchtime. Before we break for lunch, if you'd come forward, please, sir.

(WHEREUPON, Mr. DeJong and Mr. Beekman approached the bar.)

THE COURT: Mr. Beekman, if you'd stand there with

your attorney. If you would, please, raise your right hand. Do you swear or affirm the testimony you're about to give me will be the truth, the whole truth and nothing but the truth, so help you God?

MR. BEEKMAN: Yes, sir.

THE COURT: The State's about to rest its case, which means that we've reached the stage in the trial where you'll have a right to put up a defense if you choose to. Before we get there, I want to -- I'm sure you have and will have a chance to later talk with your attorney, but I want to make sure in my own mind that you understand certain rights that you enjoy under the South Carolina Constitution, as well as the United States Constitution.

Article One of our Constitution and the Fifth Amendment of the US Constitution says that no person can be compelled in any criminal case to be a witness against himself. Now, this means that you can't be required to testify, Mr. Beekman. Now, you have a right to testify in your behalf, but nobody can make you testify. It's a personal right that you enjoy and nobody can waive this right except you. So obviously you can choose that you do want to testify and if you do, you'll be subject to the same rules that govern other witnesses who are called and testify. You can be examined and cross-examined on any relevant issue in this case.

In addition, if you have any convictions in your past of dishonesty or false statements or crimes punishable by imprisonment for more than one year, then the State can use your record to attack your credibility if I determine that the probative value of doing so would outweigh any prejudicial effect.

Now, if you decide to testify, that decision must be made by you in a voluntary way, in a free manner and intelligently without any coercion of any kind, and certainly with the knowledge that you have of the protections that you enjoy under our Fifth Amendment to our Constitution. You also need to be fully aware of the consequences of your decision to testify as I've laid out.

Now, Mr. Beekman, you may decide not to testify in this case and if you make that choice, I'll instruct the jury that they cannot give the fact that you didn't testify any consideration whatsoever. And there's to be no prejudice brought to you because you chose to exercise your right not to testify. I'll instruct the jury they can't even talk about that in the jury room. Now, whether to testify or not, it's left entirely up to you. You can talk with family, friends, with your attorney, anybody else, but ultimately that decision is going to rest upon you and you alone to decide whether you wish to testify.

Do you understand what I've explained to you?

MR. BEEKMAN: Yes, sir.

THE COURT: Does the State have any impeachable offenses to which it would use against him if he were to testify?

MS. BARWICK: No, sir, Your Honor.

THE COURT: Do you have any questions about what I have discussed with you? Any questions of me that you need to ask?

MR. BEEKMAN: No, sir.

THE COURT: Well, obviously, I'm going to give you a chance now to discuss it with your attorney and we'll do that over our lunch break. You can return to your seat now with Mr. DeJong.

MR. BEEKMAN: Thank you.

THE COURT: All right. We'll take a lunch break. If there's -- the State hasn't rested yet. Is the State -- if y'all could be back a little early, we'll let the State rest on the record for any motions or charges or things that we need to do. And then I'll, of course, let her rest in front of the jury as well, let the jury know that the State's ended its case and maybe we can be ready to start either with the testimony or with any settlement that we need to do then as far as any instructions to the jury.

We'll be at ease. If you'll be back about ten minutes after, we'll try to get an early start for our jury, not

keep them waiting.

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

THE COURT: All right. I understand the State's resting at this time, Solicitor?

MS. BARWICK: Yes, sir, Your Honor.

THE COURT: Any matters that we need to take care of from the Defense?

MR. DEJONG: Your Honor, at this point in time, on behalf of Mr. Beekman, I would make a motion for a directed verdict. Obviously, the Court has to look at the testimony and evidence in light most favorable to the State. However, my understanding, the standard for directed verdict, what the Court looks at is whether or not there's any substantial credible evidence in this case in which a jury could find a verdict of guilt.

I do note in passing, as part of this motion, Your Honor, I don't believe that Mr. Beekman was ever identified by anyone on the witness stand as being the person that allegedly did these offenses. So there's no identification, as I recall from the record, whatsoever.

Additionally, Your Honor, these are basically allegations. I understand under the statute that they don't have to be corroborated, but I think certainly in looking at a directed verdict the Court may look at that when it comes

to the substantial evidence. So certainly with regard to the criminal sexual conduct in the first degree with a minor case, there's absolutely no medical evidence whatsoever to substantiate that offense. I think that is very important when you look at the allegations were of penile adult penetration.

I would simply submit, Your Honor, that there's not sufficient evidence in this case from which a jury could find a verdict of guilty without conjecture and speculation.

Thank you.

THE COURT: Solicitor, I'll be glad to hear from you on either of those matters or both.

MS. BARWICK: Your Honor, it was stated several times that the Defendant was the one who was their step-father, his date of birth and everything else was corroborated by several witnesses on the stand. So that takes care of the identity issue.

As Your Honor knows, there doesn't have to be any corroborating evidence. The jury can choose to believe each of the victims or they can choose not to. And they can convict based on their testimony alone. As the doctor testified, it's normal to be normal. I think that covers all of Mr. DeJong's bases.

THE COURT: All right. Thank you, ma'am. I think the medical testimony was, as both of you acknowledge, and

there was no medical evidence, didn't expect to find medical evidence. I find there's not a total failure of competent evidence in this case, and viewing all the evidence in the light most favorable to the non-moving party, I believe there is sufficient direct evidence and substantial circumstantial evidence, which reasonably could prove the guilt of the accused or from which that guilt could fairly and logically be deduced. I think the jury will make that determination based on the credibility of the witnesses and I'll respectfully deny your motion, Mr. DeJong.

MR. DEJONG: Thank you, Your Honor.

THE COURT: Any other matters that we need to take care of at this stage?

MR. DEJONG: We may want to do it at this point in time, Your Honor, but with the State having rested, the Defense would rest, Your Honor.

THE COURT: Okay. Well, again, I'll let both of you do that on the record. You're doing it on the record now, but we'll do it again for the benefit of the jury when they come back and then we'll be ready to go into our closing arguments.

MR. DEJONG: And for the record, Your Honor, not to interrupt you, but having rested now, I would respectfully renew my motion for a directed verdict.

THE COURT: And, again, I respectfully deny that

motion as well.

Are there any particular requests for charge that -- I know the State had one. Is there any objection to that from the Defense?

MR. DEJONG: I do object to it, Your Honor, because in doing that, in giving that charge, I realize that is a statutory law. I don't think that is a statutory law for purposes of charging. I think that becomes a comment on the evidence or very close to a comment on the evidence for Your Honor to charge that it does not need to be corroborated.

Obviously, if you charge that it doesn't have to be corroborated, I think the position that the Court is saying the evidence has not been corroborated but it doesn't have to be corroborated, and I think that is an impermissible comment on the facts, Your Honor, and I would respectfully request that you decline to give that charge.

THE COURT: I find under the *Schumpert* case and under *State v. Rayfield*, a case five years ago, that's a discretionary charge and I think in light of the facts here that that'll be a proper charge to the jury on the law based upon the facts as they developed. So I will charge the request by the State.

Any other particular requests for charge? I do have verdict forms for you to review, make sure they're in proper

order for you before you do your closing. Any other -- obviously, I'll charge -- y'all have tried cases. You know, pretty much what I charge preliminarily. I'll charge the law under *Lyle* about prior misconduct not to be considered as proof of guilt, credibility of the witnesses and each of the statutes or each of the laws that are accused -- the accused is charged with violating.

Any other particular matters we need to discuss? Otherwise, I'd like for y'all to review these verdict forms and make sure they're in proper form.

MR. DEJONG: No objection on behalf of Mr. Beekman as to the verdict forms, Your Honor.

MS. BARWICK: Your Honor, with the verdict as to indictment ending in 1405, it says as to the charge of blank degree. If it could say first.

THE COURT: Oh, okay. It don't have a first in their?

MS. BARWICK: No, sir.

THE COURT: Okay.

MS. BARWICK: Thank you.

THE COURT: Let me just let you look at that one again to make sure that it's in order, since we might not think about that in the ---

MS. BARWICK: Yes, sir.

MR. DEJONG: No objection, Your Honor.

THE COURT: All right. Thank you.

All right. If the jury's ready, Mr. Teal, you can have them come in.

(WHEREUPON, the jury entered the open court at approximately 2:30 p.m.)

THE COURT: Mr. Foreman, ladies and gentlemen, we're now ready to proceed with the trial of the case. Solicitor.

MS. BARWICK: The State rests, Your Honor.

THE COURT: Anything from the Defendant?

MR. DEJONG: The Defense rests, Your Honor.

THE COURT: Ladies and gentlemen, from what the attorneys have just told you, all of the evidence has been presented to you. We are now at the part of the trial in which the attorneys will have a chance to address you in their closing statements. I've told you from the beginning that opening statements and closing statements are not evidence. While this is not evidence and all the evidence has now been presented, I urge you to listen carefully as each of these attorneys address you. I'm confident that they can give you some valuable insights to help you in your deliberations.

After they've had a chance to address you in closing, I'll instruct you on the law. And after I instruct you on the law then, of course, that will be the time for you to

make your decision as to the facts of the case.

Solicitor, you may address the jury.

MS. BARWICK: Thank you, Your Honor. Mr. DeJong.

CLOSING STATEMENT

BY MS. BARWICK:

Good afternoon. I hope everyone had a good lunch. We're at the close of the case as Your Honor just told you. Cases like these are hard to hear. Cases of child sexual abuse, they're crimes of fear and crimes of shame and crimes of guilt.

When I speak about fear, I know Shauna Galloway-Williams told you fear comes in a lot of forms. Fear's the reason why Victim 2 didn't disclose right away. Let's talk about his fear a little bit. The Victim 2 you saw, the Victim 2 that you saw in the court testifying, that Victim 2 was eleven years old. The Victim 2 that this happened to was eight years old. You can look at the Defendant, look at him. He's bigger than Victim 2. Imagine the fear that Victim 2 felt laying on his stomach with his butt in the air and this man sat behind him and sodomized him. Imagine that fear. Imagine that kind of fear. The sense of helplessness, the kicking, the screaming, not being able to get out of that situation. The fear that if he told, something might happen to him, something might happen to his family, his sister, a sister who he loved very much, or maybe even his mother. Imagine

that kind of fear. Fear that he can't tell anybody. The only thing he could do was kick and lay in his closet asleep at night praying that the Defendant wouldn't see him. That kind of fear.

Shame. Shame so bad you saw it yesterday. He couldn't even talk to you hardly about what happened to him. You saw the victim. Do I have to tell you? Don't you already know? Shame. Shame of being called a homosexual. Shame. Shame of having to, if he does tell, have to tell his mom something as personal as being sodomized by a grown man. Shame.

Let's talk about guilt. You heard on the video if I had known what he had done to my sister, I would have done something. Guilt. He thinks that if he had just told sooner, maybe this wouldn't have happened. Fear. Shame. Guilt. You know what, he got to experience something else. He got to experience a little bit of -- he was taken out of that home where he never had a fear of what this man would do to him again. That's why he told. And he knew that it wasn't just him. He found out it happened to his sister, too. That's why he told. Shauna Galloway-Williams told you most people don't tell. They reach adulthood and they don't tell. He told. We are very lucky. We have something in this case that we very rarely have and that is a disclosure. We have a disclosure. No, we don't have DNA. We don't have

fingerprints. We don't have anything like that. No, we don't. We have something, which is still stronger than what we have in those cases, we have a little boy who was able to come up here yesterday and tell you what happened to him.

Let's talk about [redacted], some of the fears she might have felt. Here she is sleeping, in a deep sleep, and what did she wake up to? What did she wake up to? Not one, not two, but three layers clothing pulled down with his hands on her privates. That's what she got a wake-up to. No, she didn't tell right away. She told the minute she was able to get her mom alone. It might have taken a little bit of time to process. If she wanted to lie about it, what would she have done? If this was a lie, she would have told her daycare worker, she would have told her grandma. No, what she wanted to do -- this is a very shameful, it's very embarrassing, she waited. The first time she got the chance to sit down with her mother alone and say, mom, look what happened to me.

Let's talk about a little bit of guilt that mom might be feeling over this case. You know, she told you she regrets her decision. It took about a week for this to go to law enforcement. Do we really blame a mother for not wanting to put her child on the stand and have her child go through this? Any mother would not want her child to have to come up here and testify about something as sick as this.

Let's talk about the father's guilt. Ted Wheeler got up there and he said you know what I did, I punished the children when they didn't do what Ted -- I'm sorry. I punished the children when they didn't do what Rick told them to do. He punished them.

The fear of getting in trouble. Shauna Galloway-Williams said that's one reason for not disclosing, fear of getting in trouble, fear of not being believed. You heard that nobody believed [redacted] when he said, Rick's lying. Rick's lying. But nobody believed him. Fear of not being believed. Why lie? Why would a child want to lie about this? There is no reason a child would want to lie about this.

Let's talk about [redacted] a little bit. What did he gain out of this? If he didn't like Rick, he was already out of the house. Why did he need to tell? He had what he wanted. Rick was out of the house. He didn't have to deal with him anymore. No reason. Why would he scratch on himself and claw at himself and hide in the closet? He has not received anything of gain out coming forth and telling what has happened to him. All he has received is punishment. He had to talk to complete strangers about something so shameful and embarrassing as this. I get nervous sometimes just even having to stand in a room full of people and say my name. I can't imagine having to stand up in front of a group of

strangers and say something as embarrassing as this.

Eight-year-old little boys, nine-year-old little boys, eleven now, what's common about all of them? They don't want their friends at school to see their mom kissing them goodbye. They don't want their friends at school to see their dad's hug them. They're embarrassed. He had to go and talk about this to his mother, his cousin, his grandmother, his sister, to Teddi Palis, to Shauna Galloway-Williams, to the medical examiner, to me. That's eight. Twelve of you, thirteen of you, that's twenty-one, not to mention everybody else that's in this courtroom.

What other punishment did he receive out of this. He had to go through a medical exam where they had to hold him to try to take an HIV test from him. He went through a medical exam where his rectum got examined and prodded. This doesn't sound like much of a reward to me. And there's certainly no reason for him to get up here yesterday and carry on a lie. He could have said, no, I'm not coming. I'm not talking about it. Done. Why carry it on? Because he's not lying. He has nothing to gain out of this. Nothing.

Let's talk about [redacted], the same thing. Who wants to come up here and talk about this? The same exact thing. She did not receive any benefit out of this. You heard testimony that, yes, they loved Rick. They were close to

Rick. Rick was not as strict as their own father. Rick let them get away with a lot of things. Didn't make them clean up their rooms or anything like that. Wouldn't they make up a lie about their father, somebody who punishes them. Wouldn't that be the case? No. You know, I didn't always get along with my parents, but I never, never thought about making up some kind of vicious lie about sexual abuse. I wouldn't have known how to and to carry it along for this amount of time and be this consistent about the core details of what happened. They've been consistent from day one. They're consistent now.

Let's talk about the hours of counseling that they've had to go through. Victim 1 testified they'd been going to counseling since it happened. It's been three years ago. Actually, it's been a little bit more than three years ago. An hour a week, sometimes, you know, two hours a week, because there would be two times they'd go to a counselor. Let's say an hour a week, that's fifty-two weeks in a year. That's over a hundred and fifty hours of counseling to continue to talk about this. It's the truth. It was the truth then. It's the truth now.

If they really wanted to make up a lie, wouldn't Victim 1 have said he raped me? He put his penis in me. Wouldn't that have been the case? Wouldn't Victim 2 have been saying that it happened, the penetration happened more than once?

If you're going to make up a lie, you're going to make it a strong lie and you're going to say it's the worst thing that could happen to you. You're going to say that Rick's an awful person. That was not the case in this case. If they needed to be corrected about something, the kids, wouldn't they have corrected if I misunderstood something? That's same way that [redacted] did at the interview that he did. They weren't above correcting something that was wrong. They stuck with the details.

