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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Greenville County

Honorable Frank R. Addy, Circuit Court Judge

ROBERT WILSON WOODS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001245

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 State of South Carolina) 2012-GS-23-2852, 2853
3)
4 vs.) TRANSCRIPT RECORD
5 Robert Wilson Woods)
6 Defendant)
7)

7 April 8, 2013
8 Greenville, South Carolina

9 ---
10 HONORABLE ROBERT E. HOOD, Presiding
11 ---

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

13 SUSTAKOVITCH SUSTAKOVITCH, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 TIM SULLIVAN, Esquire
17 Attorney for the Defendant

18
19
20
21 Caroline Hiskell
22 Thirteenth Circuit Court Reporter
23
24
25

I N D E X

WITNESSES:	DR	CR	RED	REC
Bob Perry	5	11		
Cheryl Cromartie	16	23		
Christine Carlberg	42	---		

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State versus Robert Woods

P R O C E E D I N G S

THE BAILIFF: All rise. The Honorable H. Dean Hall presiding.

THE COURT: Good morning everybody. We're on the record in 2012-GS-23-2852 and 2853. This is the State of South Carolina versus Robert Wilson Woods. Mr. Woods is present in the courtroom. He's represented by Tim Sullivan. For the State is Ms. Christy Sustakovitch. Did I say that right?

MS. SUSTAKOVITCH: Yes, sir, Your Honor.

THE COURT: I may mess it up so just bare with me. Mr. Woods is charged in Indictment 2852 with lewd act upon a minor and in Indictment 2853 with criminal sexual conduct with a minor. We're going to do some pretrial motions now to start. The plan is to do some pretrial motions and we'll pick the jury later.

Ms. Sustakovitch.

MS. SUSTAKOVITCH: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. SUSTAKOVITCH: As to the first trial matter, the defendant has a prior conviction on his record from when he was a juvenile, criminal sexual conduct, and he is on the sex offender registry. The State wanted to make it a part of the record that we have no intention to

State versus Robert Woods

1 elicit that information during our case in chief. We
2 don't feel that it falls within any common scheme or plan
3 and would be inadmissible evidence to this trial.

4 We've cautioned our witnesses not to bring
5 that evidence out. I just wanted it to be on the record.

6 THE COURT: Mr. Sullivan, do you have
7 anything you want to say about that?

8 MR. SULLIVAN: Not about that, Your Honor,
9 but I've discussed this Robert and I reserve the right to,
10 if I want, on direct if he takes the stand of bringing it
11 out myself.

12 THE COURT: Yes, sir, absolutely.

13 MR. SULLIVAN: We talked about this yesterday
14 and we agreed -- this just came to my mind yesterday while
15 I was thinking about a case.

16 THE COURT: Understood.

17 Yes, ma'am.

18 MS. SUSTAKOVITCH: The next, Your Honor,
19 would be a brief Jackson v. Denno Hearing. The State
20 calls Investigator Bob Perry.

21 MR. SULLIVAN: We said we would stipulate. I
22 talked to Robert about it and went over it yesterday down
23 at the LEC. He said he made a statement voluntarily so I
24 don't think we would need that.

25 MS. SUSTAKOVITCH: Is there any question as

Bob Perry - Direct

1 to the substance of what the statements are going to be
2 that the State alleges he made? They are referenced in
3 the incident report that if there is an issue on that the
4 State would like to put it on the record.

5 MR. SULLIVAN: If it stays within the
6 parameter of the incident report, we have no problem with
7 that. We went over that yesterday.

8 MS. SUSTAKOVITCH: Your Honor, we would feel
9 more comfortable if we could just briefly put on the
10 record what we intend to elicit because I think there
11 could be some interpretation issues as far as what was
12 being said and I certainly don't want this to crop up in
13 the middle of trial.

14 THE COURT: Alright, let's just do it out of
15 an abundance of caution.

16 Mr. Woods, I understand you told your
17 attorney that you gave the statement voluntarily. Just
18 for the sake of protecting the record, we're going to have
19 the officer testify as to what was said and in what
20 context it was taken so I can make a determination on
21 whether the jury is permitted to hear that information,
22 okay.

23 DEFENDANT WOODS: Okay.

24 THE COURT: Yes, ma'am.

25 MS. SUSTAKOVITCH: The State calls

Bob Perry - Direct

1 Investigator Bob Perry.

2 THE BAILIFF: Investigator Perry, if you
3 would place your left hand on the Bible and raise your
4 right hand and face the judge, please.

5 THE CLERK: Do you swear or affirm to tell
6 the truth, the whole truth, and nothing but the truth so
7 help so you God?

8 INVESTIGATOR PERRY: I do.

9 BOB PERRY, having been duly sworn, testified
10 as follows:

11 Thank you.

12 DIRECT EXAMINATION

13 BY MS. SUSTAKOVITCH:

14 Q. Good afternoon, now, Investigator Perry.

15 A. Good afternoon.

16 Q. Where are you employed?

17 A. At the Greenville County Sheriff's Office.

18 Q. What's your position there?

19 A. I work as one of the investigators there in the
20 crimes against children's unit.

21 Q. Are you the lead investigator on the case
22 involving Robert Woods?

23 A. Yes.

24 Q. Was this defendant, in fact, arrested on the
25 charges that we're in court for today?

Bob Perry - Direct

1 A. He was.

2 Q. Did you try to talk to this defendant about the
3 allegations of the case?

4 A. Yes, ma'am.

5 Q. How did that interaction come about?

6 A. Basically after Mr. Woods was arrested I received
7 a call from the deputy that located him and said we're
8 transporting him to the Greenville County Detention
9 Center, would you like to talk with him before we actually
10 put him into the booking process. I said that I did and
11 then I met him up there on the outside of the department
12 before they actual went into the actual Detention Center.

13 Q. When you made contact with Mr. Woods, was he in
14 handcuffs?

15 A. He was.

16 Q. And where was he located? Was he seated?

17 A. I think he was sitting on either the curb or the
18 bench outside of the Detention Center.

19 Q. Did you advise him of his rights at this time?

20 A. I did. I read them off of a prepared text that I
21 carry with me.

22 Q. And what rights did you advise him of?

23 A. If you like I can read the exact same language
24 off the same card.

25 THE COURT: That would be great.

Bob Perry - Direct

1 THE WITNESS: I told Mr. Woods this is his
2 Miranda Rights: "You have the right to remain silent.
3 Anything you say can and will be used against you in a
4 court of law. You have the right to talk to a lawyer and
5 have him present with you while you're being questioned.
6 If you can not afford to hire a lawyer, one will be
7 appointed to represent you before any questioning, if you
8 wish, and you can decide at any time to exercise these
9 rights and not answer any questions or make any
10 statements."

11 BY MS. SUSTAKOVITCH:

12 Q. In your opinion, did this defendant understand
13 the words and the rights that you were reading to him at
14 that time?

15 A. Yes.

16 Q. What happened at that?

17 A. It was obvious he was kind of nervous and upset
18 over the whole issue and I didn't really even get a chance
19 to start asking him specific questions, he asked me a
20 question.

21 Q. What was the substance of your conversation when
22 -- let me ask you, did you do anything to make him start
23 asking you these questions?

24 A. No.

25 Q. Did you intimidate him in any way to have him to

Bob Perry - Direct

1 start asking you these questions?

2 A. No.

3 Q. And you believe his conversation where he
4 initiated these questions with you, was that voluntary?

5 A. It was.

6 Q. Tell me what the substance of that conversation
7 was, Investigatory?

8 A. He said basically kind of paraphrase the warrant
9 and said that all these incidents happened in September
10 and that wasn't true because "I" wasn't with them in
11 September because I was living with my mom.

12 Q. So he states he is not living at the incident
13 location in September, correct?

14 A. That's correct.

15 Q. Does he give you any other statements related to
16 contact with the children, specifically the victim in this
17 case? Do you need a copy of your report to refresh your
18 memory?

19 A. That's fine.

20 Q. It's written in there.

21 A. Yes.

22 MS. SUSTAKOVITCH: May I approach, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 MR. SULLIVAN: I have another one.

Bob Perry - Direct

1 BY MS. SUSTAKOVITCH?

2 Q. You just have certain statements in parenthesis.
3 I wanted to be clear.

4 A. I basically tried to scribble down quotes that he
5 made so I could understand clearly what he's talking
6 about.

7 Q. So he's told you that he doesn't live at the
8 incident location in September. And then what other
9 statements does he make related to his contact with the
10 victim in this case?

11 A. He stated, "I never lived there. I was only
12 there when Irene was home."

13 Q. Whose Irene?

14 A. Irene is the victim's mom. And he stated --
15 well, we talked about the context of the warrant a little
16 bit. He never denied anything that was in the warrant
17 itself, but he did state that, "I'm not saying somebody
18 didn't touch that child," but he never said it was him.
19 He just said, "I'm not saying somebody didn't touch that
20 child."

21 Q. Did he state to you contact in the mornings like
22 what the routine would be as far as can't have any contact
23 or not in the mornings and how he would get there and that
24 kind of thing?

25 A. Yeah, he basically told me that he didn't live

Bob Perry - Cross

1 there. He would come there to help take the kids to the
2 bus stop, get them off to school. He was only there when
3 Irene was home.

4 Q. Where was he saying that he lived at that point?

5 A. At his mom's house.

6 Q. And how far a distance from his mom's house to
7 the incident location?

8 A. I think he told me it was only a couple of miles
9 but I actually physically check it. It's actually three
10 miles.

11 Q. Was he stating to you he was walking three miles
12 in the morning to take the kids to the bus stop and he was
13 leaving? Is that the substance of what he was saying?

14 A. Correct.

15 MS. SUSTAKOVITCH: Your Honor, that would
16 pretty much be the substance of the statements he made.

17 THE COURT: Mr. Sullivan.

18 CROSS-EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Investigator, I'm not trying to trick anybody.
21 He knew about the allegations, I think, that he knew what
22 it was about, correct?

23 A. Yeah, because the warrants were read to him.

24 Q. He said on there, "I'm not saying somebody may
25 not have touched her but I didn't and I talked to her

Bob Perry - Cross

1 about her mood swings," is that correct?

2 A. That's correct.

3 Q. He's talking about her moodiness?

4 A. About the child's moodiness.

5 Q. **VICTIM**'s, correct?

6 A. Yes.

7 Q. Okay. I've asked Robert about it and he said you
8 were straight forward and nice and he made a statement
9 voluntarily.

10 THE COURT: Any further questions?

11 MS. SUSTAKOVITCH: No, sir.

12 THE COURT: Thank you, Investigator. You may
13 step down.

14 (Witness exits the witness stand.)

15 Mr. Sullivan, anything?

16 MS. SULLIVAN: Nothing further regarding the
17 statement, Your Honor.

18 THE COURT: Ms. Sustakovitch?

19 MS. SUSTAKOVITCH: May this witness be
20 excused for this hearing?

21 THE COURT: Yes, ma'am. I find based on the
22 totality of the circumstances surrounding the statement, I
23 have determined that the State has carried its burden of
24 proof showing the statement was made voluntarily, and
25 there was no threat, coercion or intimidation, and the

State versus Woods

1 statement will be admissible.

2 MS. SUSTAKOVITCH: Thank you, Your Honor.

3 The next matter is the State has filed notice
4 on defense counsel of a motion in limine in compliance
5 with the Rape Shield Statute. That's SC Code Section 16-3
6 659.1. Your Honor, has a copy of that if that could be
7 made part of the record, and this mandates limited
8 admissible of opinion evidence, reputation evidence or
9 specific incidents of sexual activity by the victims with
10 persons other than the defendant, and the State would ask
11 for an in-camera hearing for any attempt by defense
12 counsel to bring out this type of evidence. Certainly not
13 just to come out in testimony and then us having to back
14 up from there because it's very hard to unring a bell when
15 that kind of inadmissible evidence is just brought in.

16 Duck-tailing with that motion as we discussed
17 in chamber and I would put on the record the issue before
18 the Court at this point is there was a prior, what the
19 defense is going to allege, a prior false allegation by
20 the victim. The State would say that it was not a false
21 allegation by the victim. There was a prior investigation
22 that was conducted in 2009 and at the end of that
23 investigation law enforcement did not elect to pursue any
24 charges.

25 The State has filed that motion and has also

State versus Woods

1 attached the incident report from the main investigator,
2 Investigator Cheryl Cromartie who is in court. I would
3 call her to outline what the specifics of that
4 investigation were if Your Honor would like to hear that.

5 THE COURT: Mr. Sullivan.

6 MR. SULLIVAN: Yes, sir. I think we have
7 given you a copy of two cases of Sprouse and DeBorder(ph).
8 I think DeBorder is in line more than this is Sprouse.
9 Sprouse the victim never made a statement. It was
10 referred by the grandmother and the other is more in line
11 with what this case is about.

12 THE COURT: Does Mr. Sullivan need to go
13 through exactly what he wants to ask for you to get me --
14 not to ask those questions but to try to streamline it.
15 Would it be easiest for Mr. Sullivan to go ahead and tell
16 us what he wants to go into and then put up the
17 investigator?

18 MS. SUSTAKOVITCH: However Your Honor would
19 like to do it.

20 MR. SULLIVAN: I put in my motions.

21 THE COURT: I do not have a copy of that.

22 MS. SUSTAKOVITCH: Your Honor, just by way of
23 a record ---

24 THE COURT: Mr. Sullivan, I didn't get a copy
25 of that.

State versus Woods

1 MR. SULLIVAN: I thought it was put in the
2 file for you.

3 MS. SUSTAKOVITCH: The burden is on the
4 defense to try ---

5 THE COURT: That's what I was trying to
6 figure out exactly what it was from the beginning and that
7 way you would know where to go with Ms. Cromartie.

8 Thank you, sir.

9 MR. SULLIVAN: We've discussed this and we've
10 been talking about this for a week and this is not a
11 surprise witness.

12 MS. SUSTAKOVITCH: The investigator from the
13 2009 case is here as well as the forensic interviewer who
14 conducted that interview.

15 THE COURT: Ms. Sustakovitch, have you seen
16 Mr. Sullivan's offer of proof in his motion?

17 MS. SUSTAKOVITCH: I received it this
18 morning.

19 THE COURT: Okay.

20 MR. SULLIVAN: We've been talking about it
21 and I hadn't tried it yet so I had to put something in
22 writing to formalize what we've been talking about.

23 THE COURT: Nothing on this offer is any
24 surprise to you; is that right?

25 MS. SUSTAKOVITCH: No, sir.

Cheryl Cromartie - Direct

1 THE COURT: You want to call Investigator
2 Cromartie?

3 MS. SUSTAKOVITCH: Yes, sir, Your Honor. The
4 State calls Investigator Cheryl Cromartie.

5 THE BAILIFF: Investigator, would you place
6 your left hand on the Bible and raise your right hand and
7 face the judge.

8 THE CLERK: Do you swear or affirm to tell
9 the truth, the whole truth and nothing but the truth so
10 help you God.

11 WITNESS CROMARTIE: I do.

12 THE CLERK: Thank you.

13 CHERYL CROMARTIE, having been duly sworn,
14 testified as follows:

15 MS. SUSTAKOVITCH: Your Honor, if I may, may
16 I hand her a copy of the reports just to refresh her
17 recollection.

18 For the record, the State has passed up a
19 copy of the incident report from 2009 that Investigator
20 Cromartie was the lead investigator on, copy of the
21 forensic interview that was conducted at her request and
22 the medical report that was also part of her investigation
23 that she supervised.

24 DIRECT EXAMINATION

25 BY MS. SUSTAKOVITCH:

Cheryl Cromartie - Direct

1 Q. Investigator Cromartie, where are you employed?

2 A. Greenville County Sheriff's Office.

3 Q. And how long have you been employed there?

4 A. Twenty years.

5 Q. Taking you back to 2009, did you become involved
6 in an investigation in 2009 involving an allegation of
7 sexual abuse with the victim [REDACTED]?

8 A. Yes.

9 Q. Can you relay to the Court when you became
10 involved in that?

11 A. I was actually involved when the case was
12 assigned to me. There was a call in from a family friend
13 of the victim, [REDACTED], and she alleged there was some
14 sexual abuse that had taken place the year prior or within
15 that year that this report was received by the Sheriff's
16 Office.

17 Q. So the initial report to law enforcement was not
18 made by [REDACTED] herself, correct?

19 A. No.

20 Q. It was made by the complainant is a Deborah
21 Sanders. Do you know what capacity she was in [REDACTED]'s
22 life?

23 A. She was a family friend.

24 Q. You don't have to go into a ton of detail, but in
25 substance, according to this complainant, what was

Cheryl Cromartie - Direct

1 disclosed to her by the victim?

2 A. It was disclosed to her the victim, [REDACTED], she
3 was sexually abused by a subject by the name if Kevin. He
4 basically performed oral sex on her and he touched her on
5 the vaginal area, the buttocks area.

6 Q. This is according to this Ms. Sanders, the
7 complainant, correct?

8 A. Yes.

9 Q. [REDACTED] never told you that?

10 A. No.

11 Q. Is it standard practice in sex crimes
12 investigations for complainants, third hand people, to
13 come in and make allegations of abuse related to different
14 victims?

15 A. Yes.

16 Q. And is it also common place that sometimes what
17 they disclose is not what the actually victim says
18 happened?

19 A. Yes.

20 Q. Fast forward us in the investigation, did you
21 have direct contact with the victim, [REDACTED]?

22 A. Yes.

23 Q. And when did you do that?

24 A. I spoke with [REDACTED] on December 1, 2009.

25 Q. How old was [REDACTED] at the time?

Cheryl Cromartie - Direct

1 A. Seven at the time.

2 Q. Now, with young children seven years of age, are
3 you trained in how to talk with them and interview them?

4 A. Yes.

5 Q. And in your interview with [VICTIM], can you tell us
6 what she disclosed to you at that point related to any
7 possible sexual abuse?

8 A. During this interview with [VICTIM], I established
9 that she basically stated to me that she was touched on
10 her breast area and her vaginal area, which in terms she
11 used "pa-pa" for vaginal area and titties for the breast
12 area.

13 Q. Did you get a name of a potential perpetrator at
14 this point?

15 A. I did.

16 Q. What was that name?

17 A. Kevin.

18 Q. Next in the investigation did [VICTIM] have a
19 medical exam?

20 A. Yes.

21 Q. And who performed the medical exam?

22 A. Dr. Croswell.

23 Q. You know Dr. Croswell?

24 A. I do, yes.

25 Q. As part of your investigation, did you review her

Cheryl Cromartie - Direct

1 medical exam and her interview with VICTIM?

2 A. Yes.

3 Q. And during her medical exam -- initially you'd
4 been told it was somebody named Kelvin, correct?

5 A. Yes.

6 Q. During the name is it still Kelvin or had it
7 changed to something else?

8 A. It was Kelvin and then there's a Calvin.

9 Q. So at this point we have a difference of who the
10 potential perpetrator might be?

11 A. Yes.

12 Q. During this interview, do you see any disclosure
13 to Dr. Croswell related to any potential abuse? I direct
14 your attention to Page 4 of that report.

15 A. Okay. VICTIM basically stated that, in
16 Dr. Croswell's report, she's stating a Calvin. She's
17 making mention of a Calvin and she basically stated that
18 she had been touched on her feet, her pa-pa which is her
19 vaginal area. He touched her pa-pa with his hands.

20 Q. And her feet?

21 A. And her feet, yes.

22 Q. After the medical exam, is it standard for
23 children to have forensic exams in many of these cases?

24 A. Yes.

25 Q. Did you refer VICTIM to have a forensic exam?

Cheryl Cromartie - Direct

1 A. Yes.

2 Q. And did she, in fact, have a forensic exam?

3 A. Yes, she did.

4 Q. Taking us to that, what was the substance of that
5 examination as far as, and I'll direct you to Page 7 of
6 that, the conclusion of the interview what **VICTIM** was able
7 to disclose in that.

8 A. She was given two exams.

9 Q. Correct. I think those are summarizing.

10 A. The conclusion of this interview with therapist
11 Croswell she stated that she was touched on her leg and
12 body part and she was also touched on her buttocks.

13 Q. Continue reading, please.

14 A. "She did not know the identity of who touched
15 her, but at the end of the interview stated it was Kevin."

16 Q. Continue on, please.

17 A. At the end of the interview she reported that
18 Kevin touched her leg and arm and denied being touched on
19 her buttocks.

20 Q. Alright. You can continue on.

21 A. "During the first interview she stated that she
22 witnessed this man have sex with other girls, however, in
23 the second interview she denied this occurred until the
24 clinician questioned her about it and then she said he had
25 but did not know details about this."

Cheryl Cromartie - Direct

1 Q. Investigator Cromartie, there are multiple steps
2 in this investigation. At the end of the day, you're the
3 lead officer on the case, correct?

4 A. Yes.

5 Q. And did you, in fact, seek criminal charges
6 against anyone related to the investigation that you
7 conducted in 2009?

8 A. No.

9 Q. Why or why not?

10 A. Weighing the totality of the circumstances and
11 everything that surrounded it, I could not prove who the
12 actual subject would have been at the time and I just
13 didn't have enough information or details to pursue
14 criminal charges.

15 Q. Did you ever or did law enforcement every
16 determine that [REDACTED] had recanted in this case?

17 A. No.

18 Q. Did you determine that [REDACTED] had lied in this
19 case?

20 A. No.

21 Q. Did you, as a matter of fact from a law
22 enforcement perspective, believe that she was fabricating
23 and making up these allegations?

24 A. No.

25 Q. Is it common in your line of work where there is

Cheryl Cromartie - Cross

1 an unclear perpetrator and different disclosure, is it
2 uncommon that you would elect not to pursue charges?

3 A. That's not uncommon at all.

4 Q. Please answer any questions defense counsel has.

CROSS-EXAMINATION

6 BY MR. SULLIVAN:

7 Q. When this case first came up when Ms. Sanders
8 reported that [VICTIM] told her that Kevin had performed oral
9 sex on her and talked about candy at the store; is that
10 correct?

11 A. Yes, sir.

12 Q. That was one of the allegations; is that correct?

13 A. Yes.

14 Q. Now, in your interview with her on Page 3 of 6,
15 you asked [VICTIM] what's her dad's name, correct?

16 A. Yes.

17 Q. What did she say?

18 A. Kevin B[REDACTED].

19 Q. If you read over here it says, "Who is Kevin,"
20 and her answer is on Page 5 of 6 and could you start with
21 who is Kevin.

22 A. Okay. I asked who is Kevin and [VICTIM]'s answer
23 was given to me, "My mom's boyfriend. He kidnapped me and
24 rapped me."

25 Q. Go ahead and just read that.

Cheryl Cromartie - Cross

1 A. I also asked, "What do you mean when he rapped
2 you?" She stated, "He touched me on my titties and
3 pa-pa's hard with his hand." I asked her were clothes on
4 or off and she says, "My clothes on and Kevin's clothes
5 on. Why did he touch? Because he wanted to and told me
6 I'd better not scream. When did this happen? On December
7 21st. How do you know it happened on December 21st? It
8 was not Christmas yet and it was cold outside. This
9 happened in the morning. Where were you when this
10 happened? I was at his house of Rosefield Road. We
11 started fighting about him touching me. Where was your
12 mom? My momma was in the house."

13 Q. Besides the oral sex, we know Kevin B [REDACTED] is her
14 dad?

15 A. Yes.

16 Q. And then we have Kevin and she identifies him and
17 then she goes on to describe the graphic where he touched
18 her and things, correct?

19 A. Yes.

20 Q. If you would read the highlighted -- this is the
21 same thing -- highlighted portion there.

22 A. Okay. "He touched her pa-pa with his hands, her
23 clothes were on but he touched underneath her clothes.
24 When asked how it felt, she said it tickled, occurred one
25 time months ago."

Cheryl Cromartie - Cross

1 Q. So you have a situation where you know you have a
2 Kevin B [REDACTED] involved in the girls life.

3 A. Yes.

4 Q. It's kind of iffy about the oral sex, but here
5 you have two instances of her say he touched my titties
6 and pa-pa very hard.

7 A. Yes.

8 Q. And told me not to say anything, and here we have
9 she said he put his hands down in her pants an touched her
10 and it tickled; is that correct?

11 A. Yes.

12 Q. So we now we have Kevin B [REDACTED] who is related to
13 the father and specific where it happened, when it
14 happened, and what happened, did you ever interview Kevin
15 B [REDACTED]?

16 A. No.

17 Q. Why would you not interview Kevin B [REDACTED] when you
18 had this information?

19 A. I was not at that point yet. I referred her for
20 a forensic interview before continuing any investigation.

21 Q. When it was all said and done you never talked to
22 Kevin B [REDACTED] about these allegations?

23 A. No.

24 Q. You made a determination that she made all this
25 up or it didn't happen or she was too confused? Why did

Cheryl Cromartie - Cross

1 you not follow up on it?

2 A. I didn't follow up on Kevin B [REDACTED] because I
3 wanted to refer her for a forensic interview to get more
4 information and after receiving the information that I did
5 from the forensic interview and the medical exams, I just
6 determined that there was not enough evidence for me to
7 move forward or pursue criminal charges. Not only that, I
8 was basically told by the child's guardian at the time,
9 Ms. Sanders, that Kevin B [REDACTED] was not really a part of
10 this child's life.

11 Q. Ms. Sanders was the one the one that said she
12 gave him oral sex in exchange for candy, right?

13 A. I don't think Ms. Sanders stated it was Kevin
14 B [REDACTED].

15 Q. I think she referred to him as Calvin?

16 A. Calvin. Calvin, which is the mother's new
17 boyfriend.

18 Q. And she said that her mother's boyfriend
19 kidnapped her?

20 A. Yes.

21 Q. Now, you knew how Ms. Sanders got the ball
22 rolling?

23 A. You mean how I knew?

24 Q. Yes.

25 A. Calvin would take her to school, stop by the

Cheryl Cromartie - Cross

1 store, buy her something and then he would make her do
2 something. She also told me Calvin put her on the couch,
3 spread her legs, and put his hand down there.

4 MS. SUSTAKOVITCH: Your Honor, if I may, I
5 know this is a very loose hearing as far as hearsay, but
6 none of that was ever from **VICTIM** to any law enforcement
7 official. I just wanted to make that clear.

8 THE COURT: I got that.

9 MR. SULLIVAN: I didn't say it was, Judge.

10 THE COURT: What you are saying that's the
11 one who called the police and this is what she said to
12 him, right?

13 MR. SULLIVAN: That's how the ball got
14 started and then we know that Calvin, she said was her
15 boyfriend, and then in her other statement she said
16 Calvin, the boyfriend, kidnapped and raped her.

17 THE COURT: I got that.

18 MR. SULLIVAN: That's all I have. I
19 appreciate that.

20 MS. SUSTAKOVITCH: Unless Your Honor has any
21 further questions, the State has nothing else.

22 THE COURT: Is there a forensic interview
23 report on that?

24 MS. SUSTAKOVITCH: Yes, sir.

25 THE COURT: Do you have any objection to me

State versus Woods

1 looking at this, Mr. Sullivan?

2 MR. SULLIVAN: No, Your Honor, I referred to
3 her about touching inside the clothes.

4 MS. SUSTAKOVITCH: That also has the medical
5 report attached to it, Judge.

6 THE COURT: Give me just a second to look
7 through it. You can step down.

8 (Witness leaves the stand.)

9 Alright, Mr. Sullivan, tell me what your
10 argument is? Tell me what you want me to get into?

11 MR. SULLIVAN: Basically as far as the
12 testimony?

13 THE COURT: Tell me how you have shown that
14 that statement is false?

15 MR. SULLIVAN: The police said -- they had
16 the person's name, they had specifics of the boyfriend,
17 she was confused Kevin and Calvin and that sounds alike.
18 She had specifics about testing in certain areas and they
19 did the forensics and they never followed up and a similar
20 situation in this case and they proceeded to go to trial.

21 THE COURT: Yeah, but I mean the
22 threshold as I read the Boyer case, before I can make any
23 other determination or admissibility or consider any other
24 factors, I have to determine that the statements that were
25 made to law enforcement, the forensic interviewer or the

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1 doctor, or the medical provider whoever it was in
2 reference to the 2009 incident, have to be false.

3 MS. SULLIVAN: The only inference that I can
4 get from that, Judge, is she made the statements. There's
5 no question about that. The question is nobody believed
6 her and they didn't go talk to the perpetrator.

7 THE COURT: Just they didn't charge him, that
8 doesn't mean they didn't believe her.

9 MR. SULLIVAN: I have no other way to show
10 it. I can't get up here and hold her down and say you
11 lied. That's the only thing I can do.

12 THE COURT: There's no evidence before this
13 Court that anybody in law enforcement or the forensic
14 interviewer or the medical professional believed she was
15 lying. They just believed there wasn't enough evidence to
16 charge him.

17 MR. SULLIVAN: They have specific statements.
18 They have a person's name and that's what they've got
19 here. I think they assumed they didn't want to follow up
20 on it and I don't think they believed her. It was false
21 because if it was true, you follow up on it. It would be
22 a lewd act. You have the boyfriend you have identified as
23 Calvin B [REDACTED] and nobody followed up. I think somebody
24 thought it was false statements. You have enough here and
25 she got up and read to you what was did, he touched her

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1 body parts and put his hand down her pants, that's enough
2 for a lewd act. They have a name and a relationship to
3 the mother.

4 They talked to her. If they took this girl's
5 statement here and believed it, you would have gone and at
6 least talked to Calvin B[REDACTED]. I have no way of knowing
7 she lied.

8 MS. SUSTAKOVITCH: Your Honor, is seeing
9 exactly the point which is defense counsel is making
10 assumptions. The State has put up the lead officer from
11 that investigation who has testified on the record that
12 there was never a recantation. She never believed this
13 child to be a liar, never believed this to be a false
14 allegation. That is defense counsel's perspective as to
15 what must of happened and the innards of this officer's
16 brain and what must have happened, but that's all
17 assumptions and that's not what is being testified to.

18 In these cases, often, as Your Honor knows
19 law enforcement have to take the totality of the
20 investigation, particularly with very young children, look
21 at everything they have. Investigator Cromartie just
22 testified once the forensic interviews came in, they were
23 not clear enough as far as the perpetrator, who was the
24 perpetrator, and then what the actual conduct was that she
25 elected not to seek charges.

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1 She sat there under oath and never said to
2 Your Honor, you know I didn't follow up because I really
3 in my gut thought this kid was lying. That's whet defense
4 counsel wants to bring into this case to completely gut
5 the case that's before the Court today, and that's
6 specifically what the rape shield keeps out and what the
7 test for Boyer an why it's so high.

8 The State would submit that defense counsel
9 has not presented evidence that these statements were, in
10 fact, false, which is their burden.

11 THE COURT: Is there any other evidence in
12 the cross-examination of Ms. **VICTIM** concerning prior sexual
13 activity that we have not gone over?

14 MR. SULLIVAN: Yes, sir. Again, this is the
15 summary 2/17/10 and 3/11/10.

16 THE COURT: Okay. You're in No. 4 in your
17 motion to offer proof and those were statements that were
18 made during the forensic interview; is that right?

19 MR. SULLIVAN: On Page 3 of the interview.

20 MS. SUSTAKOVITCH: This is hearsay testimony
21 that would be given by a caregiver in the prior interview.

22 MR. SULLIVAN: This is in **VICTIM**'s statements.

23 THE COURT: I think he's in her forensic
24 interview.

25 MR. SULLIVAN: Yes, Page 3 at the top and

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1 then it follows up with the behavior and complaints.

2 MS. SUSTAKOVITCH: Again, the way these are
3 set up the forensic interviewer is present, Your Honor.
4 This is background. All this is background the forensic
5 interviewer gets from whomever is present bringing COURT:
6 yes, ma'am in. Often times it's hearsay statements by
7 care givers. Reportedly everything Mrs. Cunningham said
8 she would pick up and I believe Mrs. Cunningham is sitting
9 right there, she acts out sexually. She's purportedly had
10 no clothes on. The child may not have no clothes on, I
11 don't know why that is so alarming.

12 I certainly thing that defense counsel, if he
13 wants to -- Irene Cunningham will be testifying, that's
14 the victim's mother. If he wants to ask the victim, does
15 your child lie to keep herself out of trouble. If he
16 wants to throw her credibility into question like that, he
17 certainly can and be prepared for the response whatever it
18 may be.

19 MR. SULLIVAN: This says **VICTIM** said she saw.

20 MS. SUSTAKOVITCH: Even -- I have no idea.
21 Even if she saw her mother with another woman, how is that
22 going to be relevant to whether or not this defendant put
23 his penis in her rectum? How is seeing her mother with
24 another woman relevant on the point of whether or not this
25 defendant sodomized her? I don't see the connection

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1 there.

2 MR. SULLIVAN: Further down, she claimed that
3 he had raped her mother also just like he had raped her.
4 She had heard that. She's been exposed to a lot of stuff.

5 MS. SUSTAKOVITCH: Ms. Cunningham is present,
6 Your Honor. She's present. I'm going to ask her related
7 to is it possible that **VICTIM** heard whether this
8 defendant's sexual acts between you and this defendant and
9 she said yes. I said is it possible that she heard things
10 that may be considered non-consensual, and she's going to
11 say yes. That is what her testimony is going to be during
12 this trial is that sometimes the sex with this defendant
13 was of a forced nature and if that's where defense counsel
14 wants to go with that information.

15 THE COURT: What about this case? From what
16 I read it says, "Evidence of a child victim's prior sexual
17 experience is relevant to demonstrate that the defendant
18 is not necessarily the source that the victim's ability to
19 testify about the alleged sexual conduct?"

20 MS. SUSTAKOVITCH: I think that needs to be
21 considered, Your Honor. In the interview with the case
22 before the Court there is lots of talk about pornography
23 that **VICTIM** has seen. So the Court will not hear the State
24 making some argument -- you know, there is no way that an
25 eight year old could possibly come up with this. She was

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1 bent over her bed and someone put his penis in and there
2 was no way she could know that. The defense counsel can
3 make the argument she's been exposed to pornography,
4 that's where she got the idea. That is attacking her
5 credibility and the jury whether or not believes having
6 seen pornography she's going to go to the extra step to
7 specifically make up that great big lie about herself.

8 We understand she's been exposed to
9 pornography and I would say that that's in the forensic
10 interview.

11 THE COURT: You're talking about the present?

12 MS. SUSTAKOVITCH: Yes, Your Honor.

13 THE COURT: Of the case before me right now.

14 MS. SUSTAKOVITCH: Yes, Your Honor. And she
15 acknowledges she's seen it. She said she seen it by
16 herself and I certainly didn't want Your Honor to think
17 there's ever going to be that argument by the State.

18 THE COURT: You're not going to argue that
19 how you know she's telling the truth is the only way she
20 knows about any of this is because of what happened with
21 him?

22 MS. SUSTAKOVITCH: The State could make that
23 argument. She's admittedly seen porn and I think defense
24 counsel should explore that further and go down that path
25 and say, well she knows about anal sex because she's seen

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1 it, but it's going to come down to credibility and whether
2 they believe this child, again, would go the extra step
3 and say, yeah, that occurred to her.

4 So we're not trying to keep out porn in any
5 way, shape, or form.

6 THE COURT: What about it, Mr. Sullivan?

7 MR. SULLIVAN: I could bring out the porn,
8 Judge, but how about the acting out? VICTIM said she saw
9 her mother and then she acted out what she had seen.

10 THE COURT: That came out in the forensic
11 interview in the present case?

12 MR. SULLIVAN: Let me see. This would have
13 been the prior case. That's on top of Page 3 and it says
14 she was acting out and what she had seen with her mother.
15 I'm not trying to paint her as some horrible person.

16 MS. SUSTAKOVITCH: Defense counsel has every
17 right if he wants to ask if she has a reputation for truth
18 and lying, he can go there and I've already expressed to
19 defense counsel what I anticipate the response to that
20 would be. But I think it's well within his right because
21 it goes to her credibility. I don't see even if we
22 believe this to be so that it is relevant that VICTIM was
23 found with an eleven year old trying to kiss him even if
24 we believe that to be truth whether it is or not, but even
25 if we believe that to be true, VICTIM was trying to kiss an

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1 eleven year old on the mouth, that's what Rape Shield
2 would keep out.

3 It's not that she's trying to kiss a 40 year
4 old man, and even if you believe that allegation, it's an
5 eleven year old child with an eight year old child, I
6 guess, experimenting. Again, I have no reason to know
7 whether that happened or not but it is not relevant to
8 whether or not this defendant sodomized this child.

9 THE COURT: Anything else, Mr. Sullivan?

10 MR. SULLIVAN: No, sir.

11 THE COURT: Here's what we're going to do,
12 nothing from the 2009 case is coming in. So nothing she
13 said to the police, nothing she said to the medical
14 examiner, nothing about the 2009 case is coming in and my
15 reasoning for that is based on the way I read the Boyer
16 case, which is 396 SE 2nd 364 State's Supreme Court, the
17 threshold decision for me is that evidence of prior false
18 accusation maybe probative on the issue of credibility.
19 However, I have to first determine whether or not that
20 prior accusation was false before I could get to any other
21 consideration. Based on the evidence that's before me
22 today, the testimony of the cross-examination of that
23 officer, I do not believe the defendant has proven to my
24 satisfaction that the prior accusation made in 2009 was
25 false.

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1 Now, as to the other issue about things that
2 came out in her forensic interview on this case, you will
3 be allowed to cross-examine her and you will be allowed to
4 cross-examine her mother as to her propensity for
5 truthfulness.

6 Does everybody understand?

7 MR. SULLIVAN: Her truthfulness and the
8 person with whom she resides. Bessie -- and I forget her
9 last name.

10 MS. SUSTAKOVITCH: Bessie Davis and she will
11 be testifying.

12 MR. SULLIVAN: Her aunt and she says she has
13 trouble telling stories and so forth.

14 THE COURT: Okay.

15 MR. SULLIVAN: Just let me address this, I
16 object to your finding. I believe I've presented enough
17 with her direct statements and the police not following
18 up, that it must have been false and that's all I know how
19 to do. So I object to your ruling.

20 THE COURT: Okay. Let's talk about how you
21 can reserve your objection during trial ---

22 MR. SULLIVAN: If we go into it, I'll have to
23 raise it and you have to slap me down.

24 THE COURT: When we get to that point in the
25 trial, you can raise it and I'll note for the record your

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1 previous objection based on the pre-trial hearing that we
2 had and that way you are protected for the record and that
3 issue is preserved.

4 MR. SULLIVAN: Maybe Officer Cromartie is
5 going to testify again and that way you'll know if we do
6 and ---

7 THE COURT: I assume that would come out in
8 Ms. [REDACTED]'s testimony.

9 MS. SUSTAKOVITCH: The State might have
10 misheard Mr. Sullivan but we don't intent to call
11 Investigator Cromartie in this case for any reason.

12 MR. SULLIVAN: Then I'd have to ask the
13 little girl if she ever talked to Ms. Cromartie, did she
14 ever tell her stuff.

15 THE COURT: That's what I'm saying. When we
16 get to the cross-examination of her, I think for you to be
17 protected on the record I think you need to put something
18 on there that says, Your Honor ---

19 MR. SULLIVAN: I can't go into this due to
20 your prior ruling.

21 MS. SUSTAKOVITCH: Your Honor, has made his
22 specific ruling and to go at her while she's on the stand
23 is ---

24 THE COURT: I'm not going to let him go at
25 her but I think he needs to do something prior to cross-

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1 examining her saying I'd like to renew my prior motion
2 about what I can cross-examine her on or something of that
3 effect without going into the substance of it in front of
4 jury whom I trying to keep them from hearing this
5 information just so that it's not an issue on an appeal
6 where you didn't ask him to ask her about it so you didn't
7 preserve it.

8 MS. SUSTAKOVITCH: It's been three-and-a-half
9 years now since she gave the forensic interviews and what
10 she may or may not ---

11 THE COURT: I'm not going to let him ask her
12 anything about it. I just want to make sure the record is
13 preserved.

14 MS. SUSTAKOVITCH: Okay.

15 THE COURT: What I would say is, Your Honor,
16 I'd like to preserve my pretrial motion that we made
17 earlier.

18 MR. SULLIVAN: And then we'll have it on the
19 record.

20 THE COURT: I think the case law that's come
21 out recently, there's got to be something on the record.
22 I don't want you to say anything about the 2009 incident
23 or the prior incident. Just say I'd like to renew my
24 pretrial motion concerning this examination and you don't
25 have to go any further.

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1 MS. SUSTAKOVITCH: I don't mind if he says
2 related to State versus Boyer.

3 THE COURT: That would be great and that
4 would protect Mr. Woods and his rights and also protects
5 you.

6 MR. SULLIVAN: I'd like to get the three of
7 us and discuss his previous record.

8 THE COURT: Okay. Let me write down what was
9 just discussed.

10 MS. SUSTAKOVITCH: Your Honor, the next
11 motion is going to take 45 minutes, at least. It's
12 17,23,175, a motion for the admission of the forensic
13 interview in this case. Does Your Honor want to break for
14 lunch now.

15 THE COURT: What time did I tell the jury
16 when to call back?

17 MS. SUSTAKOVITCH: 3:00

18 THE COURT: This is the last motion?

19 MS. SUSTAKOVITCH: Yes.

20 THE COURT: Let's break until 1:45 and then
21 we'll do that motion and then we'll take a little break
22 and then go on into the trial. The court will be in
23 recess until 1:45.

24 (Whereupon, there was a lunch break.

25 THE COURT: Are we ready?

State versus Woods

1 MS. SUSTAKOVITCH: Yes.

2 MR. SULLIVAN: Yes.

3 THE COURT: We're back on the record in the
4 State versus Robert Wilson Woods, 2012-GS-23-2852. The
5 State has another pretrial motion.

6 MS. SUSTAKOVITCH: Yes, Your Honor. If it
7 please the Court, the next matter is the motion for the
8 admissibility for the forensic interview in this case.
9 That is made pursuant to 17.23.175. It's the out-of-court
10 statement of the victim given in this case to a forensic
11 interviewer here in Greenville County. Just for the
12 Court's information, he had loaded the forensic interview
13 into the player and defense counsel is aware that this is,
14 in fact, the forensic interviewer in this case.

15 The State calls Christine Carlberg.

16 THE BAILIFF: Place your left hand on the
17 Bible and raise your right and turn to the Judge, please.

18 THE CLERK: Do you swear or affirm to tell
19 the truth, the whole truth and nothing but the truth so
20 help you God?

21 MS. CARLBERG: I do.

22 CHRISTINE CARLBERG: Having been duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MS. SUSTAKOVITCH:

Christine Carlberg - Direct

1 Q. Ms. Carlberg, where are you employed?

2 A. I'm employed with the Greenville Department of
3 Mental Health.

4 Q. And what is the Greenville Department of Mental
5 Health?

6 A. It's the local center where children and adults
7 get therapy and they see a psychiatrist for mental issues.

8 Q. Are you also affiliated with the Julie Valentine
9 Center?

10 A. I am. I'm contracted to work at the Julie
11 Valentine Center.

12 Q. And what does your job entail there?

13 A. I am an forensic interviewer.

14 Q. Can you explain to the Court what a forensic
15 interviewer is?

16 A. A forensic interviewer is a person who questions
17 children. We also question delayed adults about something
18 that may have happened to them.

19 Q. Could you explain your training and experience
20 that qualifies you as a forensic interviewer.

21 A. I've been conducting interviews for almost 13
22 years and I have training at CornHouse which is a
23 nationally recognized forensic training and I've also been
24 trained at Child First in Mississippi and South Carolina.
25 All those are nationally leading training for forensic

Christine Carlberg - Direct

1 interviews. I've also attending various conferences
2 around the country with regards to forensic interview
3 training.

4 Q. How does a forensic interviewer conduct such an
5 interview with a child?

6 A. We use semi-structure protocol and we use a
7 developmentally appropriate method of questioning
8 children. It's not leading. It's in a child's
9 environment.

10 Q. You may have stated this, I apologize, but how
11 many children have you interviewed?

12 A. Over 2100.

13 Q. In your 2100 interviews with children, is there a
14 standard protocol that you use for conducting a forensic
15 interview?

16 A. We use a semi-structured protocol called RadTac.

17 Q. And what is R.A.D.T.A.C?

18 A. It's five stages, it stands for rapore, anatomy
19 ID, touch inquiry, abuse scenario and closure.

20 Q. Did you receive specialized training in the
21 RadTac method?

22 A. I did. The training that I talked about were the
23 training in the RagTac Method.

24 Q. Ms. Carlberg, did you have occasion to conduct a
25 forensic interview with the victim in this case, **VICTIM**

Christine Carlberg -- Direct

1 [REDACTED]?