Their credibility is essential too. And credibility, you can judge that just based on what the person says, but also based on how they looked, what their mannerisms are and that's why we have you and that's why you're able to listen to them but also look at them and determine if they're telling you the truth or a lie. When we talk to people on an everyday basis, what do we do? We look at them. And you listen and say, does this make sense? Does it look like they're telling me truth?

You can convict this Defendant based on what the victims said alone. All the other witnesses were corroborating witnesses. They are the icing on the cake. You can convict if you believe these children. And setting him free would be the same as saying what these children told me was a lie.

Let's talk about beyond a reasonable doubt a little

bit. And it's what you hear, maybe it's a lighter note. Beyond a reasonable doubt, I told you yesterday -- yes, it would have been yesterday, is something that would have to leave you firmly convinced in acting in the best accord in your own affairs. And it's something an older attorney -- I like to watch him in trial a lot, and he brings this up and I think it's a good analogy. I don't know who goes deer hunting. I don't know who's against it or who's for it, but it's the best way I know how to explain it.

Say you're up in a deer stand and you have a hunting partner with you. In this case, the Defense attorney is your hunting partner. And you take your gun and you line up the cross-hairs and you pull it up to your shoulder and the deer is right there in your cross-hairs, right there. You fire your gun. You hear your gun go off. You see the deer run. You see it drop thirty yards. You go and you see the bullet right under his shoulder, the bullet wound. You say, I shot that deer. The Defense attorney says, no, you didn't. You didn't shoot that deer. I'm pretty sure a snake jumped up and bit it and caused it to fall down. Well, that's not reasonable doubt. Or the Defense attorney might say, you know what, that deer looks a little overweight. He might have had a heart attack. Now, that doesn't make sense. That's not a reasonable doubt. Finally, he might say, well, you know what, I bet you

someone in the deer stand about five hundred feet that way, he show the deer the same exact time as you and you heard his gun go off at the same time your gun went off and he shot the deer. That's not a reasonable doubt. What's reasonable in that situation is that you shot the deer. It's your deer and you're the one who killed it.

Let's talk a little bit about the Defendant. I'm sure some of you have heard the term that somebody's MO. Well, what does MO mean? It means modus operandi, some fancy term. I believe it's Latin. I'm not really sure. But basically it means how someone acts. What is their common scheme and what is their plan? Well, let's think about this a little bit. His common scheme and his common plan is this. He would turn the TV on the news so if somebody were to walk in when he was committing these acts that he would have an excuse to be alone with the child. The news was on. Another thing he likes to do, and this is a game of attack that worked for a while with Victim 2, it didn't work quite so well with Victim 1, he would pull their pants down slightly, not all the way, didn't get them naked. If somebody walked it the room it would be a lot easier to explain than if he'd got them naked, wouldn't it? He would do it when nobody else was around. This is the kind of crime that people commit behind closed doors. Predators choose who they're attacking, where they're going to attack them and under what

circumstances. He chose. Shauna Galloway told you about grooming. He groomed them. Bought them some expensive nine hundred dollar dog. He groomed them by wanting to buy her some more bathing suits, even though they were having money problems, treating them nice, not punishing them. That's grooming. That's what he was doing in this case. He was also doing such things as testing out for how far he could go. With Victim 2, he started just by touching him and the touching led itself to anal intercourse. He lead up to see how far he could go each time so that those touches became worse and worse. Another thing that he did was, I call it fishing. He asked the children's mother or he told her stories that Victim 2 walked in on me in the shower, now he's going to tell his dad what my penis looks like. That's fishing. When I mean fishing that is him seeing if Victim 2 has said anything yet, to see if he could continue to go farther.

And Victim 2 told you what made it stop was my sister telling on him. That's what made it stop. Victim 2 believed that the touching would have continued and he's still in fear. He's afraid of people looking at him, that's with the photographs. He's still scared about it all.

Now, I want to talk about Victim 1 s encounter. I feel like I've focused a lot on Victim 2's. Let's talk about Victim 1 s. He said -- well, he didn't say anything. What I'm

getting at is Victim 1 was on the couch and she woke up and what did the Defendant do? He said, where is the remote? That was his quick explanation to get out of it. He thought he was going to get out of this like he's been getting out of Victim 2's all along. Where is the remote? He made a crucial mistake because the TV had already been changed from the Disney Channel to the news. He'd already changed the TV and the remote was right in front of him. That was the quickest way he could explain why he was touching her. I don't know about you, but I never keep the remote down my pants. There's no need for him to pull the pants down, the pants, the bloomers, the panties, to look for a remote. Victim 1's mother testified that Victim 1 came into her room, with Rick in the bed, the Defendant in bed, and said I couldn't sleep. You don't think Rick heard that? You don't think Rick saw the mother giving her a sleeping pill? This is his chance of attack. He knew he was going to prey on her.

And let me ask you this. There were four other TV's in the house, four. All four of them with cable. Why did he have to go into the living room when two kids are sleeping to go watch the news. He could watch the news in his room. His wife's going to be up shortly. He could have watched the news in there. Why did he have to sit on the same couch as Victim 1? There's a rocking chair clearly available for him to sit in. And why was he scrunched up on the edge of the

couch? Because he had just been caught. Why did he ask Victim 1 if she was mad at him? Because he wanted to know if she would tell. He got away with Victim 2 for so long, he thought maybe Victim 1 wouldn't tell. He knew Victim 1 had told when the mother said, we're going to grandma's house. And he said, nope, you've got to clean your room. He's never been concerned about cleaning any room before. He don't want her to go to Grandma's house.

Let's talk about this telephone conversation between the Defendant and the mother. He said, if -- and if your memory's better than mine, remember it how you choose to remember it. Ted is going to take the kids away if you pursue this. And if you'll just forget about it and come back to the house, we could work through this. He did not want their mother telling and even brought up, and in my mind it's a threat, that if you go through with this, your kids are going to be taken from you. And if you come back, we can work through this and you don't have to tell. Why would someone say that? He's a predator. He chose his prey. They were in his house. He knew he had authority over them. That's why he did it.

Mr. DeJong is going to be able to have the last word. He'll be able to do his closing after me. I always like having the last word because I always sit down and I feel like I've missed something. But please use your common

sense in deciding this. Please use your common sense. Who has something to gain here and who has something to lose? I know it's been a long trial and I thank you for your time. And I'm not going to use anymore of it. But I beg you when you go back there to use your common sense. This presumption of innocence that Mr. DeJong talked about yesterday ends as soon as you begin deliberating and I'm confident you will find him guilty. Thank you.

THE COURT: Mr. DeJong you may address the jury in your closing statement.

MR. DEJONG: Thank you, Your Honor. May it please the Court, Madam Prosecutor.

CLOSING STATEMENT

BY MR. DEJONG:

Mr. Foreman, ladies and gentlemen of the jury, in this case, as in any case, you have no enemies to punish. You have no friends to reward. I say that because that is indeed the case, but it also goes in with the burden of proof.

The burden of proof as we talked about yesterday, I believe it was, is on the State in this case to prove the case beyond a reasonable doubt. And basically, that's what this case is about. You have no friends to reward, no enemies to punish. This case is about has the State proved their case beyond a reasonable doubt?

Now, in this Country we only have two verdicts, guilty and not guilty. One or two countries, European countries, they have another verdict called not proved. We don't have that. We just have guilty and not guilty. But in terms of reasonable doubt, I don't know that beyond a reasonable doubt, I don't know if any of y'all have served on juries before, but you may have heard the term by the preponderance of the evidence. Preponderance of the evidence is basically putting something on the scale and if that scale tips ever so slightly, that is evidence by a preponderance of the evidence. We have clear and convincing, that is a higher standard. However, the highest standard in our judicial system of burden of proof is beyond a reasonable doubt.

Now, His Honor will share with you momentarily reasonable doubt. You take the law from him as you hear it. But basically, reasonable doubt is, if you are firmly convinced the Defendant is guilty, you must find him guilty. However, if you believe that there is a real possibility the Defendant is not guilty, then you must give the Defendant the benefit of that doubt and find him not guilty.

And as we talked yesterday, I'm not going to belabor the point, the day is wearing on, but what goes along with that is the presumption of innocence. And in talking about presumption of innocence, let me just share briefly with you, it is obvious at this point in time that the Defendant

did not testify in this case. Mr. Beekman did not take the witness stand. Now, I think His Honor will charge you when he charges you on the law, the fact that he did not testify you are not to draw any inferences or any conclusions from that whatsoever. Indeed, I believe he will share with you that is something that is not even to be discussed by you while you're deliberating on Mr. Beekman's innocence or guilt. And he will give you the reasons for that. But as I shared with you yesterday, Mr. Beekman has nothing to come into this courtroom to prove to you. He is presumed to be innocent. And the fact that he did not testify, there is to be no presumption whatsoever in regard to him not testifying. Presumption, inference or anything else. It should not even enter into your deliberations.

In this case, there are two indictments, ladies and gentlemen. I will share with you and I think His Honor will share with you, that you must look at those two indictments separately and distinctly and arrive at a separate and distinct verdict on each one of those. However, you can't look at one and make a decision and say, well, go to that to this. You must weigh the testimony as to each indictment, look at the presumption of innocence, look at the burden of proof, and then say whether or not the State has met its burden of proof.

I'm not going to belabor the evidence a great deal, but

I think we need to talk about the evidence or I need to talk about what you have heard from the witness stand, perhaps starting backwards talking about Ms. Shauna Galloway-Williams. Who, according to her, works with abused children. Doesn't go in with any kind of agenda because she is looking at abused children, who are alleged to have been abused. She just does these findings. Well, in terms of that, ladies and gentlemen, Ms. Galloway does talk and she likes to talk, that's fine. But in terms of that, also think about the fact of what she did share with you, that children lie, children make false allegations, children get angry, children are manipulative, children want to please adults. I'm leaving one out. I can't remember what it is that we talked about, but I think there were five or six areas that we talked about. Well, think about that. I'm asking you, because these are children that are testifying, not to take everything they say at face value because they do lie. They do make false allegations. Ms. Galloway-Williams doesn't really want to talk about false allegations. She wants to talk about denial as being false allegations. I don't submit to you that that is not a false allegation. A false allegation is one where somebody makes an allegation against someone of sexual molestation and it is false, period. And they do arise. And basically she said two percent, and with a little prompting she came up

with four percent, and that was by her testimony.

Now, plugging that into the equation -- well, let's just talk about Dr. Henderson for a minute and then we'll go on to Victim 2. Dr. Henderson also deals with children who have been alleged to have been abused. I find it fascinating -- and one thing about that, digressing a little bit and maybe even to Ms. Galloway-Williams -- there's no real time elements in here with Victim 2. Indeed, I think Dr. Henderson said she was under the impression, you take it the way you heard it, that the offense, alleged offense had happened some three to four weeks prior to her examination. Now, what she found was absolutely nothing. Zero, zilch, nothing. And, of course, she says normal would be normal. Well, I guess that's a good thing for normal to be normal. Mr. Beekman is seated at counsel table. You've looked at him for two days. He's a big man. And the doctor says, well, it's normal for things to come out and I'm not trying to be rude and crude, ladies and gentlemen, I just have to talk about it. And I don't dispute that it is normal for things to come out. I do dispute that it's things for normal for things to go in and she wanted to equivocate on that. And I would submit to you, and you've seen the alleged victim here today, he's not a large young person. I don't know how well you saw him on the video on July the 21st of 2008. Very small. Mr. Beekman is a large man and

they're claiming rectal, anal penetration. And they're saying there's nothing unusual about no tearing, no scaring, nothing like that. Do they have a hidden agenda? Is it their job, as they perceive it, to prosecute these cases and get convictions, to come in and say it's normal to be normal? Because there was no -- absolutely no medical evidence in this case.

Now, let's start with Victim 1. I think you have to back up in to this whole scenario, ladies and gentlemen, the week of July the 4th. What exactly happened in Charleston, we don't know. We've got a couple of different versions of it. Victim 1 said that she just locked Mr. Beekman out of the room and that was the extent of it. The mother, the State's witness, testified, yes, something did transpire out in the parking lot. As I recall her testimony, she doesn't recall exactly what it was, but there was something that had transpired out in the parking lot. I think the sixth one was revenge, if I'm not mistaken. Children get angry for whatever reason, like adults do. Sometime that anger is justified and sometimes that anger is not justified. Sometimes there's a desire for revenge. I don't know if revenge is ever justified or -- sometimes it's justified and sometimes it is not. But the feeling and the emotion is there.

Now, supposedly on July the 7th of 2008, Mr. Beekman

went into the living or the dining room and according to Victim 1 touched Victim 1. Now, the Solicitor wants to talk about consistency. Ms. Galloway-Williams wants to talk about significant events and details. Well, let's talk about details. On July the 7th of 2008, this offense allegedly happened. On the evening of that day, the alleged victim, Victim 1, reports to mother. Mother doesn't do anything other than leave. Parenthetically, an interesting aside, did she ever talk to Mr. Beekman? Did she ever talk to Rick to try to see what his side of the story was? No, she did what so many people in our society want to do. If they child says something, we believe it, they don't lie. They do lie. They do get angry. They do want revenge. So here's a child who has been medicated by her mother at some early time in the morning. I don't recall any evidence or testimony in this case that Mr. Beekman was ever aware that that child had been given sleeping pills. The mother medicates this child with a sleeping pill. This child says she has vivid dreams with or without sleeping pills. And they are very vivid after we kind of discuss what vivid means. She said she has very, very vivid dreams.

Now, the consistency issue I raise to you, you may say it's not a big point but I find it fascinating. The first police officer she reported to, who was -- I don't remember his name. It was the one in uniform who came in and

testified yesterday -- said that Victim 1 made a statement to him. Her allegation initially was that Mr. Beekman's hands were under her clothes. Now, they go home. On the 15th they talk to Teddi Palis. Now, I don't know what transpired between the 14th and the 15th. We won't know. But I submit to you that between the 14th and the 15th somebody, whether it was Victim 1, the father, the mother, or maybe even the police officer on the 15th, that this story isn't quite good enough. We've got to have something a little better than that. So now let's get your clothes down. So the next day the clothes are down. And that was then finally what was supposedly disclosed, that her clothes were down. So I submit to you those statements are not consistent. Actually it's not consistent at all. Now, think about this, also, ladies and gentlemen. Think about the routine that this family household had. The routine was Mr. Beekman would get up about four-thirty in the morning to do his morning things in the shower. He would get to the living room/kitchen area to drink coffee, as I recall Ms. Aiken's testimony, around five-thirty. There's no logic here, no sense here. This was a routine because the mother, now Ms. Aiken, would get up and drink coffee with Mr. Beekman. What kind of fool would be touching a stepdaughter when mama might walk into the room at any moment? It's just not precise timing. As I understand it, there wasn't a gong went off and these things

happened. Yes, there are windows of time here. Nobody in their right mind, I would submit to you, would do that. That would be crazy. That would be begging to get caught.

Now, Victim 1 says she didn't disclose to her mother then because she didn't have time. Mr. Beekman left for work at G.E. where he'd worked for a number of years at six o'clock, according to Ms. Aiken. She took -- she, Ms. Aiken, took the children to the babysitter. I don't remember if it was seven forty or eight. I think it was seven-forty. You take it as you heard it from the witness stand. There was an hour -- I believe there was an hour and forty minutes window in there where Victim 1 was home with her mother and nothing was said. Nothing was said to Missy, the babysitter at the daycare center where they had been going to, my understanding from the testimony, for a long period of time. Then on the night of July the 7th, Victim 1 then says she discloses. Well, again, that's all for you to decide. I would just ask you not to forget the Charleston incident and the emotions that kids have, that we have, that we all have.

Now, let's shift gears just a little bit here to Victim 2. Victim 2 sat here and told you he knew of Victim 1's allegations before he made his allegations. That was his testimony. Everybody else wanted to dance around that, but Victim 2 said, I knew that Victim 1 had made these allegations before I came forward and made my allegations. I'll ask you to consider

two things, and that is consider both his testimony and consider him on the video. I'm not saying the allegations were true, but in Victim 2's mind they were true. Victim 2 and Victim 1 had a very close relationship. They were very protective of each other. But now Victim 2 said he was angry and wanted to kill him. Talked about pellet guns and all of that. Well, he couldn't kill him. But he can do the next best thing. He could say it happened to me too. Now these were his allegations, if you will, and please, as I understand it on July the 8th of 2008, Ms. Aiken took Victim 1 and Victim 2 and left and never looked back. So these kids were out of the house for some period of time. Victim 1 makes her allegations, goes to the cops on the 14th and then after all of that, Victim 2 makes his allegations. Victim 2's allegations came out, I believe, two weeks after the fact -- or one week after Victim 1 went to the cops, two weeks after the allegations were made by Victim 1. And he was angry. Wanted to kill him. Wanted to protect his sister. Kids are bombarded in our society by everything anymore, from sex and music, the commercials, the advertising, but I would submit to you it is not unusual that an eight-year-old in our society would have some idea of sex and sexual acts.

Victim 2 said when he talked to Ms. Galloway-Williams that he was on the bed facing the bed, his bottom was in the air when this act took place, according to him. He came in and

testified to you yesterday that he was on the floor on all fours. That is certainly not consistent. Ms. Galloway-Williams says that's a significant event, they would remember what is a significant event, even for an eight-year-old, I think they could get the story straight.

And also what I found fascinating by both Victim 1 and Victim 2's testimony was this, as long as you can allow them to stay on the script, they did all right. Once you moved them out, tried to move them out of the script a little bit, they couldn't remember anything. They didn't know anything, nothing. Well, children can be scripted. Shauna Galloway-Williams a little bit agreed with me on that, not wholeheartedly, but they can be scripted. Who did these kids talk to? These are serious, severe allegations and I don't think somebody said this and then it goes on and nobody talked about it. Everybody in the family talked about it with the kids, I submit. So you have an issue here of now Victim 2 saying I want to protect my sister. I'm angry. Or maybe he did this to get attention. Somewhere between the 7th and the 14th Victim 1 was getting a lot of attention. And Victim 2 said, I want some attention. I want my fair share, could be as to why these allegations were made. Part of the thing Victim 2 testified, I think we brought it out on cross-examination, he liked to sneak around the house and hide. Well, now, they want to make a big deal out of that,

that he was in the closet. Well, he liked to play with action figures and hide. I think he didn't say the hide part, but sneak around the house and hide. He didn't say sneak around the house and hide, but Ms. Galloway-Williams did say he did like to play with action figures. And we talked about that yesterday, about him playing with action figures, sneaking around and hiding.

So I would ask you to look at those instances. Don't take it at face value because the kids said it is true. Remember all of those questions. Listen to His Honor's charge. Listen to all of it, but listen to the charge on reasonable doubt. If you believe there's a real possibility that the Defendant is innocent, you must give him the benefit of that doubt and find him not guilty. I would ask you to go back into the jury room after Your Honor charges you. You can come back with a verdict that says, State, you have failed in your burden of proof on both counts and he is not guilty. And I would ask you to bring a verdict back of not guilty on both charges.

Thank you so much for your time and your attention.

CHARGE

BY THE COURT:

Mr. Foreman, ladies and gentlemen, it's now my responsibility to instruct you on the law of the case. I have before me indictments that have charged the Defendant

in this case with criminal sexual conduct with a minor in the first degree, and a separate indictment that charges him with lewd act upon a child. I remind you the fact that the Defendant has been arrested, has been charged, has been indicted, is not evidence. It's not to be considered by you as evidence in the case. It doesn't create any presumption whatsoever of guilt. The indictment's merely the papers by which the case is brought before this court for disposition by a jury such as you.

There are two separate indictments, each of those is separate and distinct, one from another, and you must decide these indictments separately, on the evidence, the law that's applicable to each one, uninfluenced by any decision you may have on the other indictment. In other words, the Defendant can be convicted or acquitted on either or both of the offenses charged. And you'll be asked to write separate verdicts of guilty or not guilty for each of the charges that we have before us today.

The Defendant has entered a plea of not guilty to these indictments. That plea places the burden on the State to prove guilt beyond a reasonable doubt. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. That's an important rule of law, that in a criminal trial no matter how serious the charge may be, a Defendant will always be

presumed innocent of the crime for which that indictment was issued, and unless guilt has been established by evidence satisfying you of guilt beyond a reasonable doubt. The presumption of innocence doesn't end when you begin your deliberations. It continues, stays with the Defendant, accompanying him throughout the trial until you've reached a verdict of guilt, based upon evidence satisfying you of that guilt beyond a reasonable doubt.

Often, the presumption of innocence concept has been described as a robe of righteousness that's placed about the shoulders of an individual accused and remains with that Defendant until it's been stripped from him by evidence satisfying you of that Defendant's guilt beyond a reasonable doubt. In other words, presumption of innocence isn't a mere legal theory or legal phrase. It's a substantial right to which every Defendant is entitled, unless you the jury are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

The phrase beyond a reasonable doubt has been used, and you may ask yourself, what is a reasonable doubt in the law? A reasonable doubt's the kind of doubt that would cause a reasonable person to hesitate to act. Now, with the burden of proof beyond a reasonable doubt, some of you may, in the past, have had an opportunity to serve as a juror in civil cases, in Magistrate's Court, or Common Pleas Court here in

the State and a Judge told you that it was only necessary to prove a fact more likely than true than not true by what was called the preponderance of the evidence or the greater weight of the evidence. In criminal cases, the State's proof is more powerful than that. It must be proof beyond a reasonable doubt. And that would be proof that would leave you firmly convinced of the Defendant's guilt.

Now, ladies and gentlemen, there are very few things in this world that we know with absolute certainty and in criminal cases the law doesn't require proof that overcomes every possible doubt. If, based upon your consideration of the evidence, you're firmly convinced that the Defendant is guilty of the crimes charged, then you must find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

Now, I remind you that during the course of the trial, you and I have had certain duties to perform. As the Trial Judge, it's been my responsibility to preside over the trial of the case and to rule on the admissibility of evidence that's been offered during the course of the trial. You're to consider only the competent evidence that is before you. You consider obviously the testimony that's been presented from the witness stand, the exhibits that have been offered

into evidence and that alone. My job also is to instruct you on the law that's applicable to the case. I'm the sole Judge of the law in this case. It's your duty as jurors to accept that law and apply the law just as I state it to you now. Some of you may already have an idea of what the law is in a case such as this or even a notion of what the law ought to be in a case such as this. If you have such an idea and it's in conflict with what I now tell you the law is, then, of course, you must abandon such a notion or an idea because under your oath you have sworn to accept the law and apply the law just as I state it to you now.

Every case that's tried in this courtroom before a jury, that jury becomes the sole exclusive judge of the facts in a case. A Trial Judge can't intimate or state or comment on or make any statement whatsoever to a trial jury about the facts in a case. Since you, the jury, are the sole judge of the facts in this case, you're not to infer from what I've said during the process of the trial, in ruling on the admissibility of evidence or otherwise, anything I say to you now during this course of this instruction to you, that I have an opinion about the facts in the case. I don't have an opinion about the facts. The Constitution in South Carolina prohibits a Trial Judge from having an opinion about the facts in a case. It's a matter solely up to you, ladies and gentlemen, the jury, to make

that determination and you decide the effect, the value, the weight and the truth of the evidence presented during the trial.

Normally, there's two types of evidence. There's direct evidence and there's circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It's evidence which immediately establishes the main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances that indicate the existence of a fact. It's evidence which immediately establishes collateral facts from which a main fact may be inferred. In other words, it's based on inference and not on personal observation or knowledge. The law makes absolutely no distinction between the weight or the value to be given either direct or circumstantial evidence nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence, ladies and gentlemen, and after weighing that evidence if you're not convinced of the guilt of the Defendant beyond a reasonable doubt, then you must find the Defendant not guilty. And, again, I remind you, when I'm saying about the charge, that's each charge separate and distinct. You'll decide those individually.

Now, necessarily, you're going to need to determine the

credibility of the witnesses who've testified in the case. Credibility simply means believability. It's your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who've testified in the case, you can believe one witness over several witnesses. You can believe several witnesses over one witness. In your discretion, you can believe part of the testimony of a witness and you can reject the remaining part of the testimony of that very same witness. In your discretion, you can believe the testimony of a witness in its in entirety or you can reject the testimony of a witness in its entirety. You can consider whether any witness had exhibited to you any interest or bias or prejudice or other motive in the case. You can consider the appearance of the witness while on the witness stand. You can ask yourself, was that witness straight forward or hesitant in answering? Was the testimony of that witness consistent or inconsistent? Was that testimony strengthened or weakened by other testimony or other evidence. It's totally your prerogative and yours alone to determine the credibility of the witnesses.

Now, I stated to you briefly that the rules of evidence ordinarily would not permit a witness to testify as to opinions or conclusions but there is an exception for

witnesses that we call expert witnesses. That witness, who by education or experience, has become an expert in some art or science or profession or calling may state an opinion as to relevant and material matters in the case and may also state the reason for those opinions. You should consider any expert opinion received in evidence in this case, and like other evidence, give it the weight you think it deserves. If you decide the opinion of an expert's not based on sufficient education and experience or if you conclude that the reasons given in support of that opinion are not sound or that the opinion is outweighed by other evidence, you can disregard that opinion entirely. An expert witness testimony is to be given no greater weight than that of any other witness simply because the witness is an expert. Furthermore, you're not required to accept an expert's opinion even though it may be uncontradicted.

Now, in order to establish criminal liability, criminal intent is required and it must be proven by the State beyond a reasonable doubt. Criminal intent's always a matter that must be determined by a jury from the circumstances surrounding the situation. Obviously, there's no way to prove intent to a mathematical certainty. There's no way that medical science has devised to dissect a person's brain and determine what that person had in mind, so the law says that criminal intent may be inferred from the circumstances

shown to have existed. It's not necessary to establish that intent by direct and positive evidence, but it may be established by inference in the same way as any other fact, taking into consideration the acts of the parties, all the facts and circumstances of the case. Criminal intent's a mental state. It's a conscious wrongdoing. It's up to you to determine what the Defendant intended to do based upon the circumstances shown to have existed.

Now, I instruct you, ladies and gentlemen, and I emphasize to you the fact that the Defendant in this case did not testify is not a factor to be considered by you in anyway whatsoever in your deliberations and in your consideration of the question of the guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever. A Defendant has a Constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you're to draw no conclusions whatsoever from the fact that the Defendant in this case did not testify. The fact that he chose not to testify should not even be discussed by you in the jury room. The burden of proof is on the State of South Carolina, as I've stated to you, and the Defendant's not required to prove his innocence. That burden of proof stays on the State to prove guilt beyond a reasonable doubt.

You've heard evidence that the Defendant may have committed a bad act or acts, not the subject of a conviction, other than that for which the Defendant is now on trial. This testimony, if you conclude it to be true, may only be considered by you on the question of a common scheme or plan and for no other reason and for no other purpose. You can give this evidence the weight and the value, if any, that you find it should have on that sole issue of common scheme and plan. You must not consider this evidence as proof of the Defendant's guilt of the charges we're trying today.

Now, in this particular trial the Defendant has been charged with first degree criminal sexual conduct with a minor. The State must prove beyond a reasonable doubt that the Defendant engaged in a sexual battery with the victim. A sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, in any part of a person's body or of any object into the genital or anal openings of another person's body, except when that intrusion is accomplished for medically recognized treatment or diagnostic purposes. The State must then prove beyond a reasonable doubt that the victim was less than eleven years old at the time of the sexual battery. Consent or willingness or indifference or ignorance on the part of the minor, if any, as to what was taking place does not in

anyway affect the charge of criminal sexual conduct with a minor. As to this charge the testimony of the victim does not need to be corroborated. Still, the State of South Carolina is required, as in all cases, to prove each and every element of the crime charged, that being criminal sexual conduct with a minor in the first degree.

The Defendant is also charged with committing a lewd act on a minor. The State must prove beyond a reasonable doubt that the Defendant was over fourteen years of age. Next, the State must prove that the Defendant willfully and lewdly committed or attempted a lewd or lascivious act on or with the body of -- the parts of the body of a child under the age of sixteen years with the intent to arouse, appeal to or gratify the lust, the passions or the sexual desires of either the Defendant or of the child. Willfully means voluntarily and intentionally with the specific intent to do something the law forbids. Lewd means obscene or lustful or indecent or lecherous. Lascivious means tending to incite lust or lewd, indecent, obscene or tending to deprave the morals in respect to sexual relations.

Now, on each of these charges, there's two possible verdicts you can find. Either -- if you find on each one individually the State has met its burden of proof then, of course, your verdict would be guilty if they've met that burden of proof beyond a reasonable doubt. If you find the

State has not met its burden, your verdict, of course, would be not guilty.

Mr. Foreman, I've prepared verdict forms. I believe they'll be self explanatory for you. As you examine each of the two separate charges, I have two separate verdict forms. You'll merely check the appropriate block, either guilty if the State has met its proof, not guilty if it hasn't. Sign your name as foreperson, date it and let the bailiffs know that you have reached your verdict. There's no significance whatsoever in the order in which they're listed. One has to be listed before the other. You verdicts must be a unanimous verdict. All twelve of you must agree upon that verdict. Your verdict cannot be based upon sympathy or passion or prejudice or emotion or any other consideration not in evidence in the case.

And I'll remind you, Mr. Foreman and ladies and gentlemen, you're free to ask me any questions regarding the law in this case. Remember, however, it's impermissible for me to answer any questions that you have regarding the facts of the case. That's your duty as the sole fact finders.

At this time, I'm going to ask if you would go back to your jury room. Don't start your deliberations just let. There's a final matter of law I need to take care of with the attorneys. In just a few moments we'll either have you back or give you instructions to begin your deliberations.

But don't talk about the case just yet. If you will all retire back to the jury room.

(WHEREUPON, the jury exited the open court at approximately 3:37 p.m.)

THE BAILIFF: The jury's secure, Your Honor.

THE COURT: Any exceptions to the charge, from the State?

MS. BARWICK: No, sir, Your Honor.

THE COURT: From the Defense?

MR. DEJONG: Yes, Your Honor. I take exception to the charge of the -- that was requested by the State, the testimony of the victim may not be corroborated with -- may not be corroborated -- I'll put a period there -- under 16-3-652 through 653.

THE COURT: All right. Your objection is noted on that. Any other matters? If y'all will make sure the exhibits are in order, the verdict forms.

All right. Mr. Teal, if you'll have Mr. Ashes, the alternate, come out, please.

(WHEREUPON, the exhibits and verdict forms were delivered to the jury to begin deliberations at approximately 3:38 p.m.)

(WHEREUPON, the alternate juror entered the open court.)

THE COURT: Mr. Ashes, thank you very much for

serving with us. Your fellow jurors have -- well, we lost one this morning but the others have survived and you're free to go or you're free to stay. I think the jurors are calling back tonight after six o'clock. I don't know whether we've got another trial to start or not, but you just give them your badge and you're free to go now or you're certainly welcome to stay.

MR. ASHES: So I'm to call at six?

THE COURT: You need to call after six if you would. Just follow the message there, okay, sir?

MR. ASHES: All right.

THE COURT: Thank you very much. You can go out either way you want to go. Mr. Teal will take it. You can head out that way then. Thank you.

(WHEREUPON, the alternate juror was dismissed.)

THE COURT: We'll be at ease until we hear from our jury.

(WHEREUPON, court stood at recess awaiting the verdict of the jury.)