2 A. I did.

3 Q. And how was she referred to your agency?

4 A. She was referred by the Greenville Department of
5 Social Services.

6 Q. And when did this interview take place?

7 A. It took place on November 10, 2011.

8 Q. How old was she when you conducted that
9 interview?

10 A. She was eight.

11 Q. I'm showing you what's marked as Court's Exhibit
12 No. 1. I realize that's just the wrapper but have you
13 previously looked at the video in this case, the forensic
14 video?

15 A. Yes, ma'am.

16 Q. And was what you viewed a true and accurate
17 depiction of the interview you conducted with VICTIM [REDACTED]?

18 A. Yes, ma'am.

19 Q. Was the interview that you looked at altered or
20 tampered with in any way?

21 A. No.

22 MS. SUSTAKOVITCH: Your Honor, at this time,
23 the State moves to admit Court's Exhibit 1 for purposes of
24 this hearing.

25 THE COURT: Mr. Sullivan?

Christine Carlberg - Direct

1 MR. SULLIVAN: No objection.

2 THE COURT: Okay.

3 (Video marked as Court's Exhibit No. 1 for
4 identification and admitted into evidence.)

5 MS. SUSTAKOVITCH: At this time the State
6 moves to publish.

7 THE COURT: Okay.

8 (Whereupon, video was played.)

9 I got to be able to hear it with out those
10 breaks. The issue is from the test of the Whitner case is
11 I have to look at whether or not the questions are leading
12 and or trying to influence the witness and, ma'am, I'm not
13 saying that you did that. I'm saying I can't hear the
14 questions completely so it's hard for me to make that
15 determination without being able to hear that unless
16 there's a transcript of it.

17 MS. SUSTAKOVITCH: I don't have a transcript
18 of this. I don't know why we can't --- Christine, do you
19 have another copy of this over at the Advocacy Center?

20 THE WITNESS: You have the original. I can
21 have another copy made.

22 BY MS. SUSTAKOVITCH:

23 Q. Is there anyone who can bring the original over
24 and we could try that and see if it's maybe a dubbing
25 problem.

Christine Carlberg - Direct

1 A. I'm sure.

2 Q. How long would it take to do that?

3 A. A copy?

4 Q. I just want the original so we'll have the least
5 chance to ---

6 A. It would probably take 20 minutes to get there.

7 Q. Is there someone you could call?

8 A. Yes.

9 Q. Why don't you get the original. Maybe the
10 dubbing is what's messing it up.

11 THE COURT: You can step down. We'll be at
12 ease. Maybe you can play with it and see if it'll ---

13 MS. SUSTAKOVITCH: And we'll have an IT guy
14 come in to see if it's the play back.

15 THE COURT: We'll stand at ease for just a
16 few minutes.

17 MS. SULLIVAN: I also have a copy at my
18 office and I can run and see if that one is ---

19 THE COURT: How far is your office?

20 MR. SULLIVAN: About six minutes.

21 THE COURT: That's fine. I think for me to
22 correctly analyze this as to its admissibility, I'm not
23 saying she did anything, but I have to hear the question
24 to determine if they're leading or anything.

25 MR. SULLIVAN: That would be the best thing.

State versus Woods

1 THE COURT: Okay. Let's stand at ease and
2 just to make sure we have ourselves protected on that.
3 Somebody come and get me when y'all got it figured out.

4 (Whereupon, the court was in brief recess.)

5 Alright, are we going to give it a whirl?
6 Are we going to try it?

7 MS. SUSTAKOVITCH: Yes, sir, just a second.

8 (Video played.)

9 Very briefly, Your Honor, would you like to
10 hear from the State regarding the elements of the statute?

11 THE COURT: You want to ask the examiner any
12 questions, Ms. Sullivan?

13 MR. SULLIVAN: I do have some objections?

14 THE COURT: Do you want to ask Ms. Carlberg
15 any questions before we get to that?

16 MR. SULLIVAN: No.

17 THE COURT: You don't need to question her?

18 MR. SULLIVAN: No, sir.

19 MS. SUSTAKOVITCH: Your Honor, very briefly,
20 the State does believe this involved Code Section
21 17-23-175. The child is under the age of 12. She was
22 eight at the time that this was given. She gave a
23 statement in response to questions that were conducted in
24 an investigative interview. Ms. Carlberg conducted he
25 interview at the request of DSS, and the child's statement

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1 was recorded which is an element of the statute. It was
2 preserved the electronic means, which is an element.

3 The child is going to testify, Your Honor,
4 and she will be subject to cross-examination, which is an
5 element.

6 The issue for Your Honor to determine the
7 statute requires that the circumstances surrounding the
8 making of the statute, "provide particularized guarantees
9 of trustworthiness," where it's non-leading questions.
10 The state on direct examination elicited questions from
11 Ms. Carlberg related to her training where she has
12 interviewed some 2100 children. She incidentally was the
13 investigator in the Whitner case that I passed up to the
14 Court. But Your Honor makes the determination on whether
15 the statement contained a coherent detailing of the
16 offense and whether it was congruent and appropriate and
17 whether it was logical, Your Honor.

18 For those reasons, the State moves that this
19 Court admit it.

20 THE COURT: Yes, sir.

21 MR. SULLIVAN: I've got an objection. From
22 the time she started talking him drinking and weed, drug
23 use, I don't think that's appropriate. If you could cut
24 that part out about the drinking and the weed.

25 THE COURT: Okay. Where are you on the weed?

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1 MS. SUSTAKOVITCH: I would agree with defense
2 counsel that that's not relevant and it was 2230 where she
3 asked a question did they do anything that they weren't
4 supposed to do and then 2245, Robert does drugs, he drinks
5 and she goes on to this cell about the drinking and the
6 drugs. The state would concede that that's not relevant
7 or admissible.

8 I do have a concern because an issue with the
9 state is penetration.

10 THE COURT: Here's what I'm going to do is
11 y'all cut that out in the hopes of not messing up the
12 tape. We need to -- when we stopped tonight and before we
13 get to the point of the trial where we want to play this,
14 we need to figure out a way to excise out the part of the
15 tape that deals with smoking and drinking.

16 MS. SUSTAKOVITCH: Yes, sir.

17 THE COURT: I don't care if you stop it,
18 fast forward it and start it again. Y'all work amongst
19 yourselves to make it the easiest. The part about coming
20 back in the doll again, I am going to allow it and the
21 reason I'm going to allow it is because I believe it goes
22 specifically to penetration. And I think without me
23 trying to create in my mind what Ms. Carlberg was trying
24 to do and not guessing where she was trying to go to see
25 that issue to determine the severity of the situation. So

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1 I am going to allow that part.

2 So I need y'all to work on how we're going to
3 skip over the drugs and the alcohol and then I'm going to
4 find under 17-23-175 Section A and Section B that the
5 video is admissible. It was given an investigative
6 interview, it was preserved. The State has informed me
7 that the child is prepared to testify and will be subject
8 to cross-examination and that the totality of the
9 circumstances surrounding the statement provides
10 guarantees of trustworthiness.

11 There were very few leading questions, if
12 any. The questions were who, what, where, when, why
13 questions and therefore I also find that Ms. Carlberg has
14 been trained in the area of conducting investigative
15 interviews and that the statement represents a detailed
16 account of the alleged offense. And that the statement
17 has internal coherence and that Ms. Carlberg has testified
18 to the foundation of taping.

19 Let's talk about this from a practical
20 standpoint in the trial. Are you going to put
21 Ms. Carlberg up kind of like you did here today, create a
22 little bit of a background and introduce the tape?

23 MS. SUSTAKOVITCH: Yes, sir. I intend for
24 her to actually be the last witness and it will be very
25 short. I plan to qualify her and then put the tape in.

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1 THE COURT: My understanding of the law as
2 we're sitting here today, we're standing away from her
3 being an expert or her testifying as to the validity of
4 what the victim said or her corroborating the victim or
5 bolstering the victim or anything else. She's coming on
6 to say I did this interview, I'm trained to do this
7 interview, I'm paraphrasing I hope everyone understands
8 it, here's the interview and we're going to play it, is
9 that right?

10 MS. SUSTAKOVITCH: That's right, Your Honor.

11 THE COURT: Mr. Sullivan, anything else?

12 MR. SULLIVAN: I just like to renew my
13 previous objection but I understand your ruling.

14 MS. SUSTAKOVITCH: Your Honor, I'd ask your
15 opinion on this, this tape is one that the way it's
16 recorded at the Advocacy Center can't be altered that
17 easily. What I've done in the past what I've done is when
18 there's a part where the Judge objects or wants that out,
19 turned it down. Here I would have to come it down for
20 about a minute and a half.

21 THE COURT: Can't you fast forward it?
22 Here's what we'll do, let's work on it. If somebody can
23 work on it. I'd rather not just turn it down, I'd rather
24 see if you can set it up some way where it's a minimal
25 interruption and we're going through it and it's getting

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1 fast forward it to where it kicks back up.

2 MS. SUSTAKOVITCH: You mean manually fast
3 forward it?

4 THE COURT: Yes.

5 MS. SUSTAKOVITCH: Okay.

6 THE COURT: Well, if she's your last witness,
7 you've got a little bit more time. Just play with it and
8 see what you can figure out. What I don't want the jury
9 saying, well, what did she say there, or that kind of
10 situation. Or if you can get a dubbed copy that we can
11 hear as well as we heard that copy and cut it out. Either
12 way because that copy was much easier to hear than the
13 first one this morning.

14 MS. SUSTAKOVITCH: Yes, sir.

15 THE COURT: Y'all ready to bring in the jury?

16 MS. SUSTAKOVITCH: Can we have just a brief
17 recess?

18 THE COURT: Yes, sir.

19 MS. SUSTAKOVITCH: And then the state's ready
20 to proceed.

21 THE COURT: Let's talk about this. Should we
22 bring the jury up and take a little break or we go back on
23 the record at 4:00. We're probably going to pick that
24 jury and not much else.

25 How long is your opening, Ms. Sustakovitch?

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1 MS. SUSTAKOVITCH: Brief.

2 MR. SULLIVAN: A couple of hours. Just
3 kidding. I'll be brief.

4 THE COURT: Okay. Let's take a little break
5 and then come back.

6 (Whereupon, there was a brief recess.)

7 THE BAILIFF: Remain seated, court is now in
8 session.

9 (Jury pool enters courtroom.)

10 THE COURT: Good afternoon, ladies and
11 gentlemen. It's okay to respond. I promise you that
12 you're not going to be here much longer today. It's 4:00
13 in the afternoon. Throughout all the courtrooms in the
14 courthouse today the lawyers have been working so I
15 appreciate your patience in waiting downstairs. We take
16 up matters outside the jury's presence often so we can
17 make the trial go faster when it actually starts.

18 We're not trying to torture you and make you
19 wait down stairs, we're trying to straighten our case and
20 make them as fast as possible once we eventually get the
21 case to you.

22 My name is Robert Hood and I'm a circuit
23 court judge and I'm from Columbia. I'm not one of the
24 resident judges here. I actually reside down in the 5th
25 judicial circuit which is Richland and Kershaw Counties

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1 and I have been assigned by the Supreme Court to a term of
2 court here in Greenville County to cover a criminal court.

3 I got us some information I need to provide
4 you in the beginning and then we will go to what we call
5 the jury selection process where I will ask you a number
6 of questions and then we will get to the actual picking of
7 the jury where the lawyers will get to pick and decide who
8 actually makes it on to the jury.

9 That's probably as far as we will make it
10 today. We may make it just a little bit further, but
11 I promise not to keep you much past 5:00 or a little bit
12 after 5:00. I know people have children to pick up and
13 lives to attend to and day cares that charge fees if
14 you're late. So I will be courteous of that. So we're
15 gong to work as diligently as we an and as quickly as we
16 can.

17 Before begin this trial, I need to tell you
18 that this trial might be different from what you might
19 expect. Many people do not have the chance to attend
20 actual court sessions as you are doing now, and you may
21 think from watching television or movies or reading books
22 that trials are always full of high drama, intense action
23 and riveting circumstances. While all of these things may
24 be true at times, this trial is not for entertainment.

25 It is a fundamental part of our democracy, a

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1 search for the truth in an effort to make sure that
2 justice is done between the parties before the court.
3 Searching for the truth in making sure that justice is
4 done is often slow, deliberate, and repetitive. The
5 opposite of what you may have seen on television or in
6 movies or read in books.

7 This courtroom is a place of honor dedicated
8 to the protection and preservation of citizen's rights to
9 what many have called the greatest justice system every
10 created.

11 The attorneys appearing before you are
12 advocates for the parties they represent, but first and
13 foremost they are the officers of the court sworn to
14 uphold the integrity and fairness of our judicial system
15 and to help you in search for the truth. You should
16 expect them to be professional, competent and ethical in
17 their representation of their client's interest.

18 Remember you have taken an oath to try this
19 case and reach a fair and just verdict, and you are also
20 expected to be professional reasonable and ethical. I
21 would like to personally say thank you for excepting this
22 important responsibility of jury service. I know that it
23 is a great debt that you pay to your county and service on
24 a jury and I want to thank you for your contribution to
25 our justice system.

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1 You need to understand the jury service is a
2 key democratic check on our judicial system. This is your
3 as citizens of this county and of this state, this is your
4 control of our judicial branch of government. Jury
5 service is the ultimate in participatory democracy.

6 At this time we're ready to select the jury
7 in this case.

8 Ms. Sustakovitch, would you please call your
9 case.

10 MS. SUSTAKOVITCH: May it please the Court,
11 Your Honor, the State is calling the State versus Robert
12 Woods, charged with criminal sexual conduct with a minor
13 and also lewd act on a child.

14 THE COURT: The State has called its case.
15 The case of State of South Carolina versus Robert Wilson
16 Woods, 2012-GS-23-2852 and 2853. Indictment 2852 states
17 that Robert Wilson Woods of Greenville County between the
18 first day of June 2011 and the 29th day of September 2011
19 being over the age of 14 years willful and lewdly commit
20 or attempt a lewd and lascivious act upon or with the body
21 or its parts of IC, a child under the age of 16 years with
22 the intent of arousing, appealing to, or gratifying the
23 lust, passions, or sexual desires of himself or the child.
24 This in violation of the South Carolina laws as amended.

25 Indictment 2852 states that Robert Wilson

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1 Woods did in Greenville County between the first day of
2 June, 2011 and the 29th day of September 2011 commit a
3 sexual battery on IC who was less than 11 years of age.
4 This is in violation of the South Carolina laws.

5 Now, ladies and gentlemen, these indictments
6 which I have just read to you they are not proof nor
7 evidence. They are merely the charging documents that
8 allows this case to come into this court. To these
9 charges, the defendant has pled not guilty an request a
10 trial by jury.

11 Now, let me tell you who some of the parties
12 in the room are. First off, right down here to my left is
13 Ms. Shaney who works for your Clerk of Court. You
14 actually elect our Clerk of Court and Ms. Shaney is
15 employed by the Clerk of Court so she will be with us this
16 week monitoring the incoming and outgoing of documents and
17 making sure that I do everything correctly.

18 Down here to my right is Ms. Hiskell. She is
19 the court reporter. Circuit court is a court of record in
20 this state which means that she will be typing down
21 everything that is said. Now, you can't see her
22 typewriter because she has it hidden, but she promises me
23 that she is taking down everything that is said.

24 In the back is Mr. Lynch. He is one of our
25 bailiff's that will be with us this week. And at the

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1 front of the room is Mr. Anderson and he is also one of
2 our bailiff's and will be with us this week. So if you
3 actually get selected on this jury, they will be your main
4 point of contact throughout the week on where to go, how
5 to get there, what you can do and what you can't do.

6 Seated next to me is Ms. Hedgco. She is my
7 law clerk. She graduated from law school about a year ago
8 or so and she works with me for about a year before she
9 goes into the practice of law.

10 So this time we're going into the specific
11 voir dire for the case.

12 Mr. Woods, if you would please stand and face
13 the jury panel.

14 This is Robert Wilson Woods. Thank you may
15 sit down.

16 Is any member of the jury panel related by
17 blood or marriage, close personal friends with or have any
18 association in any way shape or form with Mr. Woods? If
19 so, please stand.

20 Let the record reflect there is none.

21 The attorneys in this case representing
22 Mr. Woods are Mr. Tim Sullivan.

23 Mr. Sullivan, would you please stand and
24 introduce yourself.

25 MR. SULLIVAN: I'm Tim Sullivan. I'm with

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1 the Public Defender's Office and I represent Mr. Woods.

2 THE COURT: Is anybody related by blood or
3 marriage or close personal friends with or associated with
4 Mr. Sullivan in any way or have you been formally
5 represented by him or been on the other side of a case
6 with him? If so, please stand.

7 Alright, Ms. Sustakovitch, if you would
8 please stand and tell us who you have with you.

9 MS. SUSTAKOVITCH: Thank you, Your Honor. My
10 name is Christy Sustakovitch. I am a prosecutor with
11 Greenville County. This is Kelly O'Donnell. She is an
12 investigator in our office. This is also Investigator Bob
13 Perry. He's with the Greenville County Sheriff's Office.

14 THE COURT: Is anybody related by blood or
15 marriage or have any connection to business personal or
16 otherwise with anybody at the Solicitor's Office table and
17 the Solicitor's Office at all or with Investigator Perry
18 or any other law enforcement connection, if so, please
19 stand.

20 Yes, sir, what's your number?

21 MR. GALE: Yes, sir, Charlie Gale. I think
22 it's 48.

23 THE COURT: Tell us what your connection is?

24 MR. GALE: I shoot firearms and they're all
25 friends in here and I know Bob personally. He lives in my

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1 neighborhood.

2 THE COURT: Would that affect your ability to
3 be fair and partial in this case?

4 MR. GALE: No, sir.

5 THE COURT: Would you be able to put aside
6 your relationship and based your decision solely on the
7 facts, the evidence, and the law as come from this
8 courtroom?

9 MR. GALE: Yes, sir.

10 THE COURT: And will you do that?

11 MR. GALE: I will.

12 THE COURT: Anybody else? Let me tell you
13 it's not bad to stand up, okay. We picked a jury a few
14 weeks ago and all the lawyers were relatively young and
15 had only been out of law school two or three years and I
16 went through all these questions just like I'm doing with
17 you now. At the end of it, the lawyers all looked me and
18 they said, Your Honor, may we approach and I said, yes,
19 and they came up and said, that guy on the front row, he's
20 a lawyer and he went to law school with all of us. And he
21 had never stood up the whole time and I asked the same
22 questions I'm asking you.

23 So I pulled him up and I said, do you know
24 all these lawyers, and he said, yes, sir. I said, did you
25 go to law school with all of them, and he said, yes, sir.

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1 And I said why didn't you bother to stand up, he said, I
2 didn't think it fit into any of your questions.

3 So, you're not in trouble if you stand up.
4 The purpose of the questions is so that we can get 12
5 people who don't know anything about the case and don't
6 know the parties and don't have any bias and prejudice to
7 make a decision about the case.

8 These facts allegedly occurred between June
9 of 2011 and September of 2011 here in Greenville County.
10 Does anybody know anything about the case, read about the
11 case, or heard about the case, or seen anything about this
12 case in any way shape or form. If so, please stand.

13 Has anybody been involved in a similar case
14 or another case involving a violent crime either as the
15 victim, the defendant, the witness or a family member. If
16 so, please stand.

17 Yes, ma'am, what is your number?

18 MS. BARTON: 15.

19 THE COURT: Would you like to discuss this up
20 here privately?

21 MS BARTON: Yes.

22 THE COURT: Okay.

23 (Bench conference with juror.)

24 MS. BARTON: My daughter was a victim.

25 THE COURT: How long ago was that?

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1 MS. BARTON: Four years.

2 THE COURT: Where was it prosecuted?

3 MS. BARTON: Laurens.

4 THE COURT: Would it affect your ability to
5 be fair and impartial?

6 MS. BARTON: May be.

7 THE COURT: Thank you for your services.

8 MR. SULLIVAN: What was her name?

9 THE COURT: B-A-R-T-O-N, Barton.

10 Anybody else?

11 Yes, sir, tell me your number.

12 MR. HAYES: Vernon hayes, Juror No. 64.

13 THE COURT: Go ahead.

14 MR. HAYES: I worked for an organization
15 dealing with children and we made reports of the same
16 nature as this case.

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

19 MR. HAYES: No, sir.

20 THE COURT: Are you willing to set aside any
21 relationships you may have or knowledge you may have and
22 based your decision solely on the evidence and the law as
23 it comes from this courtroom?

24 MR. HAYES: Yes, sir.

25 THE COURT: Are you willing to do that?

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1 MR. HAYES: Yes, sir.

2 THE COURT: Anybody else?

3 The next thing I'm going to do is go over a
4 witness list with you. Now, listen to these names and I'm
5 going to give you as much identifying information as I
6 can. If you think you know this person or you may know
7 this person or if you went to law school with this person,
8 don't be afraid to stand up; Investigator Bob Perry,
9 Greenville County Sheriff's Office, Dr. Nancy Henderson,
10 Greenville Hospital Systems, Irene Cunningham, **VICTIM** **[REDACTED]**,
11 Bessie Davis, Dr. Videra Varnadore, Duncan Chapel
12 Elementary School, Megan Griese at the Duncan Chapel
13 Elementary School, Linda Hutton, Christine Carlberg at
14 Greenville County Mental Health, Captain John Vandermosten
15 at the Greenville County Law Enforcement Center, Lonita
16 Nicholson at Greenville County DSS, Samantha Jenkins-
17 Ramsey at the Greenville County Mental Health, Cheryl
18 Carmartie at the Greenville County Sheriff's Office.

19 Anybody know any of those people or think
20 they know any of those people, related by blood or
21 marriage, close personal friend, acquaintance, business
22 associate, you name it, if you know them stand up?

23 And there are none.

24 Does any member of the jury panel a member of
25 or support financially or otherwise groups known as MAD,

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1 SAD, CAVE or KADRE, if so, please stand.

2 Any member of the jury panel formed any
3 opinion as to the guilt of Mr. Woods? If so, please
4 stand.

5 Any member of the jury panel have any bias or
6 prejudice for the State or the Defense in this case? If
7 so, please stand.