THE COURT: All right. We have a jury question that was just sent out. The foreperson has written, could we have a copy of Laura's testimony? Obviously, I'll call them back out and tell them we don't have a copy of the testimony, that we can play it for them if they want to hear it, as I usually do, tell them we'll play it as often and as

long as they want to hear it. Any time they feel like they've heard enough, then we'll let them make the call as to how much they want to hear and at what stage they want to -- if they want to back it up at any time, we'll accommodate them whatever way we need to. They might not even want to hear it, I don't know, if they can't get a copy. But that's the question, could we have a copy of -- could we have copy, Laura's testimony, is what the note says. We'll mark that as Court Exhibit Number 1.

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

THE COURT: All right. If the jury is prepared, they can come in.

(WHEREUPON, the jury entered the open court at approximately 4:34 p.m.)

THE COURT: Mr. Foreman, I've received a note from you asking if you could hear Laura's testimony. Obviously we have the testimony -- or could we have copy? We don't have the capability of making copies of it. We have it that we can play back for you. We can play any portion of it. We can play it as many times as you need to hear it. I'll be glad -- our Court Reporter, while we kept you back there, she's prepared to play it now if you want to hear it. If you don't want to hear it, that's fine too. But we can play

it for you, but we can't copy it for you.

I'm going to let her start playing it now. If you need adjustment on the volume in anyway, please let me know. If there's any time you feel like you need to hear more of it, you communicate with me, Mr. Foreman, and we'll stop it when we need to. We'll let it play as many times as you feel necessary, you and your fellow jurors.

All right. Ms. Hanks, if you can play the testimony of Victim 1, please.

(WHEREUPON, the testimony of Victim 1 [redacted] was played in open court.)

THE COURT: Mr. Foreman, ladies and gentlemen, you've heard the requested testimony. I'm going to ask you to go back to continue your deliberations. I know that the hour is getting a little later today. If some of you need to make some calls, you certainly can. If you would like to have supper brought in, the Clerk can make arrangements for that.

Mr. Foreman, what I'm going to ask you to do after you've deliberated a while longer, if the consensus of the jury is that they would rather come back tomorrow and continue their deliberations, I'll certainly be glad to entertain that as well. But I want you to have the flexibility you need to continue your deliberations in a proper manner. If you need food snacks or if you need to

hear more testimony, we're here to do what you need to make sure that your deliberations are conducted properly. So if you'll go back and continue your deliberations. Just write a note if there's anyone that needs to make calls or if you need any assistance from the Clerk's office or any other questions or testimony you need from the Court.

I'll ask you to go back to your jury room at this time.

(WHEREUPON, the jury exited the open court at approximately 6:02 p.m.)

THE COURT: All right. We'll be at ease until we hear from our jury.

(WHEREUPON, the Court stood at recess awaiting the verdict of the jury.)

THE COURT: I've got a note from the foreperson of the jury, would like to adjourn for today and come back tomorrow. So I'll call them out and dismiss them for the day with instructions not to discuss the case with anyone in the interim. I'll verify it tomorrow when they come back that they haven't, and then let them start their deliberations again at nine o'clock tomorrow.

If they're ready you can have them come in, sir.

(WHEREUPON, the jury entered the open court at approximately 6:25 p.m.)

THE COURT: Mr. Foreman, I understand that the jury would like to adjourn for the evening and continue your

deliberations tomorrow. If you'll be back at nine o'clock in the morning.

I need to remind you again, ladies and gentlemen, and I hope you understand the importance of my reminder, the case is now in your hands. The importance of your not discussing it with anyone, don't let anyone discuss it with you, your family, your friends or anyone else. You may go out with some friends or your family tonight, have dinner, whatever. But for the fact that you're serving on a jury, that's all you really need to talk about, and if they want to insist, please encourage them that you can't do that. You've made a high commitment. You've made a -- taken an oath to try this case between these parties and not with any other extraneous matter. Again, I remind you not to do any kind of independent research over words you've heard or things that you've heard. That would be improper as well. And, of course, I'll need to verify that in the morning. We'll go through that again to make sure you haven't. I'm confident you're a good conscientious jury and you're going to do the things under your oath that are required for you to do.

Would you rather start -- we'll start at nine o'clock. I didn't know if you wanted to start earlier or not, but we'll be ready to start at nine o'clock. Everybody be back in your jury room at nine o'clock. When everyone's here -- of course, you should not start your deliberations, Mr.

Foreman, until all twelve of you are here. When all twelve of you are here, we'll get the exhibits back for you and you can continue your deliberations.

Have a good evening, ladies and gentlemen. I'll see you back in the morning.

(WHEREUPON, the jury exited the open court at approximately 6:27 p.m.)

THE BAILIFF: The door's closed, Your Honor.

THE COURT: All right. We'll be at ease until nine o'clock in the morning.

MR. DEJONG: Thank you, Your Honor.

MR. BARWICK: Thank you, Your Honor.

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

(WHEREUPON, court stood at recess in this case for the day.)

JULY 28, 2011

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

(WHEREUPON, deliberations of the jury continued at approximately 9:00 a.m.)

THE COURT: All right. I understand we've got a verdict from the jury. Obviously, they've deliberated long and hard on this case. I'm well aware of the fact that there's a lot of emotion involved in a case of this nature.

Lots of cases have such emotion. I don't know what the jury verdict will be. It may bring satisfaction to some. It may bring disappointment to others. I want everyone in the courtroom to understand that we're going to accept this jury verdict with proper decorum. We're going to respect what they've done. If anybody in the courtroom, the parties, the attorneys, the witnesses or otherwise who feel like they cannot control their emotion when the verdict is given as far as any outcries or bursts of emotion -- emotion is a natural thing to have and I'm not trying to thwart that in any way, but I want to make sure the jury is respected in what they decide. If you feel like you just can't control your emotion, this would be a good time to just step outside. We'll get the verdict and you can come right back in. But I want to make sure everyone understands that we're going to have the proper respect for the jury who has worked hard as the fact finder. Does anybody need to leave at this time. I want y'all to be fully aware of what the Court's instructions are. If you need to leave, this will be a good time for you to just step out and leave the courtroom.

All right. Mr. Evans, if the jury is ready, you can have them come in.

(WHEREUPON, the jury entered the open court at approximately 12:04 p.m.)

THE COURT: Mr. Foreman, I understand the jury has

reached a verdict. Is that correct?

MR. FOREMAN: Yes, it is.

THE COURT: Is it a unanimous verdict?

MR. FOREMAN: Yes, sir.

THE COURT: If you would, please, hand the verdict forms to the bailiff.

(WHEREUPON, the verdict forms were handed up to the Court.)

THE COURT: Mr. Clerk, you may publish the verdict.

THE CLERK: This is case number 2009-GS-39-1405, the State of South Carolina versus Richard Burton Beekman. We, the jury, by unanimous consent find the Defendant, Richard Burton Beekman, as to the charge of first degree criminal sexual conduct with a minor, guilty.

Case number 2009-GS-39-1404, the State of South Carolina versus Richard Burton Beekman. We, the jury, by unanimous consent find the Defendant, Richard Burton Beekman, as to the charge of lewd act on a child, guilty.

Is this your verdict and still your verdict so say you all by raising your right hand?

(WHEREUPON, all jurors' right hands were raised.)

THE CLERK: Thank you very much.

THE COURT: Is there any matter we need to take care of with the jury before they're discharged in this

case?

MS. BARWICK: Not from the State, Your Honor.

THE COURT: From the Defense?

MR. DEJONG: None on behalf of Mr. Beekman, Your Honor.

THE COURT: Mr. Foreman, ladies and gentlemen, thank you very much for your service in this case. You've been a conscientious group that you've listened attentively. I know it's not been an easy case, but you've been a diligent group to work with and I'm honored to have a chance to be a fellow judge with you. You've performed a valuable service to your community. You've performed a valuable service to your State. You've fulfilled a role of being part of our government in action as jurors because as jurors, you're serving in the Judicial Branch of Government. You can't pass laws. You can't execute the laws and see that they're carried out unless you are elected to one of those positions, either as a legislator or an executive branch or a government, but you've served the third branch of government as a judge of the facts, the fact finder and I'm grateful for that.

Some of you may have a need for a statement from the Clerk's office for your employer, to show that you have been on jury service this week. If that's the case, please stop by the Clerk's office and they'll provide that for you. I

understand from the Solicitor's office that we're not going to need any of our jurors for the rest of the week. We have some motions and other matters to take care of tomorrow after we do some other work that we've been doing today. So you're dismissed for the week.

You may have remembered from Monday when I qualified you, that I told you you could be exempted from jury service if you have served in the last two calendar years. That means for 2012 and 2013 you can excuse yourself from jury service. I hope you'll elect not to do that if you are called again. One day you may find yourself sitting at a table. You may be involved in an automobile accident or have a contract dispute or may have been accused of an offense, and I'm confident that if that were to happen to you, that instead of sitting where you are that you're sitting at one of the tables, you'll want good solid citizens such as yourself to sit there in that box and decide what the facts are. Thank you so much for your service. I greatly appreciate it.

You're dismissed at this time. The foreperson, I need for you if you would, just remain in the hallway just for a moment. There's a couple of other papers I need to have you sign. The rest of you, you're dismissed. Thank you very much for your service to us this week.

(WHEREUPON, the jury exited the open court at

approximately 12:10 p.m.)

THE BAILIFF: The door's closed, Your Honor.

THE COURT: Is there anything we need to take care of before sentence is imposed?

MR. DEJONG: Your Honor, at this point in time, I would move for a new trial on behalf of Mr. Beekman in that the evidence does not substantiate the verdict, Your Honor.

THE COURT: I think the jury has examined the evidence, Mr. DeJong, and the evidence certainly was capable of their interpretation of it. I respectfully deny your motion.

MR. DEJONG: Thank you, Your Honor.

THE COURT: Any other matters?

If not, we'll have him come forward. Mr. DeJong, have you client come forward.

(WHEREUPON, Ms. Barwick, Mr. DeJong and the Defendant approached the Bar.)

THE COURT: All right. Mr. DeJong, I'll be glad to hear from you and -- well, first of all, is there anybody from the State that wants to address the Court before I hear from the Defense?

MS. BARWICK: Yes, sir, Your Honor. The victims would like to address the Court.

THE COURT: Okay. I'll be glad to hear from you. Again, state your name for the record just so we'll have a

proper recordation of who's speaking now.

MR. WHEELER: Ted Wheeler.

THE COURT: Yes, sir. I'll be glad to hear from you, sir.

MR. WHEELER: Your Honor, thank you. This is very emotional. I feel like my family has got a life sentence from this tragedy that's happened and I know that the jury made the right decision because I've been living with this for three years and I know a lot of things the jury hasn't heard. And it's just beyond comprehension. I hope no one ever has to go through this. I know people do and it's just amazing to me. And I just hope that you put him away for as long as you possibly can. That's all I've got to say. It's just destroyed our family. He's done so much damage to my son, it's unbelievable.

THE COURT: All right. Thank you, sir.

MS. BARWICK: Anyone else?

THE COURT: Anyone else want to address me?

MS. BARWICK: No one else from the family, Your Honor.

THE COURT: Anything else from the State as far as prior records or any other matters?

MS. BARWICK: Your Honor, he does not have a prior record. As Your Honor knows, he's facing significant time and the State feels that he is well deserving for as much

time as Your Honor feels comfortable giving him.

THE COURT: Mr. DeJong, I'll be glad to hear from you and I'll certainly be glad to hear from your client if he'd like to address me.

MR. DEJONG: Thank you, Your Honor, may it please the Court. Mr. Beekman is fifty-five years of age. He will actually be fifty-six in October of this year. He resides in Liberty. Has resided there for a number of years. He owns his own house out there. He is now divorced. He was divorced approximately a year after these allegations arose. Worked for G.E. Gas Turbine -- I don't ever know how to pronounce that -- in Greenville since 1988. He was a machinist over there. Has an Associate's Degree from Tri-County Tech. As I'm sure Your Honor hear during the testimony, he also volunteered with the Liberty Rescue Squad, I believe. He has been on temporary disability with G.E., Your Honor. A large part because of his volunteering with the Liberty Rescue Squad he was involved in volunteering there, he had to go to the scene of a couple of pretty bad wrecks where some young children were very seriously injured or killed. As a result, he was diagnosed with post-traumatic stress disorder. He has been taking medication for both anxiety and for depression for some time now.

As indicated by the Solicitor, Your Honor, he has no

record. The sadness of this case, Your Honor, as I see it is, in one regard, the Legislature has certainly tied the Court's hands. As I understand the current state of the law, criminal sexual conduct in the first degree with a minor, the new sentencing went into effect, I believe, in 2006, which requires a minimum mandatory of twenty-five years, can carry up to life. At Mr. Beekman's age, the minimum mandatory is a life sentence, Your Honor, and I'm not faulting Your Honor. I'm just simply stating that even with the minimum mandatory, at eighty-five percent of that, he would be well over seventy years of age by the time he was released.

Where there is life, there is hope. I would ask the Court to impose the minimum mandatory sentence in light of his lack of prior record, his work record. Obviously, the jury has found him guilty. At this point in time, there's nothing we can do about that. But in light of all of that, Your Honor, I would ask that you give him the minimum mandatory. Anything you give him on the other charge, I would ask that you run that concurrent, Your Honor.

THE COURT: Thank you, Mr. DeJong. Mr. Beekman, anything you would like to say to me before I impose sentence?

MR. BEEKMAN: I'm not guilty, Your Honor. And when this all happened my life was destroyed too. I lost --

I never had a family and I loved them. And when this all happened, I felt like my family had been taken from me just suddenly. And I've had severe problems with depression because of this. I know I'm not guilty of doing what I'm accused of doing, Your Honor. I'm not guilty.

THE COURT: Thank you, sir.

It's always a difficult -- it was difficult for the jury. It's difficult for a Judge to impose sentence to try to do justice to everyone. We often impose our own prisons. And before we look at bars, we're imprisoned. And certainly because of things that have happened, we sometimes imprison ourselves. I certainly hope these victims realize that there is a release from what has occurred to them and that there's hope and they can overcome the event that happened and they can have freedom. Even if you're behind bars there's ways to enjoy that freedom that can be found.

This is case 2009-GS-39-1405, the sentence of the Court is the Defendant be committed to the State Department of Corrections for a period of thirty years.

Case 2009-GS-39-1404, the sentence of the Court is Defendant be committed to the State Department of Corrections for a period of fifteen years. This sentence will be consecutive to that previously imposed.

We'll take a short break and be ready to hear more pleas.

MR. DEJONG: Thank you, Your Honor.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 25th day of July, 2011.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 29, 2011

Susan Danette Hanks

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

2017 FEB 10 PM 12 32
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

RICHARD BURTON BEEKMAN)
Full name and prison number (if any) of Applicant.)

2017-CP-39-00168

v.) **APPLICATION FOR**

State of South Carolina) **POST-CONVICTION RELIEF**
Respondent.)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions Pickens County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2009-GS-39-01404 15yrs } Consective J487851
   (b) 2009-GS-39-01405 30yrs } J487852
   (c)

5. The date upon which sentence was imposed and the terms of the sentence:

   (a) July 28, 2011
   (b)

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____ SUPREME COURT OF SOUTH CAROLINA

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____ Affirmed

ii. _____ STATE -vs- BEEKMAN

iii. _____ APPELLATE No·2013=002002

(c) the date of each such result:

i. _____ April 12, 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____ Appellate Case No: 2013-002002

ii. _____ SEE ATTACHED COURT ORDER

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____ N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

SEE: ATTACHMENT

(a) ____

(b) ____ SEE: ATTACHMENT

(c) ____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

SEE: ATTACHMENT

(a) ____

(b) ____

(c) ____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. ____ 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. ____

ii. ____ N/A

iii. ____

iv. ____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. ____ N/A

ii. ____

iii. ____

iv. ____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. ____

ii. ____ N/A

iii. ____

(b) the proceedings in which each ground was raised:

i. ____

ii. ____ N/A

iii. ____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) ____ Not proper for direct review

(b) ____

(c) ____

17. Were you represented by an attorney at any time during the course of:

Yes

(a) your arraignment and plea? ____

(b) your trial, if any? X

(c) your sentencing? X

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? PCR filed pro se

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. ____ John W. DeJong, Esq. 214 E. Main St. Pickens, SC. 29671 [Trial]

ii. ____ Dayne C. Phillips, Esq., P.O. Box 11589, Columbia, SC. [Appeal]

iii. ____

(b) the proceedings at which each such attorney represented you:

i. ____ Trial

ii. ____ Direct Review

iii. ____

19. State clearly the relief you seek in filing this application:

____ Vacate conviction and sentence and remand for new trial

20. Are you now under sentence from any other court that you have not challenged?

____ NO

2017 FEB 10 PM 12 32

STATE OF SOUTH CAROLINA)
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

VERIFICATION

County of PICKENS)

Richard B. Beekman

I, , 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.

Richard B. Beekman

SWORN to and subscribed before me this 27
day of Jan, 2017.

(L.S.)
Notary Public

My Commission Expires: 3/3/2024

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

2017 FEB 10 PM 12 32

CLERK OF COURT
FLORENCE COUNTY
SOUTH CAROLINA

I, Richard B. Beekman, 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 of 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 said proceeding or give security thereof.

Applicant
Richard B. Beekman

SWORN or affirmed to and subscribed before me this 27 day of Feb, 2017.

Notary Public

My Commission Expires: 3/3/2024

Revised 3/2003

2017 FEB 10 PM 12 32
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Richard Burton Beekman, Petitioner.

Appellate Case No. 2013-002002

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Pickens County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 27623
Heard April 22, 2015 – Filed April 13, 2016

AFFIRMED

Appellate Defender Laura R. Baer and Carmen V. Ganjehsani, of Richardson Plowden & Robinson, P.A., both of Columbia, and Appellate Defender Dayne Phillips, of Lexington; all for Petitioner.

Attorney General Alan M. Wilson and Assistant Attorney General Christina C. Bigelow, both of Columbia, for Respondent.

JUSTICE KITTREDGE: Petitioner Richard Burton Beekman was convicted of committing first-degree criminal sexual conduct (CSC) with a minor on his stepson (Stepson) and a lewd act upon a child on his stepdaughter (Stepdaughter). We granted a writ of certiorari to review the court of appeals' decision affirming the trial court's denial of Beekman's motion to sever the charges. We affirm.

I.

In June 2006, Beekman married Mother, who shared joint custody of Stepdaughter and Stepson with her ex-husband. On July 7, 2008, Stepdaughter reported to Mother that Beekman had sexually abused her. Mother took Stepdaughter to the children's grandmother's house for the night, and she and Stepson moved there the next day. At the grandmother's house, Stepson began acting out—scratching his skin, banging his head, hyperventilating, and drawing pictures of Beekman dying. Eventually, a cousin came over to talk to Stepson, and he disclosed to her that he had also been sexually abused by Beekman.

Beekman was subsequently charged with committing CSC on Stepson and a lewd act on Stepdaughter. The State sought to prosecute both indictments in a single trial. Beekman moved to sever the two charges, arguing they did not arise from the same chain of circumstances, would not be proved by the same evidence, and were not of the same general nature. He further argued he would be substantially prejudiced if the cases were tried jointly. The trial court denied the motion, finding that the events arose out of the same chain of circumstances and there was a "great overlap of evidence."

The case proceeded to trial. Stepdaughter testified that on the evening of July 6, 2008,[1] she and Stepson slept on couches in the living room because their rooms were messy. She stayed up watching the Disney Channel awhile, but eventually fell asleep. She awoke later in the night to Beekman touching her "private area" beneath her clothes. The television was still on and the news was playing. Beekman was startled when Stepdaughter woke up, and he asked if she knew where the remote was. She threw it at him, and he left the room. According to Stepdaughter, she told Mother the next night about Beekman touching her, and they immediately moved into her grandmother's house.

---

[1] Stepdaughter was twelve years old at the time.

Stepson also testified that, on two separate occasions within an eight-month period,[2] Beekman touched Stepson's penis while they were watching the news together. On both occasions, Beekman put his hands under Stepson's clothes and touched Stepson's bare skin. Stepson further stated that Beekman anally penetrated him on one occasion while Stepson was in Beekman's room watching the news.

After disclosing the abuse, Stepson was examined by Dr. Nancy Henderson, the head of Greenville Hospital System's section on child abuse and neglect and a physician board-certified in child abuse pediatrics. Dr. Henderson testified that Stepson informed her he had been touched on his genitals and that "someone had put his private part into [Stepson's] bottom." Although his rectal exam was normal and did not uncover any signs of scars or tearing, Dr. Henderson noted that ninety percent of children have normal exams even when there is a history of penetration.

The jury convicted Beekman of both crimes. He was sentenced to thirty years' imprisonment for CSC and fifteen years' imprisonment for the lewd act, to be served consecutively.

Beekman appealed arguing, in part, that the trial court erred in denying his motion to sever the charges. The court of appeals affirmed. *State v. Beekman*, 405 S.C. 225, 746 S.E.2d 483 (Ct. App. 2013). We granted certiorari to review the court of appeals' opinion.

Beekman argues the court of appeals erred in affirming the trial court's denial of his motion to sever the charges because the crimes did not arise out of a single chain of circumstances and were not provable by the same evidence. Further, Beekman argues that trying the charges together unfairly prejudiced him because it allowed the jury to consider evidence the State would have been prevented from presenting in separate trials and likely created the impression in jurors' minds that Beekman had a propensity to sexually abuse children. Therefore, according to Beekman, this Court should reverse his convictions and remand his case for separate trials. For the reasons discussed below, we disagree.

II.

"Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence,

---

[2] During this time, Stepson was eight years old.

(3) are of the same general nature, and (4) no real right of the defendant has been prejudiced." *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996) (citing *State v. Tate*, 286 S.C. 462, 464, 334 S.E.2d 289, 290 (Ct. App. 1985)). "A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown." *Id.* (citing *State v. Anderson*, 318 S.C. 395, 398, 458 S.E.2d 56, 57–58 (Ct. App. 1995)).

III.

First, Beekman asserts the offenses did not arise from a single chain of circumstances. We disagree and, like the court of appeals, reject Beekman's "restrictive reading of the phrase 'a single chain of circumstances.'" *Beekman*, 405 S.C. at 231, 746 S.E.2d at 486. Instead, we agree with the court of appeals that "the two charges against Beekman arose from, in substance, a single course of conduct or connected transactions." *Id.*

In other cases, even though the charges did not arise out of a single, isolated incident, this Court and the court of appeals have allowed joinder when the crimes "involv[ed] connected transactions closely related in kind, place, and character." *State v. Cutro*, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005) (footnote and citations omitted); *see, e.g., id.* at 373–75, 618 S.E.2d at 894–95 (finding no abuse of discretion in denying a motion to sever charges involving multiple victims of Shaken Baby Syndrome even though the charges stemmed from separate occurrences); *Tucker*, 324 S.C. at 163–65, 478 S.E.2d at 264–65 (permitting joinder of charges stemming from a multi-day crime spree that included a murder and multiple break-ins); *State v. McGaha*, 404 S.C. 289, 291–99, 744 S.E.2d 602, 603–07 (Ct. App. 2013) (affirming, under facts almost identical to the present case, joinder of CSC with a minor and lewd act upon a child charges arising from the abuse of two sisters who were both abused by an individual in the same manner, in the same place, and during the same time frame); *State v. Jones*, 325 S.C. 310, 314–16, 479 S.E.2d 517, 519–20 (Ct. App. 1996) (finding no abuse of discretion in consolidating child sexual molestation charges, even though the charges concerned two victims, when the offenses "were of the same general nature" and arose from the same "pattern of sexual abuse"); *see also City of Greenville v. Chapman*, 210 S.C. 157, 161–62, 41 S.E.2d 865, 867 (1947) (explaining that courts should avoid the "inflexible application" of the rule that charges must arise out of the same set of circumstances to warrant joinder and noting that if "it does not appear that any real right of the defendant has been jeopardized, [then] it would be a refinement not demanded by the law or by justice to require in all instances a separate trial").

There can be no dispute that Beekman's molestation of his two stepchildren "involv[ed] connected transactions closely related in kind, place, and character." *Cutro*, 365 S.C. at 374, 618 S.E.2d at 894 (footnote omitted). Specifically, Beekman's victims were siblings and the molestation occurred (1) at the same place—the victims' home; (2) over the same period of time—the eight-month period between November 2007 and July 2008; and (3) with the same modus operandi—Beekman taking advantage of the children's habit of watching television with him. *Cf. Cutro*, 365 S.C. at 374 n.4, 618 S.E.2d at 894 n.4 (finding joinder proper where "the State produced evidence each offense involved the violent shaking of an infant at the [defendant's] home daycare"). Therefore, the same level of interconnectedness of crimes that was sufficient to permit joinder in *Tucker*, *Cutro*, *McGaha*, and *Jones* is present here.

Beekman next argues that the molestation of each child was a distinct crime and that the two charges are not supported by the same evidence. Of course they are distinct crimes, but that in no manner diminishes the glaring similarities in Beekman molesting both of his stepchildren in the same place, over the same time period, and in a similar manner. *Cf. Cutro*, 365 S.C. at 369–75, 618 S.E.2d at 891–95 (affirming the trial court's refusal to sever charges involving multiple victims where the appellant was charged with two counts of homicide by child abuse and one count of assault and battery, each of which involved incidents occurring at different times with different children). Indeed, Beekman acknowledges that testimony from many of the same witnesses would be used to prove both charges.

The fact that the State did not present the exact same testimony to prove the molestation of each stepchild is not dispositive in considering whether joinder of the charges was proper. Beekman advocates for a rule that strictly requires all charges be proved by completely identical evidence, a requirement nowhere to be found in our precedents requiring that the crimes be "proved by the same evidence." *See, e.g.*, *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265 (citing *Tate*, 286 S.C. at 464, 334 S.E.2d at 290) (listing the joinder requirements).

For joinder of related offenses, our appellate courts have recognized that there may be evidence that is relevant to one or more, but not all, of the charges. *Tucker* is such an example. James Neil Tucker committed a murder and robbery; he subsequently broke into a church and a mobile home while on the run from police. *Id.* at 160–61, 478 S.E.2d at 263. This Court affirmed the denial of Tucker's motion to sever the charges. *Id.* at 163–65, 478 S.E.2d at 264–65. By arguing that the evidence of multiple crimes may not merely overlap but must be wholly identical to warrant consolidation for trial, Beekman ignores the fact that the

evidence needed to prove Tucker committed the murder was necessarily different than the evidence needed to prove Tucker broke into the church and mobile home.

IV.

We affirm the court of appeals in finding no abuse of discretion in the joinder of the charges, for the charges arose out of a single course of conduct, were of the same general nature, and were proved by the same evidence. Further, joinder did not prejudice any of Beekman's substantial rights. *See Tucker*, 324 S.C. at 164, 478 S.E.2d at 265 (citing *Tate*, 286 S.C. at 464, 334 S.E.2d at 290). The decision of the court of appeals is affirmed.

AFFIRMED.

HEARN, J. and Acting Justice Jean H. Toal, concur. PLEICONES, C.J., dissenting in a separate opinion in which BEATTY, J., concurs.

CHIEF JUSTICE PLEICONES: I respectfully dissent. I would reverse the Court of Appeals' decision to affirm the denial of Petitioner's motion to sever his charges and remand for further proceedings.

"Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced." *State v. Tucker*, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996); *State v. Smith*, 322 S.C. 107, 109, 470 S.E.2d 364, 365 (1996) ("Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant's substantive rights would not be prejudiced."). In order for charges to be combined in the same indictment and tried together, all four elements must be met. *Tucker*, 324 S.C. at 164, 478 S.E.2d at 265. As explained below, it is my view that the charges did not arise out of a single chain of circumstances and are not provable by the same evidence, and therefore, the Court of Appeals erred in affirming the denial of Petitioner's motion for severance. *State v. Cutro*, 365 S.C. 366, 618 S.E.2d 890 (2005) (Pleicones, J., dissenting).

Petitioner was tried for one charge of criminal sexual conduct - first (CSC) of his stepson and one charge of lewd act on a minor, his stepdaughter. Petitioner moved to sever the charges, but his motion was denied by the trial court. The Court of Appeals affirmed, finding Petitioner "embarked upon a series of actions aimed at the sexual abuse of his two prepubescent stepchildren over the course of an eight month period." The Court of Appeals found the facts that supported trying the charges in the same trial where: each alleged incident of abuse occurred in the family home; both victims are prepubescent siblings[3]; the alleged abuse began in a similar manner by petitioner placing his hand on the unclothed genitalia of the victims; the news playing on the television during both alleged incidents of abuse; and the alleged incidents occurred during an eight month period.

---

[3] Stepdaughter was twelve years old and stepson was eight years old at the time of the alleged abuse.

As explained in *Tucker*, charges can be joined in the same indictment only when all four elements warranting a combined trial are present. *Id.* In my view, the charges do not arise out of a single chain of circumstances because there is no nexus between the crimes. *Compare State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986) (reversing the consolidation of charges of murder of one victim on June 9th, murder of a second victim in a similar manner on June 10th, and an attempted robbery on June 11th because the crimes did not arise out of a single chain of circumstances); *with Tucker*, 324 S.C. 155, 478 S.E.2d 260 (holding consolidation of murder, kidnapping, armed robbery, possession of a weapon during a crime, burglary, and larceny charges was proper because the crimes arose during a single chain of circumstances when the burglaries were committed to avoid capture for the crimes related to the murder). In my opinion, the trial court and the Court of Appeals applied an exceedingly broad view of the single chain of circumstances factor. While I recognize that similarities exist, such as the alleged abuse occurred in the same home and the victims are siblings, the alleged lewd act on the stepdaughter of touching her genitals while she was sleeping has no nexus to and does not arise out of the same chain of circumstances as the alleged anal penetration of stepson while watching television.

Additionally, the Court of Appeals erred by summarily concluding that each charge is provable by the same evidence without an analysis of the evidence advanced at trial. Although some testimony would be necessary to prove each charge, such as the testimony of the victims' mother, in my view the evidence necessary to prove each charge is different. For example, the State played a forensic interview of stepson and presented testimony of the doctor that examined stepson as evidence of the CSC charge, and this evidence is not relevant to the alleged lewd act on stepdaughter.

Because all four elements required to join charges in the same trial are not present, it is my opinion that the Court of Appeals erred in affirming the denial of Petitioner's motion to sever. Accordingly, I would find the trial judge abused his discretion in denying the motion to sever the charges, reverse the opinion of the Court of Appeals, and remand for further proceedings.

BEATTY, J., concurs.

2017 FEB 10 PM 12 33
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

APPLICANT'S ATTACHMENT
TO APPLICATION FOR POST-CONVICTION RELIEF
BEEKMAN -vs- STATE
PICKENS COUNTY
INDICTMENT Nos: 2009-GS-39-01404 and 01405

To be entitled to relief on claims of ineffective assistance of trial counsel, a PCR applicant must generally show in state court that (1) counsel's stewardship fell below an objective standard of reasonableness, and (2) a reasonable probability exists that but for counsel's error, the results of the proceedings would have been different. STRICKLAND -vs- WASHINGTON, 466 U.S. 668, 687, 694 (1984). Applicant shall show unto this Court the Following claims for relief.

GROUND ONE

Applicant received ineffective assistance of counsel at trial and/or was the court in error as guaranteed under the prohibitions of the 6th and 14th amendments to the United State Constitution and Article V, section XXI of the South Carolina Constitution - when defense counsel failed to "OBJECT" to the court's prohibited charge that "A VICTIM'S TESTIMONY NEED NOT BE CORROBORATED" a fact for the jury to determine.