8 Any other member of the jury panel know of
9 any other reason why you could not service on jury duty in
10 this case? If so, please stand.

11 Any member of the jury panel who is a member
12 of or contributor to any group which has its primary
13 concern the promotion of law enforcement or victim's rights
14 or the Innocence Project? If so, please stand.

15 Any additional questions from the State?

16 MS. SUSTAKOVITCH: None from the State?

17 THE COURT: From the defense?

18 MR. SULLIVAN: None from the defense.

19 THE COURT: Alright, the next thing we're
20 going to do is actually pick the jury and the clerk is
21 going to give you some instructions. They are either
22 going to say, present you, or swear you, or strike you.
23 If they say strike, that means you're going to go back and
24 sit down. If they say present or swear, that means you're
25 going to have a seat in the jury box.

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1 We're doing five and ten and one and two for
2 two alternates.

3 THE CLERK: I'm going to call your juror
4 number. When you hear your number, gather your things,
5 come up to the front here and turn around and face the
6 attorneys and we'll go from there.

7 Juror No. 50, please bring your things up
8 front with you and turn around.

9 JUROR 50: Juror No. 50, Sally Gaza.

10 MS. SUSTAKOVITCH: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. SULLIVAN: Swear the juror, please.

13 THE CLERK: Have a seat in the jury box.

14 Juror No. 48.

15 Can you turn around and face the attorneys?

16 JUROR 48: I'm number 48, Charlie Gale.

17 MS. SUSTAKOVITCH: Please present this juror.

18 MR. SULLIVAN: Please excuse this juror.

19 THE CLERK: You're excused, sir.

20 Juror No. 135.

21 JUROR 135: Juror No. 135, Nancy Saifi,
22 restaurant owner.

23 THE CLERK: What says the State?

24 MS. SUSTAKOVITCH: Please present this juror.

25 THE CLERK: What says the defendant?

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1 MR. SULLIVAN: Swear the juror, please.
2 THE CLERK: Have a seat in the jury box.
3 Juror No. 138.
4 JUROR 138: Juror 138, Jeffrey Schneider.
5 THE CLERK: What says the State.
6 MS. CHRISY: Please present this juror.
7 THE CLERK: What says the defendant.
8 MR. SULLIVAN: Please swear the juror.
9 THE CLERK: Have a seat in the jury box.
10 Juror No. 170.
11 JUROR 170: 170, Greg Campbell.
12 THE CLERK: What says the State?
13 MS. SUSTAKOVITCH: Please present this juror.
14 THE CLERK: What says the defendant?
15 MR. SULLIVAN: Swear the juror, please.
16 THE CLERK: Have a seat in the jury box.
17 Juror No. 49.
18 JUROR 49: Juror 49, Richard Garner.
19 MS. SUSTAKOVITCH: Please present this juror.
20 THE CLERK: What says the defendant.
21 MR. SULLIVAN: Swear the juror, please.
22 THE CLERK: Have a seat in the jury box.
23 Juror 178.
24 JUROR 178: Terry Rhodes, 178.
25 THE CLERK: What says the State.

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1 MS. SUSTAKOVITCH: Please strike this juror.

2 THE CLERK: You may return to your seat.

3 Juror No. 141.

4 JUROR 141: Juror 141, Diana Shelton.

5 THE CLERK: What says the State?

6 MS. SUSTAKOVITCH: Please present this juror.

7 THE CLERK: What says the defendant.

8 MR. SULLIAN: Please swear the juror.

9 THE CLERK: You may have a seat in the jury

10 box.

11 Juror No. 16.

12 JUROR 16: Juror 16, Thomas Beach.

13 THE CLERK: What says the State.

14 MS. SUSTAKOVITCH: Please present this juror.

15 THE CLERK: What says the defendant?

16 MR. SULLIAN: Please excuse this juror.

17 THE CLERK: Thank you. Juror No. 148.

18 JUROR 148: Juror 148, Christopher Sorrells.

19 THE CLERK: What says the State.

20 MS. SUSTAKOVITCH: Please present this juror.

21 THE CLERK: What says the defendant.

22 MR. SULLIVAN: Swear the juror.

23 THE CLERK: Have a seat in the jury bo.

24 Juror No. 164.

25 JUROR 164: Juror No. 164, Thomas Whitner.

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1 THE CLERK: What says the State?
2 MS. SUSTAKOVITCH: Please strike this juror.
3 THE CLERK: Thank you. Juror No. 4.
4 JUROR 4: Juror No. 4, Cindy Alexander.
5 THE CLERK: What says the State.
6 MS. SUSTAKOVITCH: Please present this juror.
7 THE CLERK: What says the defendant.
8 MR. SULLIVAN: Please excuse this juror.
9 THE CLERK: Thank you. Juror No. 114.
10 JUROR 114: Juror 114, Juatlin Phelps.
11 THE CLERK: What says the State?
12 MS. SUSTAKOVITCH: Please present this juror.
13 THE CLERK: What says the defendant.
14 MR. SULLIVAN: Excuse this juror.
15 THE CLERK: Thank you. Juror No. 64.
16 JUROR 64: Juror 64, Vernon Hayes.
17 THE CLERK: What says the State.
18 MS. SUSTAKOVITCH: Please present this juror.
19 THE CLERK: What says the defendant.
20 MR. SULLIAN: Excuse this juror.
21 THE CLERK: Thank you. Juror No. 90.
22 JUROR 90: Juror 90, Charles Langston.
23 THE CLERK: What says the State.
24 MS. SUSTAKOVITCH: Please present the juror.
25 THE CLERK: What says the defendant.

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1 MR. SULLIVAN: Swear the juror.

2 THE CLERK: You may have a seat in the jury
3 box. Juror No. 1.

4 JUROR 1: Juror 1, Allen Abram.

5 THE CLERK: What says the State.

6 MS. SUSTAKOVITCH: Please present the juror.

7 THE CLERK: What says the defendant.

8 MR. SULLIVAN: Swear the juror.

9 THE CLERK: You may have a seat in the jury
10 box. Juror No. 55.

11 JUROR 55: Juror 55, Jeffery Goolsby.

12 THE CLERK: What says the State.

13 MS. SUSTAKOVITCH: Please present the jury.

14 THE CLERK: What says the defendant.

15 MR. SULLIVAN: Swear the juror.

16 THE CLERK: You may have a seat in the jury
17 box. Juror 75.

18 JUROR 75: Juror 75, Megan Horton.

19 THE CLERK: What says the State.

20 MS. SUSTAKOVITCH: Please present the juror.

21 THE CLERK: What says the defendant.

22 MR. SULLIAN: Excuse this juror.

23 THE CLERK: Thank you. Juror 181.

24 JUROR 181: Juror 181, Gina Simpson.

25 THE CLERK: What says the State.

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1 MS. SUSTAKOVITCH: Please present the juror.
2 THE CLERK: What says the defendant.
3 MR. SULLIVAN: Excuse the juror.
4 THE CLERK: Thank you. Juror No. 67.
5 JUROR 67: Juror No. 67, Carol Herring.
6 THE CLERK: What says the State.
7 MS. SUSTAKOVITCH: Present the juror, please.
8 THE CLERK: What says the defendant.
9 MR. SULLIVAN: Swear the juror.
10 THE CLERK: Please have a seat in the jury
11 box. Juror No. 40.
12 JUROR 40: Juror No. 40, Julie Durham.
13 THE CLERK: What says the State.
14 MS. SUSTAKOVITCH: Please present the juror.
15 THE CLERK: What says the defendant.
16 MR. SULLIVAN: Swear the juror.
17 THE CLERK: Have a seat in the jury box.
18 THE COURT: Alternates.
19 THE CLERK: Juror 183.
20 JUROR 183: Jacob Swanson, No. 183.
21 THE CLERK: What says the State.
22 MS. SUSTAKOVITCH: Please present the juror.
23 THE CLERK: What says the defendant.
24 MR. SULLIVAN: Excuse the juror.
25 THE CLERK: Thank you. Juror 119.

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JUROR 119: Juror 119, Laura Pray.

THE CLERK: What says the State?

MS. SUSTAKOVITCH: Please present the juror.

THE CLERK: What says the defenant.

MR. SULLIVAN: Excuse this juror.

THE CLERK: Thank you. Juror No. 182.

JUROR 182: James Streit, Juror 182.

THE CLERK: What says the State.

MS. SUSTAKOVITCH: Please prsent the juror.

THE CLERK: What says the defendant.

MR. SULLIVAN: Swear the juror.

THE CLERK: Please have a seat in the jury
box. Juror No. 22.

JUROR 22: Juror 22, Laurie Burke.

THE CLERK: What says the State.

MS. SUSTAKOVITCH: Please present this juror.

THE CLERK: What says the defendant.

MR. SULLIVAN: Excuse the juror.

THE CLERK: Thank you. Juror 72.

JUROR 72: Juror No. 72, Calvin Holland.

THE CLERK: What says the State.

MS. SUSTAKOVITCH: Please present the juror.

THE CLERK: What says the defendant.

MR. SULLIVAN: Excuse this juror.

THE CLERK: Thank you. Juror No. 120.

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1 JUROR 120: Juror 120, Michael Pruitt.

2 THE CLERK: What says the State.

3 MS. SUSTAKOVITCH: Please present the juror.

4 THE CLERK: What says the defendant.

5 MR. SULLIAN: Swear the juror.

6 THE CLERK: Thank you. Please have a seat in
7 the jury box.

8 THE COURT: Okay, let's call the numbers and
9 double check just to make sure who should be in the box so
10 the lawyers can check them off.

11 THE CLERK: Juror No. 50, 135, 138, 170, 49,
12 141, 148, 90, 1, 55, 67, 40, first alternate 182 and
13 second alternate 120.

14 THE COURT: Does that match with everybody?

15 MS. SUSTAKOVITCH: Yes, Your Honor.

16 MR. SULLIVAN: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen, that are
18 still out in our gallery you are excused from this
19 courtroom. The clerk would ask that you report back down
20 stairs so that you can get your instructions for the rest
21 of the week. I thank you for your attention and we may
22 see you later in the week or we may not. Please report
23 back down stairs.

24 (Jury panel remainder exits the courtroom.)

25 Any matters of law before we go forward?

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1 MS. SUSTAKOVITCH: None from the State.

2 MR. SULLIVAN: None from the defense.

3 THE COURT: Alright, I promise you are almost
4 out of here for the day. The last things that are going
5 to happen today is I'm going to talk to you for a couple
6 of minutes and then Mr. Lynch and Mr. Anderson are going
7 to give you some instructions. We're not going to do any
8 openings today and we're not going to take any testimony
9 today. We're going to start all that fresh in the
10 morning. It's the end of the day and y'all want to go
11 home. The attorneys have been working most of the day and
12 they have more work to do tonight.

13 So if you would give me your attention and
14 what I'm going to tell you how this trial is going to go
15 so you can understand it. I think one of the biggest
16 things about jury service is what's happening next and is
17 there an end in sight and how long I'm going to be here.
18 I'm going to help you out with that this afternoon and
19 give you some instructions. Okay. Mr. Lynch and
20 Mr. Anderson are going to take you out and show you where
21 to go and come tomorrow morning.

22 I don't have any order for these so just bear
23 with me, I'm just going through them in my head. The
24 court is going to start at 9:30. Now, the reason we start
25 court at 9:30 because all of these hard working people

State versus Woods

1 down here have to get into work, get ready to go, and be
2 set up that when y'all come in, we can go and that means
3 court staff, clerks, bailiffs and everybody else. So it's
4 not that we're intentionally delaying things, it just
5 takes a while to get everybody moving in the morning.

6 Now, at the end of the day we'll usually stop
7 about 5:00 and the reason we do that is not because we're
8 not interesting in working a full day, it's because court
9 staff has another 30 minutes to an hours worth of work to
10 do before they go home at night. And I also understand
11 some of you may have children or spouses or people to pick
12 up or ball games to go to or anything that's going on in
13 your life so we'll try to stop around 5:00, give or take a
14 few minutes before or after, based on where we are in the
15 trial.

16 Each day we'll take a full lunch break. And
17 again we usually take about an hour and a half and the
18 reason we do is court staff still has work to do and
19 things to get ready before they can eat their lunch. So
20 we're usually have an hour and a half lunch break and we
21 can stop anywhere between 12:00 and 1:30 before we take
22 that break just depending on how the trial is going. We
23 will take a break in the morning usually about 15 minutes
24 were you can go back in your jury room, have a snack, have
25 a drink, stretch your legs, use the bathroom, smoke if you

State versus Woods

1 need to. And we will also take a break in the afternoon.
2 So kind for your sanity of what are we doing and why are
3 we doing it, that will be the general schedule.

4 Now, we don't expect this to last anytime
5 past this week but I can't guarantee it because I don't
6 know how long it's going to last.

7 The next thing you need to know is this is a
8 small court house even though we're in a big city and you
9 may see the attorneys or you may see other people you see
10 in the room in the hallway. If you do, the attorneys or
11 anyone associated with their groups or their
12 organizations, they are not going to speak to you. And
13 they are not going to speak to you because they are not
14 ethically permitted to do so by our rules of ethics which
15 governs our attorneys. So if you see Mr. Sullivan or
16 Ms. Sustakovitch and they don't even say hi to you, that's
17 because they're following the Court's instructions. They
18 are not supposed to have any contact with jurors in any
19 way, shape or form. So don't think anybody is being rude
20 or anybody is ignoring you or trying to be impolite or
21 anything else. They're mere following the Court's
22 instructions.

23 Now, the most important thing that I need to
24 tell you is this and I'm going to tell you this repeatedly
25 throughout this trial. I'm going to tell you this so much

~~State versus Woods~~

1 you're going to think that judge thinks we're crazy
2 because he keeps telling us the same thing over and over
3 again but that's how important the next thing I'm about to
4 tell you is and that is this you are not allowed to
5 discuss the case. There will come a point in the trial at
6 the very end when you are allowed to discuss the case and
7 I will say to you you are now allowed to discuss the case,
8 but until then you may not discuss the case at all. You
9 can't discuss it with each other, you can't discuss at
10 home. You can't discuss it at work if you work at night.
11 You can't discuss it with your children, you can't discuss
12 it with your friends.

13 You can't discuss with on Facebook, on
14 Twitter, on MySpace, on Google Plus, or any other kind of
15 social media you can't discuss it on there. With that
16 being said, you are not allowed to do any of your own
17 research. So do not go out and research the law. Do not
18 go out and do a Google search to find out about the case.
19 Do not ask anybody about the case, do not talk to anybody
20 about the case.

21 The reason I give you all these warning is we
22 want your decision to come solely from what happens in
23 this courtroom and that means the witnesses that testify,
24 the exhibits, if any, that are submitted for your review,
25 and the law that I'm going to give to you at the end of

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1 the case. That's all you're allowed to base your decision
2 off of. So there is no independent research, there are no
3 Facebook messages or Twitter messages talking about your
4 jury service and this is what kind of case it is.

5 When you get home tonight, your spouse or
6 your significant other is going to say did you get picked
7 on a jury today. They'll probably text you that before
8 you get out of the building and the answer to that
9 question is I got picked for a jury but I can't discuss
10 the case because the judge won't let me. Those are the
11 rules.

12 We have those rules in place to protect the
13 integrity of the trial. This is a criminal case, it's a
14 very important case and it's a very serious case. It
15 serious to the State and to the defense and what we all
16 want, the parties and the court, is a jury who has no bias
17 no prejudice, are completely impartial and will listen to
18 the witnesses testify, look at the exhibits that are
19 entered, and will take the law as I give it to them.
20 That's why you don't need to do anything else outside of
21 the courtroom because what happens in here is the only
22 thing that matters.

23 So tomorrow morning when you come back, we
24 will get started and I will give you a brief outline of
25 the case and then the attorneys will give their opening

State versus Woods

1 statements to you and we will go straight into the
2 testimony of the case. It will take at least all day
3 tomorrow or maybe into the next day. And we will take
4 breaks as I promised you and we will work with you as we
5 need to but we will generally start everyday at 9:30 and
6 generally end everyday about 5:00, take a lunch break and
7 two morning breaks.

8 Now, somebody has to be the presiding juror
9 or the fore person. Now, tomorrow morning, I will let you
10 know who that is. That person doesn't get any extra money
11 and the vote doesn't count more than anybody else. It's
12 mere the person chosen to communicate with the Court. And
13 whoever I designate to be the fore person will sit right
14 here in this front seat where you are sitting here.
15 That's the only person who has an assigned seat.

16 Now, my two alternates, you guys have to sit
17 in those two seats. So y'all can switch it up, keep it
18 the same, but you are required to sit there and the
19 fore person is required to sit where this young lady is.
20 Other than that, you can sit where ever you want to during
21 the trial.

22 Anything else from the attorneys before I
23 release the jury for the night?

24 MS. SUSTAKOVITCH: Nothing from the State.

25 MR. SULLIVAN: Nothing from the defense.

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1 THE COURT: I'm going to release you to your
2 jury room and remember don't discuss the case with anybody
3 in any way, shape, or form and keep an open mind about the
4 case. Get a good night's rest, come back tomorrow and be
5 ready to go. We've handled a lot of legal issues today so
6 that we can move this case as fast as possible and get it
7 to you without taking too many interruptions. Okay.

8 (Jury exits the courtroom and dismissed for
9 the day.)

10 THE COURT: Anything before we go?

11 MS. SUSTAKOVITCH: Nothing from the State.

12 MR. SULLIVAN: Nothing from the defense.

13 THE COURT: Just remind me that in the
14 morning we've got to swear that jury. We'll see everyone
15 at 9:30.

16 (End of transcript - Day 1)
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~~State versus Woods~~

1 I, the undersigned, Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 the proceedings had and evidence introduced in the trial
6 of the captioned case, relative to appeal, in the Court of
7 General Sessions, Greenville, South Carolina on this 8th
8 of April, 2013.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
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13 

14 Caroline Hiskell
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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 State of South Carolina) 2012-GS-23-2852, 2853
3)
4 vs.) TRANSCRIPT RECORD
5 Robert Wilson Woods)
6 Defendant)

7 April 9, 2013
8 Greenville, South Carolina

9 ---
10 HONORABLE ROBERT E. HOOD, Presiding
11 ---

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

13 SUSTAKOVITCH SUSTAKOVITCH, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 TIM SULLIVAN, Esquire
17 Attorney for the Defendant

18
19
20
21 Caroline Hiskell
22 Thirteenth Circuit Court Reporter
23
24
25

I N D E X

WITNESSES:	DR	CR	RED	REC
Megan Griesse	100	102		
Videre Vanadore	104	105		
Nancy Henderson	107	121		
VICTIM	125	135		
Irene Cunningham	144	154		
Bob Perry	159	172		
Christine Carlberg	181	188	189	

E X H I B I T S

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P R O C E E D I N G S

THE BAILIFF: All rise, Court is now in session, the Honorable Robert E. Hood presiding.

THE COURT: Thank you. Good morning. Please take your seats. Anybody have anything before we bring the jury in?

MS. SUSTAKOVITCH: Nothing from the State, Your Honor.

MR. SULLIVAN: Nothing from the defense.

THE COURT: I'll give a brief outline of the trial and then we'll go into it.

Okay. Bring them in.

(Jury enters the courtroom.)

Good morning, ladies and gentlemen, I hope everybody had a good night and are refreshed and ready to go this morning.

There are a few procedural matters that we have to take up first before we get into the trial of the case. What you're about to receive now is called the juror's oath. It is different than being sworn yesterday. This is an oath that you try the case before you fairly and impartially. It was written a very long time ago and it has a lot of deep meaning so I ask you to pay attention to it and hold truth to that oath throughout the entirety of this case.

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1 THE CLERK: Raise your right hand. The
2 correct response to the oath is "I will." You shall well
3 and truth try the case of 2012-GS-23-2853, State versus
4 Robert Wilson Woods indicted for criminal sexual conduct
5 with a minor first degree, 2012-GS-23-2852 for lewd act
6 upon a child and a true verdict rendered according to the
7 law and the evidence shall help you God. "I will."

8 JURY COLLECTIVELY: (I will.)

9 THE COURT: Thank you. Where is
10 Mr. Langston. Mr. Langston, you're going to be our
11 presiding juror or our foreman for this case. When you
12 come back out after the break, I'd like you to take that
13 first seat.

14 As I told you yesterday, you don't get any
15 extra pay, somebody has just have to monitor
16 communications with the Court as to what's going on.
17 Thank you very much.

18 Before we begin the actual trial of this
19 case, it's going to be helpful to you if I can explain to
20 you basically how a trial is going to proceed.

21 I know I told you a little bit of this
22 yesterday, but I'm going to go into it in more detail
23 today. First, the State will make an opening statement
24 and the State is represented by the Solicitor's Office.
25 Remember that an opening statement by either party is not

~~State versus Woods~~

1 evidence. It is simply an outline to help you understand
2 what that party expects the evidence will show.

3 Defendant may, if he wishes make an opening
4 statement, but he does not have to for reason that I will
5 explain to you in a few minutes. Following the opening
6 statement, you will hear testimony and evidence this case.
7 This will consist of testimony from the State's witnesses
8 as well as any physical evidence which will be introduced
9 into evidence.

10 Following the completion of the testimony,
11 the attorneys will again have an opportunity to make what
12 is called closing statements or closing arguments to you.
13 This is an opportunity for the attorneys to summarize the
14 case from their respective points of view. Again, these
15 arguments are not evidence.

16 Following the closing statements, by the
17 attorneys I will instruct you on the law of South Carolina
18 as it applies to the issues that have arisen in this case.
19 When I have completed my instructions to you, you will
20 then be permitted to begin your deliberations in order to
21 reach a verdict.

22 Ladies and gentlemen, you are now the jury in
23 this case and I want to take a few minutes to tell you
24 something about your duty as jurors and give you some
25 instructions. At the end of the trial, I will give you

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1 more detailed instruction. Those instructions will
2 control your deliberations. It will be your duty to
3 decide from the evidence what the facts are. You and you
4 alone are the judges of the facts.

5 You will hear the evidence, decide what the
6 facts are and then apply those facts to the law as I will
7 give it to you. That is how you will reach your verdict.
8 In doing so, you must follow the law whether you agree
9 with it or not. The evidence will consist of testimony of
10 witnesses, documents, and other things received into
11 evidence as exhibits, and any facts on which the lawyers
12 agree for which I instruct you to accept.

13 You should not take anything that I saw or do
14 during the trial as indicting what I think of the evidence
15 or what your verdict should be. Essentially, you are your
16 own judges. You are the judge of the judge of the facts
17 and you will make the decisions on the facts and the law
18 as I give them to you. Nothing that I say, nothing that I
19 do should ever influence your opinion of the facts because
20 I'm not allowed the comment on the facts or make any
21 statements or comments or commentary about what facts are
22 or what the facts may be.

23 This is a criminal case brought by the State
24 of South Carolina charging the criminal sexual conduct
25 with a minor in the first agree and lewd act upon a minor.

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1 The charge against the defendant is contained in the
2 indictments which I read to you yesterday.

3 The indictments are not evidence of anything.
4 They are simply the description of the charges made by the
5 State against the defendant. To those charges, the
6 defendant has pled not guilty and is presumed innocent
7 unless and until proven guilty beyond a reasonable doubt.

8 A reasonable doubt is the kind of doubt that
9 would cause a reasonable person to hesitate to act. A
10 defendant has to right not to testify and never has to
11 prove innocence or present any evidence. The burden of
12 the proof is always upon the State of South Carolina.

13 The following things are not evidence and you
14 must not consider them in deciding the facts of the case,
15 the statements and the arguments of the attorneys, the
16 questions and objections of the attorneys or any testimony
17 that I tell you to disregard.

18 Evidence that you may hear may be direct or
19 circumstantial. Direct evidence is testimony by a witness
20 about what that witness personally saw, heard, or did.
21 Circumstantial evidence is indirect evidence, that is it
22 is proof of one or more facts from which one can find
23 another fact. You are to consider both direct and
24 circumstantial evidence. The law permits yhou to give
25 equal weight to both but it is for you to decide how much

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1 weight to give any evidence.

2 Now, in the courtroom there are rules of
3 evidence which control what can be received into evidence.
4 Basically what you are allowed to hear. When a lawyer
5 asks a question or offers an exhibit into evidence, and a
6 lawyer on the side thinks that it is not permitted by the
7 rules of evidence, that lawyer may object. If I overrule
8 the objection, the question may be answered or the exhibit
9 may be received. If I sustain the objection, the question
10 can not be answered or the exhibit can not be received.

11 Whenever I sustain an objection to a question
12 or deny a motion to admit an exhibit into evidence, you
13 must ignore the question or the existence of the exhibit
14 and you must not guess what the answer would have been or
15 what the exhibit would have shown.

16 Sometimes it may be necessary for me to
17 request that you leave the courtroom while I discuss with
18 the attorney legal questions that come up during the
19 trial. This happens in almost every trial. If this
20 occurs, you should not speculate about what we are
21 discussing or the reasons that you were asked to leave the
22 room. This is simply a procedure that the law requires
23 when certain legal issues arise.

24 There also maybe occasions when I asked the
25 attorneys to approach the bench so that I can discuss a

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1 legal issue with them in private. This will more than
2 likely happen during this trial. I will do this often as
3 possible so that you will not be required to leave the
4 courtroom more than is absolutely necessary.

5 Again, if I ask the attorneys to step up to
6 the bench or I ask you to leave the courtroom, please
7 don't think that anybody is trying to hide anything from
8 you or keep any evidence from you. This is simply a
9 procedure used by all lawyers and by all courts to
10 determine and decide legal issues. So think of it this
11 way, you're the judge of the facts and I am the judge of
12 the law, so there will be times during the trial where I
13 will have to make legal decisions on things that are
14 admissible or not admissible. Some of those you may be
15 present for in the courtroom. Some of those I may ask you
16 to step back to your jury room.

17 So if I call the lawyers up for a conference
18 at the bench, that's me trying to avoid y'all going back
19 and forth and back forth and back and forth. I hope that
20 makes sense to you. That's not an attempt to hide
21 anything from you but there are certain rules that are in
22 place in this courtroom and in every courtroom in this
23 State that have to be followed and that I have to make
24 decisions on throughout the trial.

25 In deciding the facts of the case, you may

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1 have to determine which witness to believe and which
2 witness not to believe. You may believe everything a
3 witness says, part of what a witness says, or none of what
4 a witness says. In deciding what to believe, you may
5 consider a number factors including the following; what
6 was the witness's ability to see hear or know the things
7 he or she testified to, how was the quality of the
8 witness's memory, what was the witness's manner while
9 testifying, whether the witness has an interest in the
10 outcome of the case or any motive, bias or prejudice,
11 whether the witness was contradicted by anything the
12 witness said or wrote before the trial or by other
13 evidence, how reasonable was the witness's testimony when
14 considered in the light of other evidence which you
15 believe.

16 Now, I add to that list is you bring with you
17 your everyday common sense and your life's experiences as
18 you judge credibility of the witnesses.

19 Now, this goes back to what I told you
20 yesterday, until I advise you that you are allowed to
21 begin deliberations, you are not allowed to discuss this
22 case with anyone including your fellow jurors, friends,
23 family members and anyone involved in the case. This
24 includes discussions face to face, telephone, email, text
25 message, log, Facebook, Twitter, Link-in, Google Plus,

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1 MySpace or any other social media or any other method of
2 communication that I don't know about. You may not use a
3 computer, cellular phone or other electronic device with
4 communication capabilities at any time while in the
5 courtroom or during deliberations.

6 During your breaks for meals or overnight if
7 necessary you may use these devices, however, you may not
8 at any time use these devices to get or send information
9 about the case. This includes information about a party,
10 a witness, an attorney, court officer, any news account
11 about the case, research on any topics raised or any other
12 topic you may think would be helpful in deciding the case,
13 or any testimony presented by any witness.

14 During this trial, do not read, listen to, or
15 watch any news reports about this case. This includes
16 anything that may be in the newspaper, on the Internet,
17 the radio or television. You must not consider anything
18 you may have read or heard about the case outside the
19 courtroom whether before or during the trial.

20 After the case is submitted to you, you must
21 discuss it only in the jury room and only with all 12 of
22 you present. The attorneys of the parties in this case
23 have been advised that they are not to talk to you at all.
24 So if you see anyone involved in this case and they don't
25 even say hello, they're not being unfriendly. They're

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1 just following the Court's instructions.

2 It is important that you keep an open mind
3 and not decide any issue into this case until all the
4 evidence has been presented, the parties have made their
5 closing arguments and I have instructed you on the law of
6 the case. It is your sole responsibility to determine the
7 guilty or innocence of the defendant and your verdict must
8 be based solely on the evidence as it is presented to you
9 in this trial and on the law as I instruct you during and
10 at the close of the trial.

11 Now, Mr. Langston, it is your added duty to
12 preside in the jury room and we would call that the
13 presiding juror. You are the jury spokesperson here in
14 court. It will also be your duty to write the verdict,
15 but I will give you further instructions about that at the
16 conclusion of the case.

17 Now, I'm going to tell you about an issue
18 that I had a few weeks ago because I never ended up with
19 it before, but I had jurors that on their own voluntarily
20 decided to start taking notes. I do not allow note taking
21 in trials. We do in longer trials, but I don't expect
22 this trial to be that long. I want you to use your best
23 memory. There doesn't need to be any note taking and the
24 reason is if you're writing a note about what somebody
25 says while you were writing it, you could be missing what

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1 else they said and then you get back in your jury room
2 when you're deliberating and somebody's got a note that
3 says one thing and somebody's got a note that says another
4 thing, well neither one of those notes control in the jury
5 room because what controls is the testimony that comes
6 from the witness stand and not what somebody wrote down on
7 a sheet of paper.

8 So some of you may be wondering about taking
9 notes, and that's why we will not allow you to take notes,
10 also due the brevity of the trial as we expect it to be
11 over the next day or so.

12 Alright, any exceptions from the State?

13 MS. SUSTAKOVITCH: None from the State, Your
14 Honor.

15 THE COURT: Mr. Sullivan?

16 MR. SULLIVAN: None, Your Honor.

17 MS. SUSTAKOVITCH: Thank you, Your Honor, may
18 it please the Court.

19 THE COURT: Yes, ma'am.

20 MS. SUSTAKOVITCH: In the summer of 2011,
21 **VICTIM** [REDACTED] was like most young girls, she went to school,
22 she loved to play, she liked watching the Disney Channel,
23 but the evidence will show that her life changed. Her
24 life changed after her mother's boyfriend had anal sex
25 with her. **VICTIM** [REDACTED] was just eight years old and this is

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1 the man that had anal sex with VICTIM [REDACTED], Robert Woods.

2 My name is Christy Sustakovitch. I'm a
3 prosecutor. I work with the Thirteenth Circuit
4 Solicitor's Office and represent the State of South
5 Carolina. As a prosecutor, it's my job to present to you
6 evidence in a search for a proof to prove to you beyond a
7 reasonable doubt that this defendant is guilty of the
8 crimes that he is charged with.

9 I will tell you from the beginning as I
10 looked at you yesterday none of you knew you would be on
11 this jury. You had no idea that you would have to sit and
12 listen to the content of this type of trial and I just
13 want to say from the outset, thank you. I know defense
14 counsel thanks you and Judge Hood as well. It's an ugly
15 topic. You're going to have to hear things that you don't
16 really want to and from the outset, I just want to say
17 thank you.

18 You're going to hear more about the law at
19 the end of this trial when the Judge instructs you on all
20 of the laws and he is the sole instructor on all of the
21 laws, but very briefly, this defendant is charged with two
22 crimes. One is criminal sexual conduct in the first
23 degree. What that means as you listen to the evidence in
24 this case, it means with a person, in this case this
25 defendant, commits a sexual battery on a child under the

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1 age of 11. A sexual battery can be numerous things. It
2 can vaginal intercourse, it could be oral sex, it could be
3 anal intercourse. In this case, it's anal intercourse.

4 Also, so very often when there's a criminal
5 sexual conduct, there's a lewd act that happens on the way
6 to the completion of that act. A lewd act is a lewd or
7 lascivious is basically what you think, it's the actions
8 of a lewd and lascivious act on a minor child for the
9 defendant's sexual gratification.

10 As Judge Hood just told you, evidence comes
11 in many forms. In a murder case, you might have bullets,
12 you might have all this fancy DNA and all of these medical
13 experts to come in here and tell you all kinds of big
14 names. I will tell you in this type of a trial from the
15 outset, do not expect that. You will not hear that.

16 In a case such as this one the evidence is
17 primarily direct evidence, evidence that comes from this
18 witness stand from witnesses that will come into this
19 courtroom and testify before you, from the victim in this
20 case now 10 years old and will come in here and testify
21 before you.

22 And as Judge Hood has said, evidence comes in
23 many forms, physical, medical, and direct and none of it
24 weighs more than the other, it's all just as important.
25 The essential question in this case, ladies and gentlemen,

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1 comes down to but one thing, did this defendant perform
2 anal sex on this child?

3 You're going to hear in this case the
4 background of this defendant and the little girl's mother,
5 how they met in the summer of 2011. You'll hear how this
6 child's mother had numerous boyfriends in the past. She
7 bounced from place to place with **VICTIM** and her brother and
8 in the summer of 2011 they were living in an apartment
9 complex here in Greenville County.

10 The evidence will show the child's mother was
11 a housekeeper and still is at the Holiday Inn. You'll
12 hear in the evidence that the child's mother, within a few
13 days, allowed this defendant to move into the home. She
14 liked him, started dating, they had a relationship. At
15 that point, ladies and gentlemen, the evidence will show
16 that the mother would go to work. This defendant was
17 unemployed at the time, didn't have a job, and his job was
18 to get up and take the children to the bus stop which was
19 close to the house.

20 The evidence will show later in the day he
21 would come back to the bus stop and meet **VICTIM** and her
22 little brother and he would come back to the home and it
23 would be hours in the afternoon where he would be home
24 alone with **VICTIM** and her brother.

25 The evidence will show that it was during one

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1 of those afternoons that VICTIM was sexually assaulted.
2 You will hear how VICTIM didn't come running and screaming
3 out of the room. As happens so often, a child waits.
4 They don't come out and immediately tell. She waited for
5 weeks if not a month. She didn't reach out, as evidence
6 will show, to her own mother because she didn't think her
7 mother would believe her and the evidence will show, she
8 didn't.

9 The evidence will show her mother sided with
10 this defendant and VICTIM reached out to her teacher at
11 school. Her teacher then told the guidance counselor at
12 her school and that's how this investigation began, a
13 child's voice reaching out through her teacher and her
14 counselor to get help.

15 You'll hear how VICTIM was interviewed.
16 You'll view that interview. You'll hear from the doctor
17 that examined her and at the end of this case, which I
18 expect to be short, you will determine what you believe
19 happened to VICTIM. That's what this case is about, a
20 little girl who was sexually assaulted by a man who should
21 have been there to protect her.

22 I expect as I told you this case to be short.
23 These crimes they happen in secret. They don't happen on
24 a crowded street. They happened behind closed doors.

25 Ladies and gentlemen, at this end of this,

State versus Woods

1 with all difference to Judge Hood, you alone have the most
2 significant job of anyone in this courtroom. The State
3 must present the facts to prove to you beyond a reasonable
4 doubt that these crimes were committed in search for the
5 truth.

6 Defense counsel must zealously defend his
7 client within the boundaries of the law but you alone must
8 determine the facts, but I always say that you have the
9 most important tool right now as you sit there which is
10 your common sense. Let it be your guide as you listen to
11 the evidence in this case. And at the end of this case, I
12 will ask you to return a verdict that speaks justice.
13 Thank you.

14 THE COURT: Thank you, ma'am.

15 Mr. Sullivan.

16 MR. SULLIVAN: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. SULLIVAN: Ms. Sustakovitch. Good
19 morning. It won't take very long but this is an important
20 case. This might not affect you personally, but this will
21 be one of the hardest decisions you ever make. You will
22 hear the evidence from the witness stand, however there
23 will be no evidence other than the little girl. There
24 will be no forensics, no doctors, no DNA. What we're going
25 to get down to do today is going to tell you a story. The

Megan Griese - Direct

1 burden is on the State to prove this case. This little
2 girl has had some problems and if she's not telling the
3 truth, then you will find the defendant not guilty, but if
4 she is telling the truth, then, of course, you will find
5 him guilty.

6 You are the most important people in this
7 courtroom today and each one of you must all agree but it
8 must be your individual decision to make. This is going
9 to be hard. This is not some Perry Mason thing where I'm
10 going to ask some magic question and it will all come
11 clear. I may not or may not ask a witness question and
12 it's all about what they know about the case and that's
13 all I need to know. I don't run my mouth just to hear
14 myself talk, but for now that's all I have and I'll talk
15 to you some more later. Thank you.

16 THE COURT: Thank you.

17 Yes, ma'am.

18 MS. SUSTAKOVITCH: Thank you, Your Honor.
19 The State calls Megan Griese.

20 THE CLERK: Please come forward and stop at
21 the end of the bench.

22 THE BAILIFF: Place your left hand on the
23 Bible and raise your right hand.

24 THE CLERK: Do you swear or affirm to tell
25 the truth, the whole truth, and nothing but the truth so

Megan GRIESE - Direct

1 help you God?

2 MS. GRIESE: I do.

3 MEGAN GRIESE: Having been duly sworn,
4 testified as follows:

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

7 THE WITNESS: My name is Megan GRIESE.

8 DIRECT EXAMINATION

9 BY MS. SUSTAKOVITCH:

10 Q. Good morning, Ms. GRIESE. Where are you
11 employed?

12 A. Duncan Chapel Elementary.

13 Q. And what is your position there, Ms. GRIESE?

14 A. I'm a third grade teach.

15 Q. Are you married?

16 A. Yes, ma'am.

17 Q. Are you from Greenville?

18 A. Not originally.

19 Q. How long have you been at Duncan Chapel
20 Elementary?

21 A. This is my third year.

22 Q. And how long have you totally been the teacher?

23 A. Three years.

24 Q. Do you know someone named VICTIM ?

25 A. I do.

Megan Griesse - Cross

1 Q. And how did you meet VICTIM?

2 A. She was my student from 2011 until 2012.

3 Q. I want to take you back -- that would be not this
4 year but last year; is that correct?

5 A. Yes.

6 Q. How many students do you have in a class?

7 A. Usually between 19 and 22. Last year I had 24.

8 Q. Taking you back to August 2011, would that be the
9 start of school for you?

10 A. Yes.

11 Q. Anything about VICTIM that stands out?

12 A. At the beginning the school year, she would cry a
13 lot and that stood out.

14 Q. While she was a student in your close, did she
15 ever disclose to you that she was the victim of sexual
16 abuse?

17 A. Yes.

18 Q. And without going into what she stated to you --
19 let me ask this. When you got that information, did you
20 try to go into detail with VICTIM about the subject of the
21 abuse?

22 A. No.

23 Q. What did you do at that point when she indicated
24 to you that she had been the victim of abuse?

25 A. I sent her to our school guidance counsel,

Megan Griesse - Cross

1 Dr. Varnadore.

2 Q. Is that a standard protocol as a teacher if you
3 get that kind of information?

4 A. Yes.

5 Q. Do you recall approximately when in the school
6 year **VICTIM** would have disclosed this information?

7 A. It was the beginning, I think in September.

8 Q. I have no further questions. Please answer
9 anything Mr. Sullivan has.

10 CROSS-EXAMINATION

11 BY MR. SULLIVAN:

12 Q. When did the school year start?

13 A. August of 2011.

14 Q. In the middle of August.

15 A. I think so.

16 Q. You said that when you first met **VICTIM** she had
17 behavior problems?

18 A. She was more emotional and she cried a lot and
19 she didn't always complete her work.

20 Q. This is when you first saw her?

21 A. Yes.

22 Q. And this was in August?

23 A. The beginning of the school year -- I don't
24 remember exactly.

25 Q. She was exhibiting this behavior when she went to

Megan Griese - Cross

1 the later in September?

2 A. Yes.

3 Q. You been there three years?

4 A. Uh-hum.

5 Q. And y'all are trained if something like this
6 happens, you said hold up and you get a professional
7 counseling?

8 A. Yes, and then they make up managerial
9 requirements.

10 Q. Have they had other reports in the three years
11 you've been there?

12 A. Yes.

13 Q. I can't say it's common but it's no
14 uncommon/common.

15 A. Very rare, maybe two.

16 Q. I have nothing further.

17 THE COURT: Ms. Sustakovitch.

18 MS. SUSTAKOVITCH: Nothing further. May this
19 witness be excused?

20 THE COURT: Any objection, Mr. Sullivan?

21 MR. SULLIVAN: No objection.

22 THE COURT: You may be excused. Thank you.

23 (Witness leaves the witness stand.)

24 MS. SUSTAKOVITCH: The State calls Videra
25 Varnadore.

Varnadore - Direct

1 THE CLERK: Please come forward, stop at the
2 end of the bench, put your left hand on the Bible and
3 raise your right hand.

4 VIDERA VARNADORE: having been duly sworn,
5 testified as follows:

DIRECT EXAMINATION

6 BY MS. SUSTAKOVITCH:

7 Q. Dr. Varnadore, you are a doctor?

8 A. Doctor of Education, yes.

9 Q. Where are you employed?

10 A. Greenville County Schools, Duncan Chapel
11 Elementary.

12 Q. How long have you been at Duncan Chapel
13 Elementary?

14 A. Approximately 20 years of 47 years.

15 Q. And what's your doctrine in?

16 A. Education.

17 Q. Do you know a child by the name of VICTIM ?

18 A. I do.

19 Q. And how do you know VICTIM ?

20 A. I met her as one of our students. She is now in
21 forth grade.

22 Q. When did you meet VICTIM ?

23 A. As a third grade student.

24 (Form marked as State's Exhibit No. 1 for
25

Varnadore - Cross

1 identification.)

2 BY MS. SUSTAKOVITCH:

3 Q. I want to show you what's marked as State's
4 Exhibit No. 1 for identification purposes, do you
5 recognize that document?

6 A. Yes, I completed this form.

7 Q. On what date did you complete that form?

8 A. On the 29th of September of 2009.

9 Q. What is that form?

10 A. It's a report to DSS for suspected child abuse
11 form.

12 Q. Without naming the person that **VICTIM** stated, did
13 **VICTIM** indicate to you on that date that she was a victim
14 of sexual assault?

15 A. Yes.

16 Q. And did she report the time frame that this
17 incident took place?

18 A. I'm sorry. I don't remember the time frame.

19 Q. Can you refresh your recollection in reading that
20 report?

21 A. It happened in September.

22 Q. Is that what indicated to you?

23 A. Yes.

24 Q. Did she report to you and name some places where
25 the assault took place?

Nancy Henderson - Direct

1 A. It was in her mother's bedroom.

2 Q. Do you happen to know where [REDACTED] was living at
3 the time?

4 A. She lived [REDACTED] [REDACTED] [REDACTED] Road, No. [REDACTED].

5 Q. If you see this information, what would do with
6 this?

7 A. I wrote a written report and I informed DSS.

8 Q. Would this be the same day that [REDACTED] had spoken
9 with her teacher, Ms. Griese?

10 A. Yes.

11 Q. And is it standard protocol if you in your
12 position get a report where there is concern abuse or
13 assault that you then go on to report it to authorities?

14 A. We are mandatory reporters.

15 Q. Please answer any questions defense attorney may
16 have.

17 CROSS-EXAMINATION

18 BY MR. SULLIVAN:

19 Q. I just have a few questions. She said this
20 happened sometime in September.

21 A. Yes.

22 Q. Close to the reporting time?

23 A. Yes, sir.

24 Q. After this you turned this over to the
25 authorities and then you had nothing further to do with

Nancy Henderson - Direct

1 it?

2 A. Yes, sir.

3 Q. Did you know Nancy Farnsworth, she was the
4 principal there?

5 A. No, sir.

6 MR. SULLIVAN: Nothing further.

7 THE COURT: Ms. Sustakovitch.

8 MS. SUSTAKOVITCH: Nothing further. May this
9 witness be excused?

10 THE COURT: Any objection.

11 MR. SULLIVAN: No objection.

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

14 (Witness leaves the witness stand.)