LAW/ANALYSIS

Jury instructions should be designed to enlighten the jury and aid it in arriving at a correct verdict. Regardless of whether the charge is a correct statement of law. Instructions which confuses or misleads a jury are deemed erroneous.

When reviewing a jury charge for error, the court must consider the charge as a whole:... in that, the charge must be prejudicial to a defendant to warrant a new trial STATE -vs- CURRY, 406 S.C. 364, 752 S.E.2d 263 (2013).

In the past out state appellate courts have held that while a trial court is not required to charge the language of §16-3-657; however, if it does, the charge is not reversible error provided this instruction is not unduly emphasized and the charge as a whole comports with the law.

Our Supreme Court has held the legislative intent of §16-3-657 is "NOT" the proper subject of a charge but merely serves to guide a trial and appellate court in analyzing the sufficiency of evidence (emphasis added).

Additionally the court held that this charge "has the potential for creating more problems than solutions, for it might cause confusion when read with the general charge on witness credibility and noted such charge would place emphasis on the victim's testimony appearing to be a comment on the facts by the

court. In sum, this type of charge is confusing and violative of the constitutional provision prohibiting the bar from commenting to the jury on facts of the case S.C. Const. Art., V, §XXI ("Judges shall not charge juries in respect to matters of facts, but shall declare the law").

Accordingly, it is not within the province of the court to express an opinion to the jury on its view of the facts, by addressing the veracity of the victim's testimony in its instruction. It cannot be said that any statement by the court that suggest one witnesses' testimony need not be subject to the same tests for weight or creditibility as the testimony of others has the unfortunate effect of "BOLSTERING and/or VOUCHING" for that witnesses' testimony by according it special status.

DISCUSSION

The instruction in applicant's case did just that, which effectively placed the judges' thumb on the scale to lend an extra element of weight to the victim's testimony.

In the case now before the court, applicant was charged with criminal sexual conduct with a minor; whereby, the court charged the jury that:

> "AS TO THIS CHARGE, THE TESTIMONY OF THE VICTIM NEED NOT BE CORROBORATED"

Id. at Applicant's TRIAL TRANSCRIPTS: page 406, lines 2 through 3.

This form of charge is not applicable when facts and circumstances attending a charge are disclosed in evidence, so as the jury may be able to draw a conclusion of credibility from the victim's testimony

This language in conjunction with the credibility of the victim's testimony had the prejudicial effect of "BOLSTERING and/or VOUCHING" for the victim's testimony and could "NOT" have been cured by further instruction. Consequently, the court's instruction, such as that here, cannot be harmless, because it is precisely this cumulative effect of commenting on the facts by the trial court, which produced an impermissible inference on the facts, by the court before the jury.

Evidence of such character must come from the witness stand and presumed to be sufficient to enable the jury to draw from it a conclusion of credibility one way or the other; and not from the bench.

GROUND TWO

Applicant asserts that he received ineffective assistance of counsel at trial as guaranteed by the 6th and 14th amendments of the United States Constitution and the laws of

the State of South Carolina - when defense counsel failed to "OBJECT" to Dr, Nancy Henderson's M.D. hearsay testimony solicited by the prosecution that corroborated Victim 2's (____ year old victim) testimony to facts of the assault.

LAW/ANALYSIS

The rule against hearsay testimony prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted; unless an exception to the rule applies SIMPKINS -vs- STATE, 303 S.C. 364, 401 S.E.2d 142 (1991).

The court has recognized three exceptions to the rule against testimony that allows prior consistent statements of a witness to be admitted.

FIRST, in criminal sexual cases, when the victim testifies, evidence from other witnesses that the victim complained of the sexual assault is admissible in corroboration, "LIMITED" to the time and place of the assault, excluding details on particulars. Id at 401 S.E.2d 143.

SECOND, the res gestae or excited utterance exception allows corroborative rape testimony without restriction to time and place. STATE -vs- SCHUMPERT, ____ S.C. ____, 435 S.E.2d 859 (1993).

THIRD, when a witness has been impeached by proof that the

witness has made a prior inconsistent statement, proof is allowed that the witness has made a prior inconsistent statement, provided that the prior statement must have been made before the "Existence of [the] relation of [the witness] to the cause." BURNS -vs- CLAYTON, 117 S.E.2d 300 (1960).

DISCUSSION

Applicant was charged with criminal sexual conduct with a minor, and lewed act of a minor, and during applicant's trial the prosecution without objection from the defense solicited testimony from Dr. Nancy Henderson that:

> Q... OKAY, AND DID HE TELL YOU WHAT THE SOURCE OF THE STINGING WAS
> A... WELL, AFTER HE SHARED ABOUT THAT, HE HAD SHARED ABOUT WHAT HAPPENED TO HIM.
> Q... AND WHAT DID HE SAY HAPPENED TO HIM?
> A... HE HAD SAID THAT HE HAD BEEN TOUCHED ON HIS GENITALS AREA AND ALSO HAD SHARED THAT SOMEONE HAD PUT HIS PRIVATE PART INTO HIS BOTTOM, INTO Victim 2's BOTTOM. ALSO ALSO THAT HE HAD TO TOUCH THAT PERSONS PRIVATE PART AS WELL

Id. at applicant's TRIAL TRANSCRIPTS, page 267, lines 10-18.

Dr. Henderson's testimony regarding the events of the alleged assault does not fall into any of the above exceptions. Specifically, the testimony was not limited to the "time" and "place" of the assault; and the testimony does not establish any evidence that victim's statement was an "excited utterance" and because the witness is the victim in tis case, the victim could not have made the prior statement regarding the assault before the victim had a "relation to the clause."

Therefore because Dr. Henderson's testimony did not fall within an exception to the hearsay rule, it was detrimental and extreme prejudicial to applicant's defense. Applicant asserts that defense counsel's failure to "OBJECT" to the introduction of this hearsay evidence, rendered defense counsel' stewardship well below an objective standard of reasonableness pursuant to STRICKLAND -vs- WASHINGTON (citation omitted).

CONCLUSION

For reasons set forth above, but not limited too, the results of applicant's trial CANNOT be relied upon as just and fair under the mandates of our constitutions (federal and state), and his case should be remand back the trial court for a new trial.

APPLICANT FOREVER PRAYS:

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2017 FEB 10 PM 12 33

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Dear Clerk:

Enclosed please find applicant's post-conviction relief application (2 copies). Please file one copy with the court and may you be so kind and clock-stamp the second copy and return it to me in the self-addressed envelope for my records

Thanking you in advance for your assistance in this matter.

With kind regards,

Richard B. Beekman
Lee Correctional Instution

APPLICANT.

DATE: 1-27-2017

Pickens Co. Clerk of Court
PO Box 215
Pickens, SC 29671

2017CP3900168

Tavish D. Yeargin # 317173
LCI WB #2
PO Box 205
Ridgeville, SC 29472

2017 FEB 10 PM 4 27
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

* emailed to Judy Carey ✓
2/13/17 MB

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	
Richard Burton Beekman, #347134,	)	2017-CP-39-0168
	)	
Applicant,	)	
	)	**RETURN**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on February 10, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In September 2009, the Pickens County Grand Jury indicted Applicant for committing or attempting lewd act upon a child under the age of sixteen (2009-GS-39-1404), and criminal sexual conduct with a minor under the age of eleven, first degree (2019-GS-39-1405). John W. DeJong, Esquire, represented Applicant. Jenny L. Barwick, Esquire, prosecuted the case. On July 25-28, 2011, Applicant proceeded to trial before the Honorable G. Edward Welmaker. The jury found Applicant guilty as indicted. Judge Welmaker sentenced Applicant to imprisonment for consecutive terms of fifteen years for committing or attempting to commit lewd act upon a child under the age of sixteen and thirty years for criminal sexual conduct with a minor under the age of eleven.

The facts leading to the indictment are as follows. On July 7, 2008, Applicant was alleged to have woken one of the victims by molesting her in her sleep. Trial Tr. pg. 95 Line 21- pg.96 Line 3.

Afterwards, the victim's younger brother shared that the applicant had molested him. Trial Tr. pg. 96 Lines10-17.

Applicant filed a timely notice of appeal. Dayne C. Phillips, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 26, 2013. State v. Beekman, Op. No. 5145 (S.C. Ct. App. filed June 26, 2013). Applicant filed a petition for rehearing on July 11, 2013. In an order dated August 22, 2013, the Court of Appeals denied Applicant's petition for rehearing.

Applicant then filed a petition for writ of certiorari to the South Carolina Supreme Court on November 22, 2013. By order dated July 25, 2014 the Supreme Court granted certiorari. Carmen V. Ganjehsani, Esquire, of the Office of Appellate Defense perfected the appeal. The Supreme Court affirmed Applicant's conviction on April 13, 2016. State v. Beekman, Op. no. 27623 (S.C. Sup. Ct. filed April 13, 2016). The remittitur was returned to the circuit court on April 29, 2016.

Attached to this Return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel," in that:
    a. "Defense counsel failed to 'OBJECT' to the court's prohibited charge that a 'A VICTIM'S TESTIMONY NEED NOT BE CORROBORATED" a fact for the jury to determine;"
    b. "Defense counsel failed to 'OBJECT' to Dr. Nancy Henderson's M.D. hearsay testimony solicited by the prosecution that corroborated [the victim's] testimony of facts of the assault."

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the

record does not conclusively refute. Accordingly, 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 must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

[*Signature page follows*]

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 26, 2017

STATE OF SOUTH CAROLINA COUNTY OF PICKENS RICHARD BURTON BEEKMAN, 347134 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2017-CP-39-0168 AFFIDAVIT OF SERVICE BY MAIL

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 July, 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, Applicant, -VS- Richard Burton Beekman, Respondent.	Case No(s).:2017CP3900168 TRANSCRIPT OF RECORD

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
Greenville, S.C. 29602

Records are taken and produced via



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EXHIBITS PAGE

NO.	DESCRIPTION	ID	EV

APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 25th day of October 2017 at approximately 11:59 a.m.)

THE COURT: Yes, sir.

MR. MITCHELL: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. MITCHELL: This is 2017-CP-39-0168, Richard Burton Beekman versus the State of South Carolina. The applicant is presently confined in the SC Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In September 2009, the Pickens County Grand Jury indicted the applicant for committing or attempting a lewd act upon a child under the age of 16 and criminal sexual conduct with a minor under the age of 11, first degree.

Mr. John DeJong represented the applicant. On July 25th through the 28th, 2011, Applicant proceeded to trial before the Honorable G. Edward Wanamaker. The jury found Applicant guilty as indicted. Judge Welmaker sentenced Applicant to imprisonment for consecutive terms of 15 years for committing or attempting to

commit a lewd act upon a child under the age of 16 and 30 years for criminal sexual conduct with a minor under the age of 11.

He is present in the courtroom today and represented by Mr. Mills Ariail.

THE COURT: Mr. Ariail?

MR. ARIAIL: Yes, Your Honor. We're ready to proceed. I would just call Mr. Beekman to testify. If he could sit right here, that would be good.

THE COURT: All right. Yes, sir.

THE CLERK: Mr. Beekman, would you please raise your right hand?

RICHARD BEEKMAN

having first been duly sworn, testifies as follows:

THE CLERK: Thank you. If you could, please state your full name for the record.

THE WITNESS: Richard Burton Beekman.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q Mr. Beekman, I'm going to stand here. Make sure you get that microphone. We're here today -- you filed a PCR in regards to your representation by Mr. DeJong, correct?

A Correct.

Q I want to go through a little bit. We talked a little bit about it, and you've given me a lot of information about this. As I explained to you, this is a proceeding, which is post-conviction relief proceeding, that deals with whether or not Mr. DeJong was ineffective during your representation. Okay. I want to go back and just get a little bit of the background in regards to his representation of you. Did you discuss this case with him and understand the specifics about the evidence that was going to be used against you?

A Prior to my second trial, I did.

Q Okay. You say prior to your second trial. Let's go back and let me misunderstand a little bit. You say you had a first trial in regards to this?

A Dallas Ball was my attorney, at that time.

Q Maybe we can go through a little bit about that. Tell me -- you are saying Dallas represented you on one of these charges?

A Both of them.

Q Okay. So, Dallas -- tell me when you hired Mr. Ball?

A I hired him the day I was arrested.

Q Okay. So Mr. --

A I don't recall the dates.

Q Okay, but you hired him on these two charges?

A Yes, sir.

Q He began to represent you?

A Yes, sir.

Q And then what happened with that representation?

A Well, after, I would guess, maybe two, maybe three years, it went to trial. And they did not provide any discovery to Dallas Ball, my attorney. He made some kind of deal with the judge. I don't know what the deal was exactly. But they made a deal over the discovery, that he was going to get the discovery after she looked at it. She looked at it and gave it to him, and then she made a decision. Her decision was that I was to pay a $100 fine and I was to be put on their offender list.

MR. MITCHELL: I'm just going to object to any of this testimony. I don't think it's relevant to the ineffective assistance of counsel allegations against Mr. DeJong. The previous attorney is not here today.

THE COURT: Right.

MR. MITCHELL: Any of this testimony is

not relevant.

MR. ARIAIL: The only issue is, and I don't know, I'm trying to piece together this with him, is whether or not there's a double jeopardy issue. I don't know because I'm trying to understand exactly what he's got about Mr. Ball representing him or how it got to a judge that only gave him a $100 fine.

THE COURT: Okay. Let's -- then I'll tell you what, I'll hear a little bit of it, and we'll just kind of see where this goes.

BY MR. ARIAIL:

Q I'll try to be brief. So Mr. Ball had these charges. You said he went to trial in front of a judge; is that correct?

A Yes.

Q Who was the judge?

A I don't remember her name. It was a woman and it was in Family Court.

Q Okay. It was a Family Court decision. Do you remember that?

A It was in that court office.

Q You remember if it was a DSS case or if it was some type of --

A I don't know. I'm very naïve about this

kind of stuff?

Q I think you answered my question. It didn't appear that it was a criminal case in front of a jury of 12 people; is that correct?

A There was no jury, but I thought it was my trial.

Q Okay.

A I was under the understanding that I was on trial.

Q Okay. But at some point in time, Mr. Ball stopped representing you; is that correct?

A Mr. Ball retired.

Q Okay.

A He called me on a Friday and he told me he retired.

Q Okay.

A That Monday, the following Monday, the judge -- not the following Monday, but that day Dallas Ball retired, I received notice to be at roll call the following Monday.

Q Uh-huh.

A The following Monday, I saw the judge. He said we're going to bring you to trial again.

Q Right.

A I said, "My lawyer has retired. What do I

do?" He said, "You are to go to see the Public Defender's Office" ---

Q Okay.

A --- "and you are to pay them $200 a month."

Q Okay.

A He would not give me time to hire another lawyer.

Q Okay. So you went and did that?

A I went and did that. They sent me to -- they said they had too many cases. They sent me to a lawyer named Steven Alexander.

Q Okay.

A Mr. Alexander spent the better part of an afternoon with me, wrote down my whole defense, wrote down my whole story.

Q Okay.

A Everything. I mean, he had several pages that he wrote down. At the end of the meeting, he got up and excused himself for 10 or 15 minutes. And he came back and said, "I have a conflict of interest. I can no longer represent you."

Q Okay.

A I said, "What do I do?" He said, "Go back to see the Public Defender's Office."

Q Okay.

A Which I did. Then we proceeded to trial with Mr. DeJong.

Q Okay. As I explained to you, this is a PCR, which is dealing with ineffective assistance of counsel by Mr. DeJong. Okay?

A Yes, sir.

Q So we discussed this. I've gone through this. Me and you have had numerous conversations in regards to this case. What are you saying, or do you believe, Mr. DeJong did that would was inefficient or defective?

A Well, Mr. Alexander stood with the prosecution the whole second trial. It was later, I found out that he was with the prosecution on the first trial. I should have never been sent there. Once I was sent there, their whole story changed.

Q Okay. When you said you were sent there, what you mean by that?