15 MS. SUSTAKOVITCH: The State calls Christine
16 Henderson to the stand.

17 THE CLERK: Please pause at the bench, place
18 your left hand on the Bible and raise your right hand.

19 NANCY HENDERSON, having been duly sworn
20 testifies as follows:

21 You can have a seat and state your full for
22 the record.

23 THE WITNESS: Nancy Ann Henderson.

24 THE CLERK: Thank you.

25 DIRECT EXAMINATION

Nancy Henderson - Direct

1 BY MS. SUSTAKOVITCH:

2 Q. Dr. Henderson, what is your occupation?

3 A. I'm a child abuse pediatrician with Greenville
4 Health System.

5 Q. And how long have you been a pediatrician for
6 Greenville Health System?

7 A. I've been working with the hospital since 1991.

8 Q. Can you describe for the jury your work
9 experience.

10 A. I attended medical school in Balmont Grade
11 Medical Center in Winston Salem, North Carolina and then
12 did my three year pediatric residence in Chattanooga,
13 Tennessee and finished there in '87 and worked there
14 approximately three years and then came to Greenville
15 Hospital System.

16 Q. Can you go into any licenses or certifications
17 and such that you have?

18 A. I am licensed as a medical physician in South
19 Carolina. I'm board certified in general pediatrics and
20 adolescence medicine and child abuse pediatrics.

21 Q. You touched on those, Dr. Henderson, but could
22 you discuss further your particularized training in sexual
23 assault of children and abuse.

24 A. Yes. Child abuse pediatrics is a new
25 subspecialty in the area of pediatrics. It just started

Nancy Henderson - Direct

1 in 2009 was the first board certification in that area so
2 you either had to have a fellowship in at that area or at
3 least been -- your work experience had to be approximately
4 at least 50 percent of time in all area of child abuse and
5 that includes physical abuse, physical abuse, neglect
6 issues and things like that in order to sit for the exam.
7 And, again, that was in 2009 and that has to be
8 recertified every 10 years with a new exam.

9 Q. Doctor, have you had occasions to perform
10 examinations on children where there is a concern of
11 sexual abuse?

12 A. Yes. As one part of my job, I work at two
13 different advocacy centers where there are usually
14 referrals from either law enforcement and/or DSS and
15 sometimes private pediatricians when there are concerns
16 about sexual abuse and sometimes physical abuse incidents.

17 Q. Through your 20-odd years, can you estimate how
18 children you've seen where there is a concern of sexual
19 abuse?

20 A. I see approximately 200 children a year through
21 the advocacy centers and again a majority of those is
22 where there's concerns about sexual abuse.

23 Q. Dr. Henderson, have you testified in courts of
24 this state in the areas of pediatric and child sexual
25 abuse?

Nancy Henderson - Direct

1 A. Yes, I have.

2 Q. And how many times have you testified in that
3 specialty?

4 A. I'm usually called to court about 10 times a year
5 for those type of things.

6 Q. Which courts have you testified in?

7 A. Family court and criminal court.

8 Q. Have you been qualified as an expert in this
9 state in the area of child sexual abuse and pediatrics?

10 A. Yes, I have.

11 MR. SULLIVAN: We stipulate to her
12 qualifications, Your Honor.

13 MS. SUSTAKOVITCH: The State is going to
14 move at this time for her to qualified as an expert in the
15 area of pediatrics and child sexual abuse.

16 THE COURT: Any objections, Mr. Sullivan?

17 MR. SULLIVAN: No objection.

18 THE COURT: Ladies and gentlemen, normally a
19 person in a trial can not give opinion testimony.
20 Normally when a person testifies, they must testify to
21 what they either saw or heard, sensed by smell or
22 something of that nature. However, there's an exception
23 under our rules due to a person's education or experience,
24 they are permitted to give their opinion in certain areas
25 if the court qualifies them in that way. This witness,

Nancy Henderson - Direct

1 Dr. Henderson, will be qualified in the area of pediatric
2 and child sexual abuse -- is that right, --

3 THE WITNESS: Yes, sir.

4 THE COURT: To give opinion testimony in that
5 area. Now, that does not mean you must accept the
6 opinion, but is evidence for you to use in any way that
7 you see fit to give the weight and credibility that you
8 believe is appropriate. Thank you.

9 Yes, ma'am.

10 MS. SUSTAKOVITCH: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SUSTAKOVITCH:

13 Q. Dr. Henderson, did you perform an exam on the
14 child that's involved in this case **VICTIM** **████**?

15 A. Yes, I did.

16 Q. When did you perform this exam?

17 A. January 12, 2012.

18 Q. Where did you perform this exam?

19 A. I performed it at the Julie Valentine Center.

20 Q. And what is the Julie Valentine Center?

21 A. The Julie Valentine Center is an advocacy center
22 that evaluates -- or part of the Julie Valentine Center,
23 which is the one I am involved with -- evaluates children
24 when there is a concern about abuse and neglect. So they
25 may be referred for a variety of different services. It

Nancy Henderson - Direct

1 could be that they're referred for forensic interviews to
2 try and understand what may have happened. They could be
3 referred for a medical exam, which is the part that I'm
4 involved with. They could be referred to counseling which
5 another avenue which the advocacy center does. And the
6 last part that we do is we have staffing that we get back
7 together with the referral agencies and other providers
8 that are involved with the child to kind of help share our
9 recommendations and come up with a plan for that child.

10 Q. How was **VICTIM** referred to your agency?

11 A. She was referred by both law enforcement and the
12 Department of Social Services.

13 Q. And how old was she when she was referred?

14 A. She was nine.

15 Q. Who took her to the exam?

16 A. Her aunt.

17 Q. Before we talk about **VICTIM**'s specific exam,
18 Dr. Henderson, are there different, for the jury's
19 education, are there different types of medical exams that
20 are given to children where there is a concern of sexual
21 assault?

22 A. There are different types of exams and they're
23 based really on the time when the disclosure is made
24 compared to when the incident happened. So not very
25 common in kids, but every now and again a child may make a

Nancy Henderson - Direct

1 disclosure and it just happened. And in those cases, if
2 it comes forwards, they are often referred to the
3 emergency room for what we call an acute sexual assault
4 exam. And the reason why it's acute is there is more
5 evidence, DNA evidence, that may be able to collected in
6 that time.

7 There also be other things, like fibers, hair
8 samples, and things like that they may be able to collect
9 off of a body so that's different than the type of exam
10 that we do typically at the Advocacy Center, which would
11 be called more of a chronic exam, and that's outside of
12 that 72 hour window from the incident to disclosure.

13 Q. In your training and experience, is one type of
14 exam more common than the other, meaning the acute versus
15 the chronic?

16 A. Yes, for children, they often don't disclose
17 right away. They often can take weeks, months, and even
18 years for them to even understand what happened to them
19 wasn't supposed to happen. It's fairly uncommon for
20 children to have that acute exam although that does occur
21 in chronic exams. The ones that occur at the Advocacy
22 Center is much more common in children.

23 Q. A chronic exam is the one that's outside of the
24 72 hour window when a child has been raped; is that
25 correct?

Nancy Henderson - Direct

1 A. That's correct.

2 Q. In your training and experience, what are some of
3 the reasons children delay in reporting?

4 A. As I mentioned a lot of times when something's
5 happened, they've been touched, they don't even realize
6 that that's not supposed to be happening or should be
7 happening ongoing day in and day out, but once they get to
8 the school system, they realize that's not supposed to be
9 happening to people and they may disclose it at that time.
10 Sometimes they are scared. The child lives within the
11 home, they've been threatened that something really bad
12 will happen to them, or they're family so they don't
13 disclose right away and wait until there's a safe
14 environment.

15 Sometimes they're just afraid. They're
16 afraid of what will happen to them, afraid of how they're
17 other parent may respond to it. So there are lots of
18 reasons that children delay disclosure.

19 Q. What type of exam did you perform on **VICTIM**?

20 A. It was what we call a chronic exam.

21 Q. During this exam, could you tell the jury what a
22 child has to do?

23 A. Well, what ---

24 THE COURT: Doctor, can you slow down just a
25 little bit. The court reporter has to keep up with you.

Nancy Henderson - Direct

1 She hasn't looked at me yet, but she may, because you're
2 going really fast. Can you slow down just a little bit
3 for us.

4 THE WITNESS: Of course, I'm sorry.

5 THE COURT: That's okay. I'm sorry to
6 interrupt. Thank you, ma'am.

7 THE WITNESS: Yes. Sure.

8 So what happens at the Advocacy Center is a
9 child is preferred and usually they're accompanied by a
10 protective caretaker and so I have a child life specialist
11 that works with me and are able to go out and meet the
12 child and that person is out in the waiting room and bring
13 the child back. And then during that time, they have an
14 opportunity to really go over the exam with the child and
15 play with the equipment and kind of use dolls so the child
16 feels most comfortable during the exam, which is very
17 important.

18 It is also an opportunity to understand body
19 part names so that we're talking about kind of the same
20 issues with the child. And then what will happen is after
21 that's taking place, I'll talk with the child life
22 specialist about what happened in the room and then I'll
23 go through with the care taker about the medical history
24 because those patients are all new to me so it's not like
25 I've seen them as they're regular job to obtain their

Nancy Henderson - Direct

1 medical history, learn any concerns that the parent or
2 child may have, that may be what's happening at home, and
3 then they will often to talk to the child by themselves if
4 they're able to separate and get an understanding of what
5 may have happened, again, any questions, concerns, that
6 the child may have about their body and then offer the
7 child an opportunity to have with them in the exam
8 everything they would like.

9 We want to make this as easy as possible and
10 then I do the medical exam which is a complete head to toe
11 exam.

12 BY MS. SUSTAKOVITCH:

13 Q. Dr. Henderson, if I could break for one second
14 just to clarify. [REDACTED]'s exam, who brought her to the
15 actual exam?

16 A. Her aunt.

17 Q. And during her physical exam, which I want to
18 talk about now, was anyone present in the room with you,
19 meaning was her aunt in the room when you did that exam?

20 A. She was not. She opted to just do it with the
21 child life specialist which was the only person in the
22 room at that time.

23 Q. Do you know her aunt's name?

24 A. Bessie Davis.

25 Q. So Aunt Bessie is not in the room. Can you tell

Nancy Henderson - Direct

1 us what the child -- what **VICTIM** -- has to physically do
2 during this exam?

3 A. The physical part is what you might think of a
4 regular head to toe check-up, looking in the ears, eyes
5 and throat, listening to heart and lungs, inspecting the
6 skin for any scars or rashes and things like that, looking
7 at the abdomen for any kind of masses and also looking at
8 the genital area. I use a piece of equipment called the
9 colposcope which is a large piece of equipment that does
10 at all touch the child. He or she also gets a look behind
11 it so they feel comfortable with that, and that just
12 allows for a documentation and magnification of the
13 genital area with a really good light source to see if
14 there's any abnormalities there.

15 And then depending on what the situation is
16 we decide if we need to do any further testing for
17 sexually transmitted infections and things like that.

18 Q. Dr. Henderson, without stating any name if she
19 did give one, did she indicate to you whether she was a
20 victim of sexual assault?

21 A. Yes, she did.

22 Q. And did she indicate to you the time or times
23 when then occurred?

24 A. Yes, she did.

25 Q. What did she state?

Nancy Henderson - Direct

1 A. She said that it happened one time and it
2 happened when she was eight.

3 Q. Did she indicate to you the place or places where
4 this one time incident occurred?

5 A. She said it happened at her mom's house.

6 Q. And as part of your medical treatment of **VICTIM** in
7 this exam, for purpose of medical diagnosis and treatment,
8 do you try to find out what type of actual sexual assault
9 occurred? Maybe vaginal versus anal, do you inquire into
10 that?

11 A. Yes, I do.

12 Q. Did you inquire into that with **VICTIM**?

13 A. Yes, I did.

14 Q. What did she state related to the type of assault
15 it was?

16 A. She said that it had happened regarding her butt,
17 her bottom area.

18 Q. And what did she state related to that?

19 A. That the private part had went into her butt.

20 Q. Did she indicate male private part?

21 A. Male private part, yes.

22 Q. And did she indicate to you anything related to
23 how that may have felt when that male private part went
24 into her butt?

25 A. She said it was uncomfortable but she denied any

Nancy Henderson - Direct

1 bleeding.

2 Q. Okay. Can you tell the jury what the result of
3 the exam going back to -- now that you know that there's
4 concern of anal penetration, do you inspect the child's
5 anal area as part of the exam?

6 A. Yes, I do.

7 Q. And can you tell the jury what the result of that
8 was?

9 A. Her exam was normal.

10 Q. Tell the jury what that means? When you have a
11 history of anal penetration and then you have a result
12 that is "normal", what, if anything, does that mean as
13 related to the sexual abuse? Does that indicate to you
14 that the abuse did not occur?

15 A. Well, when the child has a normal exam, that's a
16 good thing that everything is okay, but it does mean that
17 the abuse did not occur especially with regarding anal
18 penetration. Things can go into the rectal area as well
19 as come out of the rectal area without causing any trauma
20 to that. That's kind of what's it's normal job is. The
21 other thing that comes into play is that area has an
22 extremely good blood supply so that small tears can heal
23 very very quickly within days. So when there is a delay
24 in a medical examine, it's often is very much healed and
25 we won't see anything on an exam.

Nancy Henderson - Cross

1 Q. Put another way, if the juror has a perception
2 that if there's anal penetration, you would definitely see
3 scaring and definitely see tearing. What would your
4 response to that be in your medical opinion?

5 A. That is not true that a majority of times in the
6 exams that I do, the exams are normal, and again about 90
7 percent or more and that is because often these types of
8 acts don't cause any kind of trauma related, tearing, and
9 sometimes if they do, they heal very very quickly.

10 Q. Were you provided with a medical history of any
11 other medical conditions that **VICTIM** previously had that
12 you were told about during that exam?

13 A. Yes, I was provided. She had a history of
14 constipation that had resolved. She also had a problem
15 with scabies.

16 Q. What are scabies?

17 A. It's a mite that actually is microscopic. It's
18 not one that you can really see but what happens is it
19 kind of burrows underneath your skin and creates a very
20 very itchy type rash that can in adults that's often more
21 kind of like the fingers, in between the wet spaces of the
22 hands and feet and under the arms, but typically in
23 children it becomes total body and you see the rash much
24 more generalized.

25 Q. Please answer any questions counsel has.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. SULLIVAN:

4 Q. I was looking at your notes and it was curious
5 you stated it happened in the mom's house?

6 A. The mom's house.

7 Q. In September?

8 A. She said when she was eight.

9 Q. She didn't say a date. I have your notes here if
10 you want to look at them. It's on Page 4 at the very
11 bottom.

12 A. It just has it happened when she was eight.

13 Q. Now, she also said this had happened one time?

14 A. That's what she had told me, yes, sir.

15 Q. It's also in the report that she denied any
16 pornography?

17 A. Yes, that's correct.

18 Q. She indicated to you she had not viewed any
19 pornography.

20 A. Correct.

21 Q. Now, this happened sometime in September and you
22 had all of October, November and December and you saw her
23 the first of the year.

24 A. Yes.

25 Q. During that period of time, you said if you had

Nancy Henderson - Cross

1 happened there would have been time for a healing period.

2 A. That's correct.

3 Q. So the fact that you found a normal situation and
4 there was no tearing or anything like that, and it
5 appeared normal.

6 A. Yes, sir.

7 Q. Page 7, normal no tearing.

8 A. That's correct.

9 Q. If you had examined the child that had not been
10 abused, would this be the same exam?

11 A. Well, these exams are only done when there is a
12 concern of abuse obviously and the history of what the
13 child shares is obviously very important.

14 Q. If you saw a patient in your pediatric practice
15 without this kind of abuse and you found a normal reading
16 on your exam of her rectum, no tears, there would nothing
17 there to alert of any sexual abuse?

18 A. That's correct. If the behavior is fine, there's
19 no history, the exam itself would not have alerted me to
20 an abuse issue.

21 Q. The could have been a normal exam if she hadn't
22 of been abused?

23 A. Yes, sir.

24 Q. Thank you.

25

REDIRECT EXAMINATION

Nancy Henderson - Recross/Redirect

1 BY MS. SUSTAKOVITCH:

2 Q. Dr. Henderson, what this normally exam means
3 hypothetically if there's a history of abuse on a Monday
4 and the child is brought to you on a Tuesday or a
5 Wednesday, is it in your expert opinion still as likely
6 that you could still have a normal exam under that
7 scenario for anal penetration?

8 A. That's very possible.

9 Q. And what's the reason for that again?

10 A. Well, the reason, again, a lot of times with anal
11 penetration, there's not any specific evidence that you
12 might see on the exam with regard to changes in tone,
13 tears and things like that.

14 Q. Thank you.

15 RECROSS-EXAMINATION

16 BY MR. SULLIVAN:

17 Q. Do you ever see an abnormal exam in ---

18 A. I think in my whole practice I've seen one.

19 Q. But it does happen?

20 A. Yes, sir.

21 MR. SULLIVAN: No further questions, Your
22 Honor.

23 THE COURT: May the witness be excused?

24 MS. SUSTAKOVITCH: Yes, Your Honor.

25 THE COURT: Any objections?

Nancy Henderson - Recross

1 MR. SULLIVAN: No, Your Honor.

2 THE COURT: Okay. We'll take our morning
3 break at this time and as you see once we get started it
4 moves faster. I will remind you not to discuss the case
5 in any shape or form with your fellow jurors. We'll take
6 about a 10 minute break. Keep an open mind about the case
7 and we'll see you back in a few minutes. Mr. Anderson and
8 Mr. Lynch will take good care of you.

9 (Jury exits to courtroom for morning break.)

10 (Whereupon, there was a break.)

11 Okay. Bring them in.

12 (Jury re-enters the courtroom.)

13 I hope everybody had a nice break.

14 Mr. Sullivan, you have someone new at your
15 table?

16 MR. SULLIVAN: Yes, Your Honor. I'd like to
17 introduce to the Court John Kringle. He's in my office.
18 He helps me. He was in another court yesterday so he'll
19 be sitting with me and helping me keep things straight.

20 THE COURT: Okay. Call your next witness.

21 MS. SUSTAKOVITCH: The State calls **VICTIM** **██████**.

22 THE BAILIFF: Place your left hand on the
23 Bible and raise your right hand and face the judge.

24 THE CLERK: Do you swear or affirm to tell
25 the truth, the whole truth, and nothing but the truth so

VICTIM [REDACTED] - Direct

1 help you God?

2 MS. VICTIM: Yes, ma'am.

3 VICTIM [REDACTED], having been duly sworn, testified
4 as follows:

5 THE CLERK: Thank you.

6 If you want to have a seat.

7 Tell the court reporter your full name,
8 please.

9 THE WITNESS: VICTIM [REDACTED].

10 DIRECT EXAMINATION

11 BY MS. SUSTAKOVITCH:

12 Q. Good morning, VICTIM. How old are you?

13 A. Ten.

14 Q. Where do you go to school?

15 A. Duncan Chapel.

16 Q. What grade are you in?

17 A. Fourth grade.

18 Q. What's your teacher's name in school?

19 A. Ms. Austin.

20 Q. Do you like Ms. Austin?

21 A. Yes.

22 Q. What things do you like to do with Ms. Austin?

23 A. I like to learn math with her.

24 Q. What things in math is fun with her?

25 A. She teaches us fun facts.

VICTIM [REDACTED] - Direct

1 Q. What do you mean fun facts?

2 A. If we can't understand it she does it in a fun
3 way.

4 Q. Do you have any friends in school?

5 A. Yes, ma'am.

6 Q. Who are they?

7 A. It's a girl name Kiasha.

8 Q. What do you do with Kiasha?

9 A. We play a lot.

10 Q. Do you have any brothers or sisters, VICTIM?

11 A. Yes, ma'am.

12 Q. A brother or a sister?

13 A. A brother.

14 Q. What's his name?

15 A. Minor #1 [REDACTED].

16 Q. How old is Minor #1?

17 A. Seven.

18 Q. And, VICTIM, have you lived in Greenville your
19 whole life?

20 A. Yes, ma'am.

21 Q. And who lives with you right now?

22 A. My aunt.

23 Q. What's her name?

24 A. Bessie Davis.

25 Q. Who else lives with you right now?

VICTIM [REDACTED] - Direct

1 A. My brother.

2 Q. [REDACTED] Minor #1 ?

3 A. Yes.

4 Q. I want to take you back in time a couple of
5 years. Let's go back to second grade. What was your
6 second grade teacher's name?

7 A. Ms. Owens.

8 Q. Who?

9 A. Ms. Owens.

10 THE COURT: Everybody needs to hear you so if
11 you'll speak up so the jurors on the back row can hear
12 you.

13 If the jurors on the back row can't hear,
14 sort of raise your hand and I'll know that.

15 BY MS. SUSTAKOVITCH:

16 Q. [REDACTED] VICTIM, before we go to school, do you know why
17 you're in court today?

18 A. Yes, ma'am, Robert.

19 Q. We're going to talk more about Robert in a
20 minute, but, first, do you know the importance of telling
21 the truth?

22 A. To be honest.

23 Q. What's the difference between the truth and a
24 lie?

25 A. When you tell more lies you can't keep up with

VICTIM [REDACTED] - Direct

1 your lies.

2 Q. Is it good to tell the truth or a lie?

3 A. To tell the truth.

4 Q. What happens if you tell a lie?

5 A. Then people are not going to believe you.

6 Q. Okay. You said you're in court today because of
7 Robert. I want to take you back a little bit before we
8 get into that. Tell me about second grade. Who was your
9 teacher in second grade?

10 A. Ms. Owens.

11 Q. Did you like Ms. Owens?

12 A. Yes, ma'am.

13 Q. And what kind of fun things did you do in second
14 grade?

15 A. We learned writing and reading.

16 Q. I want to take you back to the summer before you
17 started the third grade, the summer of 2011. Do you
18 remember before you started the third grade?

19 A. (No response.)

20 Q. Do you remember living with your mom at [REDACTED]
21 [REDACTED] Drive?

22 A. Yes, ma'am.

23 Q. And when you lived at [REDACTED] [REDACTED] Drive who
24 lived with you there?

25 A. Robert, my brother and my mom.

VICTIM - Direct

1 Q. Do you remember when you first met Robert?

2 A. Uh-hum.

3 Q. What do you remember about first meeting Robert?

4 A. He had a dog named Buttercup.

5 Q. Did you like the dog named Buttercup?

6 A. Yes, ma'am.

7 Q. And did you get along with Robert when you first
8 met him?

9 A. Yes, ma'am.

10 Q. What kind of things did you do with Robert?

11 A. He bought me ice cream.

12 Q. Did you like him okay?

13 A. Uh-hum.

14 Q. I want to take you to third grade. Who was your
15 third grade teacher?

16 A. Ms. Greacy.

17 Q. Do you remember starting the third grade in
18 August of 2011?

19 A. Yes, ma'am.

20 Q. You said that you were here because of Robert.
21 What happened with Robert that you're in court to talk
22 about today?