A To Mr. Alexander, Steve Alexander.

Q Did you tell Mr. DeJong that Mr. Alexander had gotten all of this information from you and that he was now --

A Well, I assume they knew that. They are the ones that sent me there.

Q Did you tell him, specifically, about that?

A I don't know if I did or not, to be honest with you. I believe I brought it up with the woman at -- the secretary at the desk there.

Q At the Public Defender's Office?

A Yes.

Q But you didn't tell him, hey, before we go to trial, I'm going to let you know --

A I honestly don't know if I did or not.

Q Okay. Now, what other things are you saying that -- cause I discussed with you, and I've gone through and tried to look at various items -- where you believe that he did or was deficient?

A Well, I think there were things that -- I had a lot of trouble with the little girl, prior to the charges made. Those troubles were never brought up.

Q Okay.

A In regards to the little boy, everything is a lie. It never happened.

Q So you believe that he should have gone into a little bit more, in regards to the issues that you were having with the little girl; is that correct?

A Yes.

Q And do you believe that he did not do what

he needed to do to cross-examine the little boy in regards to his statements?

A Well, you know, I don't know how any of this works. I've never been in trouble in my life, until this happened. I didn't know anything about how the court works. I didn't know anything about how to defend myself, and I didn't think I needed to defend myself because I didn't do anything wrong.

Q Tell me any other items that you want to bring up to the Court in regards to what you believe Mr. DeJong didn't do.

A While I can't judge on what Mr. DeJong did. I felt he did an honest job for me.

Q Okay.

A But I don't know.

Q Okay.

A I -- up until this court, nobody has cared that I am innocent, nobody.

MR. ARIAIL: Your Honor, I have no further questions.

THE COURT: Any questions?

MR. MITCHELL: Just briefly.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Mr. Beekman, how are you today?

A I'm fine. How are you?

Q I'm doing well. I just have a few questions for you. I heard you say, just now, that Mr. DeJong did an honest job for you. Is it fair to say that he did a good job for you?

A No.

Q No, he didn't?

A It's not fair to say that.

Q No?

A I'm innocent and I'm in prison.

Q I understand that. Let me ask you this, how many times did he meet with you to prepare for trial?

A I think twice.

Q Twice? Did he go over any type of discovery with you in anticipation of a trial?

A Yes, he did.

Q He did?

A Yes, he did.

Q Were you able to talk with him about a trial strategy and what you guys were going to present?

A Yes, I did.

Q Okay. And did you give him any type of leads or witnesses or folks that you wanted to call on your behalf?

A Most likely.

Q Did he comply with those things that you asked him to do?

A I didn't have any witnesses. I wasn't allowed to have any.

Q Okay. All right. Do you recall discussing whether you were going to testify at trial or not?

A Pardon.

Q Do you recall whether you were going -- do you recall discussing with him whether you going to testify at trial or not?

A Well, yes. Obviously, yes, we did.

Q Okay. So he had all of those discussions with you. Do you ever recall if he ever discussed with you about pleading guilty at all?

A He did.

Q Okay.

A And I wasn't guilty.

Q So you decided that you were going to trial, correct?

A They offered me a plea bargain.

Q You declined?

A I declined.

MR. MITCHELL: Okay. Judge, that's all the questions I have.

THE COURT: All right. Any other questions?

MR. ARIAIL: No follow-up, Your Honor.

THE COURT: All right. And --

MR. ARIAIL: I call Mr. DeJong to the stand.

THE COURT: All right. Fine.

JOHN DEJONG

having first been duly sworn, testifies as follows:

THE CLERK: Thank you. Please state your full name for the record.

THE WITNESS: John, J-o-h-n, William, W-i-l-l-i-a-m, DeJong, spelled D-e-j-o-n-g.

DIRECT EXAMINATION

BY MR. ARIAIL:

Q All right. Mr. DeJong, you represented Mr. Beekman in this case, correct?

A I had that pleasure.

Q Okay. And as part of this, did you meet with him and discuss the evidence that was going to be used against him?

A We did.

Q Do you think that he understood, I guess, the evidence that was there and how it was going to be presented at trial?

A I think he understood. Of course, he denied all the allegations from the outset.

Q Right.

A I was the third lawyer involved in his case.

Q Okay. Now, let's go -- I'm going to talk to you, real quick, about the plea offer. He was given a plea offer at some time, correct?

A He was. I think that was when -- I had it just a moment ago. I think Mr. Alexander was still representing him at that point in time, because Mr. Alexander actually had him right across the face of the offer. Here it is. Yes, Mr. Alexander got a plea offer on May the 2nd of 2011. There is a notation on the offer: received by defendant 5/9 of 2010, and signed Richard Beekman.

Q Okay. And what was the plea offer for?

A The plea offer was to plead to one -- well, under the old law, one lewd act and then also they offered to -- if I'm reading it correctly, which I believe I am -- reduce the criminal sexual conduct with a minor first degree to a lewd act with a minor. So they were offering to let him plead to two lewd acts for 15 years and a -- for 15 years as a negotiated plea. Then, the notation of the solicitor,

"This is my final offer. If he does not accept, I will put him on the trial docket for trial term -- looks like July of 2011."

Q Okay. And he turned that down, correct?

A Yes.

Q All right. Let's go back through a little bit of history of the case. Maybe you can fill us in. He says he had three attorneys in regard to this. What is your recollection of how his representation went along?

A I'm sorry. Would you say --

Q I guess what I'm trying to figure out is, do you recall or have any recollection of Dallas Ball representing him and then going into Steven Alexander?

A I don't have any recollection of that, but I do see some correspondence from Mr. Dallas Ball early on saying that he represented Mr. Beekman in these charges and actually had requested discovery, the way it appears from the correspondence. I don't know exactly what happened between Mr. Beekman and Mr. Ball. I wasn't privy to any of that. He did, at some point in time -- I'm not sure if he applied -- we used to have a judge in Pickens that, even if somebody did not qualify, he would appoint us. And

this may be what happened in Mr. Beekman's case and him saying that he was to pay $200 a month. I know this judge would do that from time to time. I don't know. But initially, when the Public Defender's Office in Pickens County got appointed, he was assigned to Mr. Steven Alexander.

Q Okay.

A At this point in, I guess we could say, my relationship with Mr. Alexander, I didn't realize what a problem that -- what problem we were facing, because he also did a lot of the -- well, he represented the lay guardian ad litem in Family Court. And there was so much of an overlap in, perhaps, children that were involved with clients who were charged with charges similar to these. I think that's what happened in this case. Mr. Alexander realized -- he did have the case for a while, but he realized, as we were going down the road, that he had been involved in a Family Court action.

Q Okay.

A So then it came back and I got it.

Q All right. After you got it, did you -- what I'm trying to get into is, did you hear anything or see anything or did you get any information showing that he had already been tried on these

matters and that Dallas Ball had had a resolution of that?

A No. I see nothing of that. There may be some confusion, again, with Mr. Alexander's situation. Going back to that a little bit, there may well have been some DSS hearings in Family Court.

Q Okay.

A That, I don't know.

Q But there were no double jeopardy issues that you were aware of?

A I did not see anything that there had ever been a jury sworn, a mistrial, anything along those lines.

Q Okay. In regards to Mr. Alexander, his representation, did he -- Mr. Beekman says that he was either at trial or was behind the solicitor during the trial -- I don't know -- if he was providing information? Do you remember any of that?

A I don't recall that. That's where, again, I'm wondering -- I'm speculating, yes, that there's some confusion between the General Sessions criminal charge and the DSS case.

Q Okay.

A I suspect that it was very probable, on any DSS case, that Mr. Alexander would have been in the

courtroom.

Q Okay. But you saw nothing where there was a potential conflict with Mr. Alexander and in your representation of Mr. Beekman at the trial?

A None, whatsoever.

Q Okay. Now --

A I will say this, I had never discussed Mr. Beekman's case with Mr. Alexander.

Q Got it. Now, as part of your representation of him, I know this was a case where two children had alleged some sexual abuse by Mr. Beekman. One of them was a girl and then another one was a boy. He indicated, during his testimony, that you never brought up any of the issues that he was having with the little girl. Do you remember -- I know there was an incident which involved him locking her out of a room while they were in Charleston. Do you remember other things you and him discussed that could have been raised to show that this girl was biased against him?

A I honestly don't. I'm not saying he didn't.

Q Right.

A I understand the case has some age to it, obviously. I'm not using that as an excuse, but I don't remember that and I don't know if I brought any

of that up on cross-examination of the child, or not.

Q Okay. And he indicated that the boy had lied on the stand. Did you do what you could to, I guess, cross-examine the child? Or do you remember anything about that?

A Yes. And any time you are cross-examining a child, you have to do it, in my opinion, very delicately. You can't hammer on them. You can, but I don't think it goes over well with a jury.

Q Right.

A So you have to do it -- beg your pardon -- as delicately as you can.

Q Okay. Were there any other items or any other things that you saw that would have helped him in defense of this -- it was pretty much the kid's statements against him?

A Yes.

Q Were there any other items that you could've brought up or any other defenses or --

A Beg your pardon.

THE COURT: Do you need anything?

THE WITNESS: No, just poured some water. I think that will work. Thank you.

I can't think of anything.

THE COURT: Okay.

MR. ARIAIL: Your Honor, I have no further questions.

THE COURT: All right. Mr. Mitchell?

MR. MITCHELL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. DeJong?

A Good afternoon, sir.

Q How long have you practiced law here in South Carolina?

A 42, 43 years, I believe.

Q And is it fair of me to say that a lot of those years have been devoted to criminal law?

A Yes, either as a prosecutor or as a public defender.

Q Very good. You were appointed to this case, correct?

A The Public Defender's Office was appointed. Yeah, apparently, that came as a result of -- again, I don't know what happened with Mr. Ball. Apparently, he did, initially, represent Mr. Beekman. It came to our office. Mr. Alexander was one of our contract lawyers. He was assigned the case, initially.

Q Okay. And after being appointed, you met with Mr. Beekman and talked about the charges with

him, correct?

A Yes.

Q Talked about the potential penalties that he would be facing, correct?

A Yes.

Q Okay. Did he ever indicate to you that he didn't understand any of what you were saying to him?

A No, sir.

Q Okay. So no competency issues that you ever felt?

A I never saw anything that would raise a red flag as to competency.

Q Very good. Do you recall -- I know it's been quite some time, what type of investigation you did in this matter, at all?

A I don't recall. I think, as Mr. Beekman said, there were no witnesses as was obviously -- obvious to me, at any rate. In this type of case, there usually are no witnesses. I am not, again, saying that Mr. Beekman did anything wrong. A jury did that. But other than that, no, I can't say that I did any investigation. I spent a lot of hours going over the discovery.

Q I guess, to that point, was it Mr. Beekman's contention that these things never

happened, correct?

A Yes.

Q That would have been -- was that the trial strategy going into trial?

A That was the only trial strategy we had.

Q I think we touched on it earlier, about plea offers and plea negotiations. Was it always his contention that he would not plead guilty?

A Yes.

Q Okay. I want to talk to you a little bit about the trial itself. At the beginning of the trial, you made a motion to sever the actual charges, correct?

A I did.

Q Okay. What was the basis of that, if you could recall?

A That the charges were -- the two cases did not arise out of, basically, the same set of circumstances, the time frames, may have been a couple of other things I argued. I don't remember, but I think that was the main thing.

Q The judge denied that -- that motion, correct?

A Rather summarily.

Q Okay. And I want to talk to you about some

allegations that the applicant has alleged in his application, one of those being that you didn't object to the Court's charge to the jury that the victim's testimony need not be collaborated.

A Yes.

Q Did that issue come up at trial?

A I think it did. I think I objected to it, but I don't know. I'd have to go back and look at the transcript.

MR. MITCHELL: I would note for the record, Your Honor, on Page 360 of the transcript, Mr. DeJong did object to that charge. He was overruled.

BY MR. MITCHELL:

Q And then the second allegation that he made in his application was that you failed to object to Dr. Henderson's -- her hearsay testimony solicited by the prosecution. Could you tell me a little bit about that?

A I did not object. Perhaps, in retrospect, I should have. If -- something sticks in my mind is that there is an exception to the hearsay rule for a treating physician testifying as to information gleamed for diagnostic or treatment purposes. Could be wrong, but there's something that sticks in my

mind about that.

THE COURT: You're correct.

THE WITNESS: Thank you, ma'am. Now, in retrospect, perhaps I should have objected because I don't think Dr. Henderson was really doing -- it was -- well, I'm making no sense. Let me stop here for a minute. Dr. Henderson was doing a forensic examination and not, in one sense, necessarily for diagnosis or treatment. So if we made that distinction, then perhaps yes, I should have objected.

BY MR. MITCHELL:

Q Based on that rationale, you didn't feel the need to?

A Exactly.

MR. MITCHELL: Judge, that's all the questions I have.

THE COURT: All right. Any other questions for this witness?

MR. ARIAIL: No follow-up, Your Honor.

THE COURT: Sir, you can step down.

THE WITNESS: Thank you, ma'am.

MR. ARIAIL: That's our case, Your Honor.

THE COURT: All right. Anything else?

MR. MITCHELL: The State has no witnesses,

Your Honor.

THE COURT: Mr. Beekman, I am -- I'm going to take this matter under advisement. I'm going to think about the things that you testified to. I need to take a look at the file in this case further. I've looked at it some, but this is the file, so it will take me little time to do that. I'll be issuing a decision fairly shortly, probably within a couple of weeks. All right.

MR. BEEKMAN: Thank you, ma'am.

THE COURT: Yes, sir.

(Proceedings are concluded at approximately 12:25 p.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens, South Carolina, on this 27th day of August, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Richard Burton Beekman, #347134 Applicant, v. State of South Carolina, Respondent.	2017-CP-39-0168 **ORDER OF DISMISSAL**

CLERK OF COURT
PICKENS CO., S.C.
2018 MAY 21 A 8:38

This matter comes before the Court by way of an application for post-conviction relief filed on February 10, 2017 by Richard Burton Beekman (Applicant). Respondent made its Return on or about July 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 John W. DeJong, 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 presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Pickens County Clerk of Court. In September 2009, the Pickens County Grand Jury indicted Applicant for committing or attempting lewd act upon a child under

the age of sixteen (2009-GS-39-1404), and criminal sexual conduct with a minor under the age of eleven, first degree (2019-GS-39-1405). John W. DeJong, Esquire, represented Applicant. Jenny L. Barwick, Esquire, prosecuted the case. On July 25-28, 2011, Applicant proceeded to trial before the Honorable G. Edward Welmaker. The jury found Applicant guilty as indicted. Judge Welmaker sentenced Applicant to imprisonment for consecutive terms of fifteen years for committing or attempting to commit lewd act upon a child under the age of sixteen and thirty years for criminal sexual conduct with a minor under the age of eleven.

Applicant filed a timely notice of appeal. Dayne C. Phillips, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on June 26, 2013. State v. Beekman, Op. No. 5145 (S.C. Ct. App. filed June 26, 2013). Applicant filed a petition for rehearing on July 11, 2013. In an order dated August 22, 2013, the Court of Appeals denied Applicant's petition for rehearing.

Applicant then filed a petition for writ of certiorari to the South Carolina Supreme Court on November 22, 2013. By order dated July 25, 2014 the Supreme Court granted certiorari. Carmen V. Ganjehsani, Esquire, of the Office of Appellate Defense perfected the appeal. The Supreme Court affirmed Applicant's conviction on April 13, 2016. State v. Beekman, Op. no. 27623 (S.C. Sup. Ct. filed April 13, 2016). The remittitur was returned to the circuit court on April 29, 2016.

FACTUAL HISTORY

The victims' mother and Applicant met while the victims' mother was working as a pharmacist at CVS Pharmacy. (R. p. 144-45). She and Applicant began dating after she transferred her employment to Ingle's Pharmacy. (R. p. 145, lines 15-20). The victims' mother, along with the victims, moved in with Applicant around October 2005, and she and Applicant

married on June 3, 2006. (R. p. 146, lines 9-17). During this time, the victims' biological father had joint custody of the victims and kept them every other week. (R. p. 146, lines 10-15). In the beginning, Applicant had a good relationship with the victims and spent quality time with them, although the female child (Stepdaughter) was not at home much since she kept very busy with cheerleading and tumbling activities. (See R. p. 57-59; p. 92-94; p. 146-47). However, on July 7, 2008, Stepdaughter, who was then twelve years old and "very little" and physically immature for her age, disclosed to her mother that Applicant had sexually abused her earlier that morning. (R. p. 56-76; p. 149-150).

The previous night, Stepdaughter slept on the couch in the living room. (R. p. 62-63). She slept with blankets and wore underwear, cheerleader bloomers, and pajama pants. (R. p. 65). Stepdaughter had trouble sleeping that night, so her mother gave her half of a melatonin tablet to help her sleep. (R. p. 65-66; p. 173, lines 2-22). Stepdaughter awoke around 4:30 am to find Applicant touching her private area. (R. p. 66-67; p. 90, lines 13-21). Her blankets were on the floor and Applicant had pulled her underwear and bloomers down a bit. (See R. p. 67, lines 3-13). A news program was on the television at the time. (R. p. 68, lines 21-23). When Applicant realized that Stepdaughter was no longer asleep, "he jumped up and hesitated and asked where the remote was." (R. p. 68, line 24 – p. 69, line 1). However, the remote was sitting directly in front of Applicant in plain view on the coffee table. (R. p. 69, lines 2-9). Stepdaughter grabbed the remote and threw it at Applicant, and Applicant left the room. (R. p. 69). Stepdaughter was "shocked" at what Applicant had done. (R. p. 73, lines 21-23). Stepdaughter decided to tell her mother about the abuse as soon as she "could get her alone." (R. p. 70, lines 1-5).

Later that afternoon, Applicant picked up Stepdaughter and her brother from their babysitter's house. (R. p. 70, lines 17-21). As Stepdaughter was getting in the truck, Applicant asked Stepdaughter if she was "mad at him." (R. p. 70, lines 20-23). Stepdaughter, still feeling scared of Applicant, did not verbally respond but simply got in the truck. (R. p. 71, lines 2-15). When they arrived at home, Stepdaughter stayed in the presence of her brother and waited for their mother to come home. (R. p. 72-74). When her mother arrived home from work that evening, Stepdaughter immediately pulled her into the bathroom and told her what Applicant had done. (R. p. 75-76). Her mother became "really upset" and decided to take the children to their grandmother's house. (R. p. 76, lines 1-14). Applicant tried to prevent Stepdaughter from leaving by stating that she couldn't leave because her room was a mess. (R. p. 76, lines 15-20). Nevertheless, the victims' mother and the children did proceed to the grandmother's house that night, and, in fact, they never returned to live with Applicant. (R. p. 77). Subsequently, Stepdaughter told her biological father about the sexual abuse by Applicant and they ultimately reported the incident to the police. (R. p. 77-78). The victim was later placed in counseling as a result of the abuse. (R. p. 79).

While the victims were living with their grandmother, Stepdaughter's brother (Stepson), who was then eight years old, made a disclosure of sexual abuse by Applicant. (R. p. 57, lines 12-19; p. 72, lines 7-8; p. 79-80; p. 149, line 19). He made this disclosure of abuse around the time Stepdaughter told him, for the first time, what Applicant had done to her. (R. p. 82-84; p. 211-17). Prior to making his disclosure, Stepson had been "freaking out," in that he had been pulling his hair, hiding in the closet, and crying. (R. p. 80-81; see also p. 131-32). He had also been making drawings of Applicant dying, which Stepdaughter found balled up in the trash can. (R. p. 82-83).

Stepson, who was eleven years old at the time of trial, testified that he and Applicant initially got along "pretty well" and hung out "like buddies." (R. p. 122, lines 10-23). However, their relationship quickly deteriorated after Applicant began sexually abusing him.[1] (See R. p. 122-30). Applicant first touched Stepson on his private part (which he referred to as his "worm") underneath his clothes while they were in Applicant's bedroom watching a news program on television. (R. p. 124-25). Applicant told Stepson that he shouldn't "tell" because Applicant might get in trouble. (R. p. 125). Applicant touched Stepson's private part underneath his clothing a second time under similar circumstances, i.e., they were in Applicant's bedroom and the news was on television. (R. p. 125-26). On a third occasion, Applicant forced Stepson to touch Applicant's private part underneath Applicant's clothing. (R. p. 126, lines 14-24).

Subsequently, Applicant anally penetrated Stepson with his penis, which Stepson found painful. (R. p. 127-29). This also occurred in Applicant's bedroom while the news was on television. (R. p. 128). During this incident, Stepson's clothing was pulled down but not removed. (R. p. 128-29). Applicant told Stepson not to tell anyone about the incident because Applicant would get in trouble. (R. p. 129, lines 18-25). He also told Stepson, at some point during these incidents of sexual abuse, that he would hurt Stepson's family if he told. (R. p. 130, lines 1-6). Stepson confessed that, during the time he was being abused by Applicant, he would often sleep in his closet or with his sister so that Applicant would not find him. (R. p. 130-31). Stepson's mother confirmed this and noted that Applicant "really wanted" Stepson to sleep in his own room in his own bed. (R. p. 158, line 18 – p. 159, line 3). She also stated that, prior to Stepson's disclosure, he had been acting "terrible" and was scratching his skin, banging his head,

1 The testimony regarding Applicant's acts of sexual misconduct with Stepson prior to anal penetration were admitted at trial over Applicant's objection. (See R. p. 2-12; p. 37-39; p. 123-24). The admission of these prior bad acts was not challenged on appeal. (See Appx, p. 8).

crying, and saying that he had a "secret." (R. p. 163-64). The victims' mother saw Stepson's drawings depicting Applicant dying. (R. p. 164-65).

Following Stepson's disclosure of Applicant's abuse, his mother immediately called law enforcement and "rape crisis." (R. p. 167, lines 7-16). She testified that both children were subsequently placed in counseling and remained in counseling. (R. p. 169). She also stated that both her children changed after Applicant's abuse. (R. p. 170). She stated that Stepdaughter still cries and expresses that she feels "dirty." (R. p. 170, lines 17-18). Meanwhile, Stepson is "very paranoid," cries, sometimes "wishes he could die," and is afraid Applicant will "come to the house and hurt us." (R. p. 170, lines 18-25). Stepson also expressed fear he was gay as a result of the abuse. (R. p. 171, lines 4-17; see also p. 190, lines 8-24).

After Stepson's abuse was reported to law enforcement, he was referred for a forensic interview and a medical examination. (R. p. 218-314). Stepson participated in a forensic interview with Shauna Galloway-Williams on July 29, 2008. (R. p. 263). Stepdaughter also met with Galloway-Williams. (R. p. 285). At trial, Ms. Galloway-Williams was qualified as an expert in child counseling and forensic interviewing. (See R. p. 250-52). Galloway-Williams testified that both victims disclosed sexual abuse to her and both stated that it happened in their home. (R. p. 285-91). The videotape of Stepson's forensic interview was introduced and published at trial over Applicant's objection. (R. p. 292-93).

Dr. Nancy Henderson testified that she conducted a medical examination on Stepson on July 31, 2008. (R. p. 221). It was her understanding that the act of sexual abuse involving anal penetration occurred approximately three weeks prior to the exam. (R. p. 235, lines 8-13). Dr. Henderson stated that Stepson complained of symptoms including anxiety and sleeping problems. (R. p. 224-25). Dr. Henderson testified that she conducted an examination of Stepson

which revealed some redness on the outer part of his buttocks area and a little bit of redness on the top part of his penis, but otherwise, the exam was normal. (R. p. 227, lines 8-12). Dr. Henderson stated that in ninety percent of cases where children are abused and there is a history of penile penetration in the rectal area, the rectal examination will be normal. (R. p. 228, lines 3-10). She explained that lacerations, if any, in the rectal area heal "very, very quickly within hours to days;" she also explained that Stepson did not experience any bleeding from his rectal area at the time of the abuse, which was not unusual because the area was made to "stretch instead of tear." (R. p. 228-29; see also p. 238). She testified that, assuming the penile penetration occurred on July 6, 2008, it would be very likely that there would have been no evidence of it at the time of the exam on July 31, 2008. (R. p. 229, lines 2-13).

After the State completed the presentation of its evidence, Applicant elected not to testify and the defense rested without putting up any evidence. (R. p. 318). The jury ultimately found Applicant guilty of both charges. (R. p. 362, lines 11-19).

ALLEGATIONS

1. "Ineffective Assistance of Counsel," in that:
    a. "Defense counsel failed to 'OBJECT' to the court's prohibited charge that a 'A VICTIM'S TESTIMONY NEED NOT BE CORROBORATED" a fact for the jury to determine;"
    b. "Defense counsel failed to 'OBJECT' to Dr. Nancy Henderson's M.D. hearsay testimony solicited by the prosecution that corroborated [the victim's] testimony of facts of the assault."

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified he discussed the evidence in his case with Trial Counsel prior to his second trial. He testified prior to being represented by Trial Counsel he had hired Dallas Ball, Esquire, the day after he was arrested to represent him. Applicant testified no discovery was

provided to Mr. Ball. He testified he went to trial before a women judge in family court. Applicant testified he was not sure if there was a companion DSS case along with his criminal charges but there was no jury. He testified Mr. Ball retired and the following Monday he got an appointment from the Public Defender's Office after appearing at a roll call prior. Applicant testified Steven Alexander, Esquire, was appointed to represent him. He testified he and Mr. Alexander talked extensively that day about the case and possible defenses. Applicant testified Mr. Alexander then informed him there was a conflict of interest and Applicant needed to get another attorney. He testified Trial Counsel was then appointed to represent him. Applicant testified he believed Mr. Alexander was working with the prosecution the whole time to help them with their case. He testified he was not sure if he told Trial Counsel that information but he may have told the secretary at the Public Defender's Office. Applicant testified he had a lot of trouble with the little girl prior to being charged and those things were never brought up. He testified all the allegations concerning the little boy was a lie. Applicant testified he believed Trial Counsel should have brought up issues he had with the little girl and more vigorously cross-examined the little boy. He testified he believed Trial Counsel did "an honest job" for him. Applicant testified no one had cared that he was innocent.

On cross-examination, Applicant testified he was innocent. He testified he only met with Trial Counsel twice. Applicant testified Trial Counsel reviewed discovery with him, discussed trial strategy, what they were going to present and talked about potential witnesses. He testified he did not want to plead guilty because he was innocent.

Trial Counsel's Testimony

Trial Counsel testified he was the third lawyer involved in Applicant's case. He testified there was a plea offer from the state when Mr. Alexander represented Applicant. Trial Counsel

testified Applicant always denied doing anything to the victims. He testified the plea offer extended by the state was for Applicant to plead guilty to one count of a lewd act and the state would also reduce the criminal sexual conduct with a minor first degree to another lewd act for a negotiated sentence of fifteen years. He testified the offer was received by Applicant who rejected it. Trial Counsel testified Mr. Ball was Applicant's first attorney and requested discovery in the case but he was not sure how or why Mr. Ball got relieved from Applicant's case. He testified Mr. Alexander was assigned through the Public Defender's Office but was relieved because of a conflict as Mr. Alexander was counsel for the guardian ad litem in the family court case. Trial Counsel testified there was no double jeopardy issues because Applicant's prior case was a DSS case in family court. He testified the allegations concerning the little girl included issues that Applicant locked her out of a room in Charleston. Trial Counsel testified he tried to thoroughly cross-exam the little boy during trial.

On cross-examination, Trial Counsel testified he had practiced law for forty-two years and been a prosecutor and public defender during that time. He testified he was appointed to represent Applicant through the Public Defender's office. Trial Counsel testified he discussed with Applicant his charges, defenses and evidence the state had against him. He testified he did not recall what type of investigation he did and testified it was common for him to not call witnesses in these types of cases. Trial Counsel testified he spent a lot of time going over the discovery in this case. He testified his trial strategy was that Applicant was innocent because that was the only strategy they had. Trial Counsel testified the motion to sever was based on grounds that these charges did not arise out of the same time frame or scenario. He testified he did object to the trial court's charge to the jury concerning a victim's testimony need not be corroborated. Trial Counsel testified he believed the doctor's testimony was hearsay but that he thought it fit

into a hearsay exception regarding medical diagnosis. He testified he did not think he needed to object to her testimony because of this exception.

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 object to Jury Instruction

Applicant alleged Trial Counsel was ineffective for failing to object to the trial judge's charge to the jury. Pursuant to S.C. Code Ann. § 16-3-657, the trial judge in this case instructed the jury during his charge "that a victim's testimony need not be corroborated" (R. p. 352, lines 2-3). In 2016, the South Carolina Supreme Court held that charge to be unconstitutional State v. Stukes, 416 S.C. 493, 787 S.E.2d 480 (2016). Here, this Court finds Trial Counsel was not ineffective regarding this allegation. First, as an initial matter this Court would note Trial Counsel did in fact object to the jury charge given by the trial judge as evidenced by the record. (R. p. 354, lines 10-14). Furthermore, this Court finds even if Trial Counsel had not objected to the jury charge he would not have been ineffective because at the time of Applicant's trial the jury charge had not been rendered unconstitutional. Stukes was decided almost three year after Applicant's trial. No South Carolina court has ever required an attorney to anticipate or discover changes in the law, or facts which did not exist, at the time of the trial. Thornes v. State, 310 S.C. 306, 309-10, 426 S.E.2d 764, 765 (1993). The relevant time frame for analysis is when the alleged ineffectiveness occurred. Id. at 310. While the rules of preservation require that objections to the admissibility of evidence be specific, they most certainly do not require clairvoyance. State v. Tapp, 398 S.C. 376, 728 S.E.2d 468 (2012). Therefore, Counsel cannot

reasonably be held ineffective for failing to object based on case law that had not even been decided at the time of trial. 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.

Failure to Object to Hearsay Testimony

Applicant alleged Trial Counsel was ineffective for failing to object to the medical expert's testimony as it constituted hearsay. Trial Counsel testified he believed the doctor's testimony was hearsay but that he thought it fit into a hearsay exception regarding medical diagnosis. He testified he did not think he needed to object to her testimony because of this exception. Here, this Court finds Trial Counsel was not ineffective regarding this allegation as the testimony was appropriately admitted under the medical diagnosis exception of Rule 803(4), SCRE. Hearsay is not admissible unless it is pursuant to an exception provided by the South Carolina Rules of Evidence or other means. Rule 802, SCRE. A statement consistent with the victim's testimony in a criminal sexual conduct case is not hearsay when it is limited to the time and place of the incident. Rule 801(d)(1)(D), SCRE. Further, "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment" are admissible pursuant to the trial court's discretion. Rule 803(4), SCRE. 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.

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. Reefer 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

2018 MAY 21 A 8:34

CLERK OF COURT
GREENVILLE COUNTY
SOUTH CAROLINA

WITNESSES

Teddi Palis

Pickens County Sheriff's Office

8/9/2008

ARREST WARRANT NUMBER

J487851

ACTION OF GRAND JURY

TRUE BILL

Date SEP 15 2009

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Date:* 18, 2011

DOCKET NO. 2009-GS-39- 1404
WDR

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2009

THE STATE

vs.

RICHARD BURTON BEEKMAN

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

Certified Copy
Clerk of Court
Pickens County, SC
Dated 4-6-2017

VNG

500

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on the Grand Jurors of Pickens County present upon their oath:

That RICHARD BURTON BEEKMAN did in Pickens County, on or about the 7th day of July, 2008, 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 L. W., 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.

Certified Copy
Harold P. Williams
Clerk of Court
Pickens County, SC
Dated Feb 2017
MS

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

SOLICITOR