23 A. He put his private inside of me.

24 Q. VICTIM, take us back to that day. Where were you
25 when Robert did that?

VICTIM - Direct

- 1 A. In my mom's room.
- 2 Q. Where was your mom?
- 3 A. At work.
- 4 Q. Where was your brother?
- 5 A. In my room.
- 6 Q. When you say your room, did you and your brother
- 7 have a room?
- 8 A. We shared a room.
- 9 Q. Did your mother have a room with Robert?
- 10 A. Uh-hum.
- 11 Q. How did you end up to be in that room with Robert
- 12 that day when he put his private in your butt?
- 13 A. I came out the bathroom and he called me in my
- 14 mom's room.
- 15 Q. What happened then, VICTIM?
- 16 A. He told me this would help me stop scratching.
- 17 Q. Did you have a problem scratching?
- 18 A. (Witness nods.)
- 19 Q. Do you know why you had a problem scratching?
- 20 A. (Witness nods.)
- 21 Q. Did you have a problem with scratching in your
- 22 body?
- 23 A. Uh-hum.
- 24 Q. He told you this would help you with scratching.
- 25 What happened next?

VICTIM - Direct

1 A. He put his private into my boom.

2 Q. Did you have your clothes on or off or some of
3 them off?

4 A. Off.

5 Q. How did your clothes get off?

6 A. He told me to take them off.

7 Q. Where were you when he put his private in our
8 backside?

9 A. In my mom's room.

10 Q. Where in your mom's room were you?

11 A. On her bed.

12 Q. Were you standing or laying or something else?

13 A. Laying.

14 Q. Where was Robert? Was he standing or lay or ---

15 A. He was behind me.

16 Q. He was behind you standing. Can you describe for
17 the jury what you recall about your mom's room?

18 A. She had a brown cover. She had a gold thing like
19 on the rail thing.

20 Q. Are you talking about on the bed? When you say
21 thing, what are you talking about?

22 A. It's like at the ending of the bed.

23 Q. It's some kind of bedding you're talking about?

24 A. Yes.

25 Q. Can you recall anything else about your mom's

VICTIM [REDACTED] - Direct

1 room?

2 A. I think she had white pillows.

3 Q. Alright. Going back to -- you said you came out
4 of the bathroom and Robert called you over and he said
5 that it would help your scratching. When he told you to
6 take your clothes off, did you understand what he was
7 doing?

8 A. Yes.

9 Q. When he got behind you, did you understand what
10 he was doing?

11 A. Yes.

12 Q. At that point, what did he put inside, I believe
13 he called it your buttocks, what did he put inside your
14 buttocks?

15 A. His private.

16 Q. When you say private, on a male, what is a
17 private? Is that what they use to go to the bathroom?

18 A. Yes.

19 Q. Which bathroom? To pee?

20 A. Uh-hum.

21 Q. I just want to be clear for the jury what you're
22 talking about. VICTIM, when this was going on, did you
23 understand why Robert was doing that?

24 A. He said it was to help me stop scratching.

25 Q. After this stopped, did Robert say anything to

VICTIM - Direct

1 you?

2 A. He told me not to tell my mom.

3 Q. Why did he say not to tell your mom?

4 A. I told him she might kill him.

5 Q. Did this happen this one time or more than that
6 with Robert?

7 A. One time.

8 Q. After this happened with Robert, who did you wind
9 up telling about what had happened with Robert?

10 A. To my teacher.

11 Q. Why didn't you tell your mother?

12 A. I was afraid she might not believe me.

13 Q. Which teach was it that you told?

14 A. Ms. Greasy.

15 Q. Do you recall after that having to go talk to
16 anybody else at the school about it?

17 A. I had to talk to Dr. Banderdorf.

18 Q. Did you talk to her about it?

19 A. Yes, ma'am.

20 Q. When your mom did find out what happened, do you
21 remember having a phone conversation with your mom?

22 A. Uh-hum.

23 Q. And in that phone conversation with your mom, can
24 you describe what she was acting like?

25 A. She was calm but she was frustrated with me.

VICTIM - Cross

1 Q. She was frustrated at you?

2 A. Uh-hum.

3 Q. What were you telling her on the phone?

4 A. I told her that he put his privates in me.

5 Q. Did she seem to believe you?

6 A. I said he put his privates on me and she asked me
7 was I lying and I told her no.

8 Q. Who were you with when you had that phone
9 conversation?

10 A. My aunt.

11 Q. Whose your aunt again?

12 A. Aunt Bessie.

13 Q. VICTIM, as far as this happened, do you know what
14 day this happened on? Did you have any idea?

15 A. Uh-hum.

16 Q. So when you told Ms. Greasy a school, it had
17 happened sometime prior to that; is that correct?

18 A. Yes, ma'am.

19 Q. Do you remember having to go to the doctor and
20 having the doctor check you out after this?

21 A. Yes, ma'am.

22 Q. VICTIM, is there anybody on this planet that could
23 make you make this up if this did not happen to you?

24 A. No, ma'am.

25 Q. Are you telling this jury the truth about what

VICTIM

- Cross

1 Robert did to you?

2 A. Yes, ma'am.

3 Q. Please answer any questions defense counsel has.

4 CROSS-EXAMINATION

5 BY MR. SULLIVAN:

6 Q. Just a few questions, VICTIM. Do you remember a
7 person named Lisa?

8 A. Yes, sir.

9 Q. Who was Lisa?

10 A. She was my mom's great niece.

11 Q. Did she live with y'all during this time?

12 A. Yes, sir, but she moved out because Robert was
13 staying there.

14 Q. Did she move out before this happened or after
15 this happened?

16 A. After this happened.

17 Q. So she was living there when you say Robert did
18 this to you?

19 A. Yes, sir.

20 Q. So in the house it would have been you, Lisa,
21 Robert and Trail, that's what you call your brother.

22 A. Yes, sir.

23 Q. So she was there, correct?

24 A. Uh-hum.

25 Q. She didn't work at that time, did she? She

VICTIM - Cross

1 stayed in the house?

2 A. Yes, sir.

3 Q. Where was she when this happened?

4 A. I don't think she was there.

5 Q. You don't know for sure?

6 A. No, sir.

7 Q. So where did she sleep?

8 A. She slept in the living room on the couch.

9 Q. So you and **Minor #1** had y'all room and then Robert
10 and your mother, Irene, had a room and then Lisa slept on
11 the sofa?

12 A. Uh-hum.

13 Q. And she did not move out until after this
14 happened, correct?

15 A. Yes, sir.

16 Q. Now, when this happened you say that you came out
17 of the bathroom.

18 A. Yes, sir.

19 Q. And then Robert have you take your clothes off.

20 A. Yes, sir.

21 Q. Did he have his clothes on or off?

22 A. On.

23 Q. So he had his shirt and his pants and his shoes
24 on?

25 A. Yes, sir.

VICTIM

- Cross

1 Q. And you say he took his private out. Did you see
2 that?

3 A. No, sir.

4 Q. So you did not see him take his private part out.

5 A. No, sir.

6 Q. Did you see him put anything on it?

7 A. No, sir.

8 Q. Now, when he was on top of you, okay.

9 A. Yes, sir.

10 Q. I think you told a person that his body didn't
11 move, is that correct?

12 A. Yes, sir.

13 Q. So he was laying on you and his body wasn't
14 moving.

15 A. Yes, sir.

16 Q. But you said we moved; is that correct?

17 A. Yes, sir.

18 Q. You said when it was over you didn't know if
19 anything came out; is that correct?

20 A. Yes, sir.

21 Q. And then you say he put his wee back in his
22 pants?

23 A. Yes, sir.

24 Q. Did you see that?

25 A. No, sir.

VICTIM

- Cross

1 Q. But you say that he had it in your buttocks?

2 A. Yes, sir.

3 Q. You felt that?

4 A. Yes, sir.

5 Q. Did you holler or make any noise?

6 A. No, sir.

7 Q. So **Minor #1** in the next bedroom wouldn't hear
8 anything?

9 A. No, sir.

10 Q. And Lisa wouldn't have heard anything?

11 A. No, sir.

12 Q. And what happened after that?

13 A. He told me don't tell my mom.

14 Q. How did you get dressed?

15 A. I just put my clothes back on when he was done.

16 Q. And he never had his clothes on but you think he
17 had his wee out, correct?

18 A. Yes, sir.

19 Q. But you never saw him put it back up, correct?

20 A. Yes, sir.

21 Q. Now, you reported also that he didn't touch any
22 other part of your body; is that correct?

23 A. Yes, sir.

24 Q. He didn't touch your ba-ba, is that what you call
25 it?

VICTIM - Cross

1 A. Yes, sir.

2 Q. He didn't touch that. Was he holding your arms
3 or something?

4 A. No, sir.

5 Q. Where was his hands?

6 A. On the bed.

7 Q. His hands were not touching you. They were on
8 the bed.

9 A. Yes, sir.

10 Q. Now, have you ever seen or heard Robert and your
11 mother doing this?

12 A. Yes, sir.

13 Q. Tell me about that. Have you seen them?

14 A. Yes, sir. No, I haven't seen them but I heard
15 them. I heard my mom scream.

16 Q. You said you reported he did the same thing with
17 you mother but his wee in her butt, did you see that?

18 A. I heard it.

19 Q. Did you hear it more than once or just one time?

20 A. I only heard it one time.

21 Q. Did you ever see them watch any pornography?

22 A. I don't know understand with Robert but my momma
23 watching it. Well, sometimes I would be in my room
24 because Robert would always punish us.

25 Q. For not doing your homework and things.

VICTIM - Cross

1 A. Yes, sir.

2 Q. When Robert would come in the morning, he would
3 be there and he would walk y'all to school, correct?

4 A. Yes, sir, he would walk us to the bus.

5 Q. And then you would get off the bus around 3:00 or
6 so and he would be there to walk y'all back to the house?

7 A. Correct.

8 Q. And y'all were supposed to be doing your
9 homework?

10 A. Yes, sir.

11 Q. And does your brother have asthma?

12 A. Yes, sir.

13 Q. And if he gets overheated does he have to stop
14 and get oxygen?

15 A. Yes, sir.

16 Q. And sometimes you would see him jumping from the
17 chester to the bed.

18 A. Yes, sir. He would be jumping on the bed and
19 Robert would holler at him.

20 Q. He thinks he's in wrestling, WWE or something?

21 A. Yes.

22 Q. And Robert would tell y'all to quit rough
23 housing, correct?

24 A. Yes, sir.

25 Q. And if you didn't he would spank you, correct?

VICTIM

- Cross

1 A. Yes, sir.

2 Q. You never saw any marks on [Minor #1] or marks on you
3 from the spanking, did you?

4 A. Yes, sir.

5 Q. And the spankings were on your clothes. He
6 didn't have any exposed, correct?

7 A. Yes, sir.

8 Q. And when your mom got home, what would happened?

9 A. She would change her clothes, take a bath or just
10 lay down.

11 Q. Would Robert fix y'all dinner while y'all were
12 taking a bath?

13 A. He would never fix dinner. My mom would.

14 Q. Who helped you with your baths?

15 A. My mom did.

16 Q. Robert never helped you with baths or anything?

17 A. No, sir.

18 Q. Now, have you ever from your classmates or
19 anybody from Julie Valentine Center?

20 A. Have I heard about it.

21 Q. Had you heard about it before you went?

22 A. Anything about it.

23 Q. About toys and things?

24 A. I'm not sure.

25 Q. Did you and your friends ever talk about going

VICTIM - Cross

1 there or being there, your friends?

2 A. No, sir.

3 Q. When you got there were there a lot of toys and
4 things?

5 A. There were toys at the Julie Valentine Center and
6 I played with them.

7 Q. So you had a chance to play with them. Did you
8 draw on the board and stuff like that?

9 A. Yes, sir.

10 MS. SUSTAKOVITCH: May we approach?

11 THE COURT: Sure.

12 BY MR. SULLIVAN:

13 Q. After this happened, VICTIM, did you see a doctor?
14 I'm sure you saw Dr. Henderson.

15 A. I have saw somebody at the Julie Valentines.

16 Q. That would be Ms. Henderson, but between it
17 happened and the time you saw Ms. Henderson did you see
18 any other doctor?

19 A. I had but they weren't checking me about that.

20 Q. That was just your normal business, right?

21 A. Yes, sir.

22 Q. You were complaining about anything involving
23 this, did you?

24 A. No, sir.

25 Q. Now, the movies your mom and Robert would watch,

VICTIM

- Cross

1 do you know where they kept them?

2 A. In their room.

3 Q. How did you know that?

4 A. Because usually my mom would keep them in her
5 drawer.

6 Q. You saw her put them there?

7 A. Yes, sir.

8 Q. And you had seen them watch it but you never seen
9 them do anything with each other. You heard that?

10 A. I heard it.

11 Q. I said you think there was a railing on the bed.
12 If the bed was long, like this, where would the railing
13 be?

14 A. I was laying like this but her bed was like that.

15 Q. So you were laying across the bed rather than the
16 long ways and he was laying on top of you?

17 A. Yes, sir.

18 Q. But he body didn't move. You said he reached for
19 a pop-sickle, when did he reach for a pop-sickle?

20 A. Pop-sickle? He bought us ice cream when he first
21 came.

22 Q. I thought you said he gave you a popcille and
23 your mom came home. Was the pop-sickle later?

24 A. (No response.)

25 Q. Now, you said your mom was anxious with you or

Irene Cunningham - Direct

1 frustrated with you.

2 A. Yes.

3 Q. You know the different between the truth and
4 lies. Are there big lies and little lies and do you know
5 the difference?

6 A. Sometimes when I do the little stuff, she'll like
7 fuss at me.

8 Q. Did you ever tell little lies like homework and
9 things?

10 A. No, sir. I might lie first and then tell the
11 truth like hiding cake behind couches or sneaking candy.

12 Q. Homework. So you told little lies before that
13 way you wouldn't get in trouble?

14 A. Yes, sir.

15 MR. SULLIVAN: Nothing further.

16 MS. SUSTAKOVITCH: I have nothing further.

17 THE COURT: Ms. **VICTIM**, you may step down.

18 Thank you.

19 THE WITNESS: You're welcomed.

20 (Witness leaves the witness stand.)

21 MS. SUSTAKOVITCH: The State calls Irene
22 Cunningham.

23 THE BAILIFF: Place your left hand on the
24 Bible raise your right and face the Judge.

25 THE CLERK: Do you swear or affirm to tell

Irene Cunningham - Direct

1 the truth, the whole truth and nothing but the truth so
2 help you God?

3 MS. CUNNINGHAM: Yes.

4 THE CLERK: You may have a seat.

5 IRENE CUNNINGHAM, having been duly sworn,
6 testified as follows:

7 You may have a seat and state your full name
8 for the record.

9 THE WITNESS: Irene Cunningham.

10 DIRECT EXAMINATION

11 BY MS. SUSTAKOVITCH:

12 Q. Good morning, Ms. Cunningham.

13 A. Good morning.

14 Q. How old are you, ma'am?

15 A. I'm 43.

16 Q. Where are you from?

17 A. Greenville, South Carolina.

18 Q. Have you always lived here?

19 A. No, I lived in Florida for a little while.

20 Q. How long did you live in Florida?

21 A. Three or four years.

22 Q. How old were you when you lived down there?

23 A. I had just turned 18.

24 Q. Do you have any children?

25 A. I have three.

Irene Cunningham - Direct

1 Q. Are you married, ma'am?

2 A. Yes.

3 Q. How long have you been married?

4 A. All together, now, because we're separated, it
5 would be 12 years.

6 Q. Have you been separated 12 years?

7 A. Yes.

8 Q. Where is your husband?

9 A. He's in Florida.

10 Q. Do you have any children with your estranged
11 husband?

12 A. No.

13 Q. Can you tell the jury about your children, their
14 names and ages?

15 A. [Minor #2] is 16, [VICTIM] is 18, [Minor #1]
16 is 7.

17 Q. Just for point of clarification, were you ever
18 married to this defendant Robert Woods?

19 A. No.

20 Q. So when you had [VICTIM], you and your husband, you
21 were estranged for a couple of years, correct?

22 A. Yes.

23 Q. Do you currently work?

24 A. Yes.

25 Q. Where do you work?

Erene Cunningham - Direct

1 A. Holiday Inn.

2 Q. And what do you do at the Holiday Inn?

3 A. Housekeeping.

4 Q. And how long have you been doing that?

5 A. About five or six years.

6 Q. And I want to take you back to the summer of
7 2011, do you recall meeting this defendant in the summer
8 of 2011?

9 A. Yes.

10 Q. How did you meet this defendant?

11 A. Through an employee at work.

12 Q. Tell the jury a little bit about that, was it at
13 a party or was it just a ---

14 A. It was at work.

15 Q. So you went out on a date or what happened?

16 A. I met him over the phone at work and I invited
17 him over to the house a couple days later. He came over
18 to the house, we sat and talked, you know, listen to the
19 music and watched tv. He went home and I stayed home but
20 we kept seeing each other every now and then and then
21 after about a week or so I moved him into the house.

22 Q. So you met him and about a week later you moved
23 him into the house.

24 A. Yes.

25 Q. So you liked him?

Irene Cunningham - Direct

1 A. Yes.

2 Q. Where did he move into the house?

3 A. [REDACTED].

4 Q. Can you tell the jury about the set up of that
5 house, how many bedroom, big, small?

6 A. It was small, two bedrooms.

7 Q. Did you have your son living there as well?

8 A. Yes.

9 Q. Where did [REDACTED] and your son sleep?

10 A. In their bedrooms. They had separate beds.

11 Q. Once this defendant moved in, where did he sleep?

12 A. In my bedroom.

13 Q. Now, do you know somebody named Lisa?

14 A. Yeah, she stayed there way before he moved in.
15 She moved out when he came.

16 Q. So when he came Lisa was gone?

17 A. Yes.

18 Q. Who was Lisa anyway?

19 A. She was a friend of mines.

20 Q. Did you let her stay just because she didn't have
21 anywhere to live?

22 A. Yes.

23 Q. So Robert moves in. How did the meetings go with
24 the kids? Did they seem to go well?

25 A. Yeah, they liked him.

~~René Cunningham -- Direct~~

1 Q. Let me ask you about pornography. A personal
2 question, but did you have it in the house?

3 A. Yes.

4 Q. Where was it kept in the house?

5 A. In my closet.

6 Q. Did you guys watch any Tyler Perry movies?

7 A. Yes.

8 Q. What type of Tyler Perry movies did you watch?

9 A. The plays or the movies that they have out now.

10 Q. It was like Madea?

11 A. Yeah, it was basically like a gospel movies.

12 Q. Let me ask you about this defendant, you met him,
13 he moved in, did you guys begin having sexual relations at
14 that point?

15 A. Yes.

16 Q. How would you describe those interactions?

17 A. Some days it would alright, he was good, then
18 some days I'm tired, I don't want to have sex and he get
19 mad if I don't want to have sex. It's like he's cursing
20 me out and getting mad at me. I'm tired, you know.

21 Q. Let's got to your working hours. You said you're
22 in housekeeping at Holiday Inn. What were your working
23 hours, ma'am?

24 A. 8:00 to 4:30, 8:00 to 5:30.

25 Q. And going back to the summer of 2011, do you

Irene Cunningham - Direct

1 recall when **VICTIM** started third grade at Duncan Chapel
2 Elementary?

3 A. Yes, she been there ever since.

4 Q. When the kids had to go to school and you had to
5 go to work, tell the jury about Robert, what if anything,
6 was his role in that equation?

7 A. Well, I have to leave the house at 6:30 to go
8 catch my bus because I have to ride the city bus. I have
9 to be up there at least before 7:00. So I leave the house
10 at 6:30 to get up there on the hill at a quarter til. The
11 bus usually comes about ten minutes to 7:00. His job was
12 to walk the kids to their bus stop when I leave to go to
13 work and get them off the bus until I get home.

14 Q. Was he working at this time?

15 A. No.

16 Q. So when he would be at the bus stop and walk them
17 home, how much time would pass between them getting home
18 and you getting home from your job?

19 A. Their bus let them off around five or ten minutes
20 after 3:00. They get out of school at 2:30. They ride
21 the bus so to fill the bus up, they're sitting at school
22 for at least about a quarter til, five minutes til 3:00.
23 I get home at least about five or ten minutes after 3:00
24 or fifteen after because school was right there close to
25 the house.

~~Irene Cunningham -- Direct~~

1 I would get home at least by -- if I get off
2 at 4:00, I catch that 4:30 bus. I got to go down town,
3 change buses, I get home probably about 5:30.

4 Q. Between the time Robert got them off the bus and
5 5:30 when you got home, what did you think he was doing
6 with [Minor #1] and [VICTIM]?

7 A. When I come in the house, they would be in their
8 room and he would be in my bedroom.

9 Q. Did you end up leaving the [REDACTED] [REDACTED] Street
10 address?

11 A. Yes.

12 Q. How about in 2007, did you leave that address?

13 A. It had to be sometime in September because I got
14 evicted.

15 Q. That was my next question, how did you end up
16 leaving your [REDACTED] [REDACTED] apartment?

17 A. I got evicted.

18 Q. Where did you move?

19 A. I moved with him at his mom's house.

20 Q. Where did your children go live?

21 A. They lived with my aunt, Aunt Bessie.

22 Q. Why did you let your children go live with Aunt
23 Bessie?

24 A. Because I was on the street.

25 Q. Since you were on the street, you wanted your

Irene Cunningham - Direct

1 kids to be safe, is that correct?

2 A. Yes.

3 Q. At the point that you got evicted sometime in
4 September of 2011, did you have any clue that anything had
5 happened to **VICTIM** at that point?

6 A. No.

7 Q. Do you recall finding out that something happened
8 or there was an allegation something had happened to
9 **VICTIM** ?

10 A. Someone came -- DSS and law enforcement came to
11 my job.

12 Q. Do you recall the interactions with law
13 enforcement when they came to your job?

14 A. Yes.

15 Q. Do you recall this gentlemen on the first row
16 coming to your job?

17 A. Yes.

18 Q. Do you know who that is?

19 A. Yes.

20 Q. Investigator Perry, do you remember him?

21 A. Yes.

22 Q. Do you remember when he came out to your job
23 would say you cooperative or uncooperative or how would
24 you classify yourself?

25 A. I was trying -- I was hurt or shocked and saying

~~Trene Cunningham~~ — Direct

1 how can somebody that supposed to care about me and my
2 kids harm my kids?

3 Q. Do you recall telling Investigator Perry that
4 this defendant was never left alone with your children?

5 A. No.

6 Q. You don't recall that?

7 A. No.

8 Q. Do you recall telling this officer you didn't
9 know this defendant's last name?

10 A. No.

11 Q. Do you recall telling him you didn't know whether
12 this defendant had a job or not?

13 A. I told him he didn't have a job because he didn't
14 have a job.

15 Q. Do you recall have a phone conversation with
16 **VICTIM** where you were pretty upset?

17 A. Yes.

18 Q. Were you yelling?

19 A. No, I wasn't yelling.

20 Q. What were you doing?

21 A. I was asking her what had happened. You know,
22 did he mess with her and she said yes, mamma, he did.

23 Q. I don't want to hear about any hearsay statement.

24 A. Okay.

25 Q. Would it be fair to say you were shocked when you

Irene Cunningham - Cross

1 first heard this?

2 A. Yes.

3 Q. And did you not, in fact, quiz your daughter
4 about it and were pretty upset at the beginning; is that
5 correct?

6 A. Yes.

7 Q. Are you still with this defendant?

8 A. No.

9 Q. When did you break up with this defendant?

10 A. Right after I had heard about my daughter I had
11 left.

12 Q. Where is **VICTIM** living now?

13 A. With my Aunt Bessie.

14 Q. Living with Aunt Bessie since this incident
15 happened in the fall of 2011 up until now?

16 A. Yes.

17 Q. Please answer any questions defense attorney has.

18 THE COURT: Cross-examination

19 CROSS-EXAMINATION

20 BY MR. SULLIVAN:

21 Q. The lady that you note Robert's sister, Tracy?

22 A. Play sister.

23 Q. Play sister.

24 A. That's what they call each other.

25 Q. He called her and then you got on the phone and

Irene Cunningham - Cross

1 y'all kind of had an altercation.

2 A. Yes.

3 Q. Now, you were there at the house, did you ever
4 notice any inappropriate behavior by anybody?

5 A. No, I know my daughter sometimes she would lay
6 around sometimes and I go ask her if she was okay, stomach
7 hurting or school okay or talk about anything, and she
8 would say, no, momma, I'm fine.

9 Q. When did this happened? Did this go on most of
10 the time?

11 A. Some times.

12 Q. Now, you say that the porn that you and Robert
13 had, did you keep it in the drawer?

14 A. I kept it in a closet on the shelf.

15 Q. So the kids couldn't reach it or get it?

16 A. That's right.

17 Q. Do you know if they ever saw any of it?

18 A. No, I wouldn't dare show my kids porn.

19 Q. Do you know if they ever saw you and Robert
20 watching?

21 A. No.

22 Q. Did she ever see you and Robert do anything in
23 bed together?

24 A. No.

25 Q. Do you think she could hear anything?

Irene Cunningham - Cross

1 A. She probably could hear it but never seen it.

2 Q. Now, who is Minor #1's father?

3 A. Terry J [REDACTED].

4 Q. Was he helping you and your family?

5 A. Yes, he was helping me before I moved him into my
6 home.

7 Q. And then he stopped?

8 A. Yes.

9 Q. Were you behind on your rent at that time?

10 A. Yes.

11 Q. Who is VICTIM's father?

12 A. Calvin B [REDACTED].

13 Q. Did he do anything to help y'all?

14 A. No.

15 Q. So Robert moved in at the end of August and then
16 y'all were evicted. Y'all tried by couldn't get the rent
17 caught up?

18 A. Yes.

19 Q. So y'all were evicted at the end of September?

20 A. Yeah, around the end of September.

21 Q. You moved in with he and his mom?

22 A. Yes.

23 Q. The kids stayed at the same school and y'all
24 would get back together later, correct?

25 A. The kids, yes.

Irene Cunningham - Cross

1 Q. Tell me about Lisa?

2 A. Lisa was one of my friends that I knew for a
3 while and she had a little problem. She didn't have no
4 where to live. So I seen her one day in the store and she
5 asked me if should could move in for a little while and I
6 told her yes until you get yourself up on your feet and
7 then you have to get you own place.

8 Q. Where did she sleep when she was there?

9 A. She slept on the couch when she was there.

10 Q. Now, like all kids, **Minor #1** and **VICTIM**, did they ever
11 tell small lies or anything?

12 A. They would tell little stories like kids would do
13 but they ain't never told no lie on an adult.

14 Q. But they would lie. Why would they tell stories?

15 A. Like if I asked them and if one was crying and I
16 ask the other one, what did you do, did you hit your
17 sister or hit your brother, they would like about that.
18 But anything else, they won't lie about it.

19 Q. So to keep out of trouble, they would lie.

20 A. Right.

21 Q. Like if you gave them cookies and they would get
22 an extra one?

23 A. Right.

24 Q. Do you know if **VICTIM** had any problems at school
25 about telling the truth?

Irene Cunningham - Cross

1 A. No.

2 Q. How about acting up or acting out?

3 A. This little girl at school, they had a little
4 problem playing together on the playground.

5 Q. So other than what **VICTIM** told you and you pretty
6 much talked to Investigator Perry, that's all your
7 knowledge of this case?

8 A. Yes.

9 Q. You have no seen Robert since then?

10 A. No.

11 Q. Did you call him and tell him this accusation had
12 been made and they were going to talk to him?

13 A. I told him when I left -- when they told me
14 everything I told him a detective want to talk to him but
15 I don't know what happened to him after that.

16 Q. But you told him they wanted to talk to him about
17 it?

18 A. Yes.

19 MR. SULLIVAN: I have nothing further.

20 MS. SUSTAKOVITCH: Nothing further from the
21 State. May this witness be excused?

22 THE COURT: Any objection?

23 MR. SULLIVAN: No objection.

24 THE COURT: You may step down.

25 (Witness leaves the witness stand.)

Bob Perry - Direct

1 MS. SUSTAKOVITCH: The State calls
2 Investigator Bob Perry.

3 THE BAILIFF: Investigator, place your left
4 hand on the Bible, raise your right hand and face the
5 Judge.

6 THE CLERK: Do you swear or affirm to tell
7 the truth, the whole truth and nothing but the truth so
8 help you God.

9 INVESTIGATOR PERRY: I do.

10 BOB PERRY, having been duly sworn, testified
11 as follows:

12 THE CLERK: Thank you. You may have a seat.
13 State your full name for the record.

14 THE WITNESS: Investigator Bob Perry with the
15 Greenville County Sheriff's Office.

16 DIRECT EXAMINATION

17 BY MS. SUSTAKOVITCH:

18 Q. Investigator Perry, what's your position with the
19 Greenville County Sheriff's Office?

20 A. I'm an investigator in the Special Victim's Unit
21 investigating violent crimes on children.

22 Q. How long have you been an investigator with the
23 Special Victim's Unit?

24 A. Since it was formed in August of 2011.

25 Q. Give the jury a little bit of background, your

Bob Perry - Direct

1 law enforcement career. How long have you been in law
2 enforcement?

3 A. About 26 years or so.

4 Q. In those 26 years, what different capacities have
5 you worked?

6 A. Started out as working in the State of Georgia as
7 a regular deputy, became a sergeant. I took a job in
8 Florida to work in criminal investigations division. I've
9 been an investigator in homicide, robbery, things of that
10 nature, got interest into the child abuse aspect and
11 started seeing a lot of it in early 1990s. I started
12 doing some training on sexual abuse, sexual assault.
13 Stayed there and worked on that for many years. I
14 eventually after about 20 years and then took a job in
15 Greenville.

16 Q. How many years have you investigated throughout
17 your career different forms of sexual assault involving
18 children?

19 A. Seven years or so of sexual assaults.

20 Q. Can you tell the jury how, typically, sexual
21 assaults will be reported to the Sheriff's Office? What
22 are the different ways it will come in and end up on your
23 desk as an investigator?

24 A. There are several different ways that they
25 report. Many people call and leave tips, some people walk

Bob Perry - Direct

1 up to the front desk or report to a patrol deputy or to
2 our office making reports of allegations. We get reports
3 from other agencies such as the Department of Services and
4 information from reporters and forms, so there's multiple
5 ways we actually get the initial allegation to our
6 department.

7 Q. Are you familiar with this defendant Robert
8 Woods?

9 A. I am.

10 Q. And how are you familiar with him, sir?

11 A. Basically, he was a suspect in a case involving
12 VICTIM [REDACTED].

13 MS. SUSTAKOVITCH: Beg the Court's indulgence
14 for one moment.

15 (Document marked as State's Exhibit No. 2 for
16 identification.)

17 BY MS. SUSTAKOVITCH:

18 Q. What date did you become involved in this
19 investigation that brings us here?

20 A. October 3rd.

21 Q. I'm going to show what's been marked as State's
22 Exhibit No. 2 for identification purposes. Do you
23 recognize that document?

24 A. Yes. It looks like a copy of the original
25 document we got from DSS.

Bob Perry - Direct

1 Q. What is the date that the case was referred?

2 A. The intake date, September 29, 2011.

3 Q. At this point, is it common for reports to come
4 from school and DSS to contact law enforcement and the
5 investigation to take off from there?

6 A. Correct.

7 Q. Do you know a girl named VICTIM ?

8 A. Yes, I do.

9 Q. And who was she?

10 A. She was the victim in this case.

11 Q. After you received the DSS intake referral, what
12 was the next step that you took in this investigation?

13 A. Basically, since we're dealing with a juvenile,
14 you contact a parent and see what kind of information they
15 can give to me and make sure they are still in their care
16 and custody and the investigation starts. I'll take this
17 two-page referral that they send to our department. I
18 will initiate a case number and write what we call a Code
19 5 and the report is kind of vague because I don't have a
20 whole lot of information at that particular time. Usually
21 I had not talked to the suspect parent or the possible
22 victim. So that's how it initially gets started.

23 Q. Did you find an address or location where VICTIM
24 and her mother Irene Cunningham were supposed to be
25 living?

Bob Perry -- Direct

1 A. I did.

2 Q. What was that address?

3 A. Originally they were living -- well, I found
4 several addresses for them through our computer search and
5 the current one was [REDACTED].

6 Q. What county is that in?

7 A. It's in Greenville County.

8 Q. Did you in fact go to that location and try to
9 locate them?

10 A. I did.

11 Q. What was the result of that search?

12 A. I believe I found the apartment vacant and
13 started kind of wonder around the apartment complex
14 talking to people and one of the neighbors, possible the
15 maintenance guy, somebody said that they she moved to like
16 a motel off of Augusta Road.

17 Q. As a result of that information, did you go track
18 down Irene Cunningham, the mother?

19 A. I basically started a computer search of every
20 hotel one after the other after the other until I finally
21 find it.

22 Q. Where did you find it search?

23 A. The address ---

24 Q. If you would like to refer to your report.

25 A. If you don't mind. I know I wrote it down

Bob Perry - Direct

1 somewhere. If you could give me a second.

2 Q. Was it a locate near the Greenville ---

3 A. It was a local motel.

4 Q. Holiday Inn?

5 A. Yes.

6 Q. When you met with her there, did you talk with
7 Irene Cunningham, the mother?

8 A. I did.

9 Q. Did you tell her the substance of the allegations
10 against this defendant that had been disclosed?

11 A. I did.

12 Q. Can you describe to the jury, you just got to see
13 Ms. Cunningham, was she cooperative that day or how would
14 describe Ms. Cunningham when you met with her that day?

15 A. Reluctant. My first impression was that she
16 didn't really want to talk to me because she really wasn't
17 sure if I was talking to her because she was a suspect.
18 So I tried to work my way through that and just kind of
19 kept talking to her and trying to ask her specific
20 questions because I had a lot of voids in my report.
21 First of all, I did not know the suspect and just the
22 first name at that particular part. So she was not
23 forward in our first conversation.

24 Q. Did she state to you, you just witnessed her
25 testimony today, she had never left **VICTIM** alone with this

Bob Perry -- Direct

1 defendant?

2 A. That's what I recall.

3 Q. Did she state to you that she didn't even recall
4 his last name?

5 A. That's is correct.

6 Q. Was it your impressions she was supportive her
7 daughter at this point?

8 A. Not at all.

9 Q. When you talked to the mother, did you at that
10 point set up any kind of a forensic interview for the
11 child at this point? Did you try to do that?

12 A. I did. I actually talked to Ms. Cunningham and
13 said part of our investigation is to utilize a local child
14 advocacy center called Julie Valentine Center. So I
15 explained to her what the Julie Valentine Center, the JVC,
16 and I explained to her what happens at the JVC, what it
17 actually is the child forensic interview, the protocol and
18 questions they ask and try to be as non-evasive as
19 possible, thing of this nature, so that she would
20 definitely agree to allow her child to be interviewed.

21 Q. What date was **VICTIM**'s forensic interview
22 initially set for?

23 A Initially I set it for October 26, 2011.

24 Q. Did **VICTIM** show up for this interview?

25 A. No, she did.

Bob Perry - Direct

1 Q. Did you try to figure out why the child was not
2 brought?

3 A. Yes. I went back to mom's work and was initially
4 was able to determine that VICTIM was not staying with the
5 mom, she was staying with Aunt Bessie and mom was supposed
6 to get hold of Aunt Bessie and there was some
7 communication errors. Aunt Bessie didn't realize she was
8 supposed bring VICTIM at that date and time so was at
9 school or whatever, so that was a communication problem
10 between Irene and Bessie.

11 Q. Did VICTIM end up having a forensic interview?

12 A. She did.

13 Q. And what date was that?

14 A. November 10, 2009.

15 Q. Did you observe the forensic interview?

16 A. Yes, I did.

17 Q. Were you present in the room or were you
18 observing it outside of the room?

19 A. A forensic interview is actually conducted in a
20 very controlled little environmental room and it's on
21 video tape and I watch from a separate location in the
22 same building but not in that particular rule.

23 Q. Did you end up talking to Aunt Bessie at some
24 point? We've heard a lot about Aunt Bessie and did you
25 locate Aunt Bessie?

Bob Perry -- Direct

1 A. I did. I actually spoke to her in the lobby
2 before the interview began at the Julie Valentine Center.

3 Q. And was Aunt Bessie present for this forensic
4 interview in November when VICTIM came?

5 A. Yes, she was the one that brought VICTIM.

6 Q. When was the defendant arrested on this charge?

7 A. It was November 15.

8 Q. On that date did you try to speak with this
9 defendant about the allegations made against him?

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

11 Q. How did you come in contact with him? Where was
12 he?

13 A. Basically I tried to contact him before and
14 wasn't successful at his regular listed address so I think
15 I left a card in the door or somehow or another. I had a
16 little bit of problems with his address because our
17 computers were showing different things for different time
18 so that gave me an indication he may have moved several
19 times. So I tried to go to different locations and tried
20 to locate him. I was not able to talk to him before the
21 warrant was actually issued.

22 I put a note on a warrant and I gave it to
23 two of our guys who worked with us who basically serve our
24 warrants for us and I say if you find this guy, and it's
25 not 2:00 in the morning, I'll be up and I'll be down there

Bob Perry - Direct

1 to talk to him and see if he'll say two words to me.

2 Q. Where did you see him at the Law Enforcement
3 Center?

4 A. He was placed under arrest and they stopped at
5 what we call a (inaudible) which is basically a parking
6 area for the deputies that transport the prisoners from
7 their car into the Detention Center.

8 Q. Was he in handcuffs or not?

9 A. Yes, he was.

10 Q. Did you advise him of his rights at this point?

11 A. I did. I read it off a prepared text that I keep
12 with me.

13 Q. Can you read to the jury what you advised him of
14 what rights he has.

15 A. This is the exact same card that I had that
16 particular day. I told him, "Mr. Woods this is your
17 Miranda warning. You have the right to remain silent.
18 Anything you say can and will be used against you in the
19 court of law. You have the right to talk to a lawyer and
20 have him present with you while you're being questioned.
21 If you can not afford to hire a lawyer one will be
22 appointed to represent you before any questioning if you
23 wish, and you can decide at any time to exercise these
24 rights and not answer any questions or make any
25 statements."

Bob Perry - Direct

1 Q. Did he end up making any statements to you?

2 A. Yes, he did.

3 Q. Before we go into that, did you feel like he
4 understood his rights when you read it to him?

5 A. He did.

6 Q. Did he appear that he wanted to speak to you at
7 that point?

8 A. He did.

9 Q. And what did he, if anything, state to you at
10 that point?

11 A. He basically asked me a question and it was a
12 question about the warrant he stated if the warrant stated
13 this happened in September, it's impossible because I
14 wasn't living there in September and that started our
15 conversation.

16 Q. You can refer to your reports so the jury gets
17 everything he said, but he did make a statement as to
18 whether he ever lived at the incident location with Irene?

19 A. He did.

20 Q. What did he say about that?

21 A. I basically had a little pen and paper because I
22 was trying to get quotes, "I never lived there, I was only
23 there when Irene was home."

24 Q. So he's telling you that he never lived at the
25 incident location and he was only there when Irene was?

Bob Perry - Direct

1 A. That's correct.

2 Q. Did he admit to any kind of contact with VICTIM
3 and her brother?

4 A. Yes. He admitted he would take him to and from
5 the bus stop.

6 Q. He stated he didn't live there so how if he was
7 taking them to the bus, did he indicate to you how that
8 went down in the mornings according to this defendant?

9 A. Yes. That was part of my line of questioning to
10 him as to how you were coming from your house and you
11 saying you lived at [REDACTED] Hampton Avenue, mom's house where
12 you lived and walking every morning to pick up the kids
13 from house and taking them to the bus stop which was kind
14 of far.

15 Q. So a point of clarification, he's telling that he
16 was living at his mom's house getting up in the morning
17 and walking all the way over to the incident location,
18 correct?

19 A. Correct.

20 Q. How many hours or feet or whatever was that? Did
21 you clock that?

22 A. He told me it was couple and I typed it into my
23 little GPS and it was showing 3.0 and I actually drove it
24 and it was actually 2.9.

25 Q. 2.9 what?

Bob Perry - Direct

1 A. Miles.

2 Q. So he tells you that he gets up and walks 2.9
3 miles from his mom's house to the incident location in the
4 morning. And then what does she do according to the
5 defendant?

6 A. Basically gets the children off to school.

7 Q. So since he doesn't live at the incident
8 location, how does he get back home?

9 A. I don't remember if he talked about that but I
10 think he said he walked back home.

11 Q. So his statement was he never lived at Irene's
12 house on [REDACTED], correct?

13 A. Correct.

14 Q. Did he end the conversation shortly after this
15 point, sir?

16 A. He did.

17 Q. We don't have to go any further but he ended your
18 conversation, correct?

19 A. Yes.

20 Q. Did [REDACTED] have a medical exam in this case?

21 A. She did.

22 Q. And is that standard for these kinds of cases for
23 them to have a medical exam?

24 A. It is.

25 Q. Do you know which doctor she saw?

~~Bob Perry~~ - Cross

1 A. It was Dr. Emerson.

2 Q. Please answer any questions defense counsel may
3 have.

4 CROSS-EXAMINATION

5 BY MR. SULLIVAN:

6 Q. You got involved with this case in September. If
7 you have your report, you can refer to it. You found that
8 Ms. Cunningham, Irene, the mother and then you talked to
9 you. Can you identify this?

10 A. It appears to be a supplemental in this case.

11 Q. So these are your notes and the best of your
12 recollection what happened?

13 A. Yes, dated 10/7/2010.

14 Q. If you would start there down to there your
15 interview with Ms. Cunningham.

16 A. "I subsequently located Irene Cunningham working
17 at the Holiday Inn located at 4295 Augusta Road. I asked
18 to speak to her about her daughter," should I use her
19 name?

20 Q. Yes.

21 A. "About her daughter, **VICTIM**, and she asked if
22 there was a problem and why I was contacting her and she
23 said no one had informed her about the allegations."

24 MS. SUSTAKOVITCH: Your Honor, I'm going to
25 object a little bit here because we're getting in to

Bob Perry - Cross

1 hearsay. I'm not sure where this is going, these
2 questions.

3 THE COURT: Are this your report?

4 THE WITNESS: Yes.

5 THE COURT: You've been using it the whole
6 time, haven't you?

7 MS. SUSTAKOVITCH: Yes.

8 THE COURT: I'm going to allow it but I'm not
9 going to admit it.

10 THE WITNESS: "Ms. Cunningham says she no
11 long sees her since they had to move from their last
12 department. She said **VICTIM** was now staying with her
13 grandmother, Bessie Davis, in the Crestview Forest
14 Apartments." When I asked for her phone number and
15 apartment number, she was unable to provide either. She
16 also was very reluctant to give any information on Robert.
17 She said she did not even know his last name.
18 Ms. Cunningham acted as if she did not believe the
19 allegations and began questioning me about what **VICTIM** had
20 told the counselor. We spoke for several minutes and
21 Ms. Cunningham provided very little useful information.
22 She stated Robert was not left alone with **VICTIM** and she
23 did not know why anyone would accuse him of anything."
24 Q. When you talked to her at the Holiday Inn, she
25 said at that point she had already moved out with Robert,

Bob Perry - Cross

1 correct?

2 A. Correct.

3 Q. And she did not know prior to you coming to her
4 job about these allegations?

5 A. That is the impression that she gave me.

6 Q. And she also stated in this that Robert was not
7 left alone with the children.

8 A. That's also what she told me.

9 Q. You've been in the courtroom and you've heard
10 referred to a person name Lisa, have you not?

11 A. I have.

12 Q. Have you ever talked to Lisa?

13 A. That was the first time that I've heard of Lisa.

14 Q. Nobody told you about Lisa, did they?

15 A. That's correct.

16 Q. Now, you talked to Robert. I think you got a
17 warrant on him 11/15 and gave it to the warrant people.

18 A. Correct.

19 Q. And they picked him up on the 16th and you talked
20 to him a little bit later. He told you he was not living
21 there?

22 A. That is correct.

23 Q. If you could start about right here.

24 MS. SUSTAKOVITCH: I object to the form of
25 this. He needs to ask questions and he just can't read

1 the police report into evidence. I'm concerned about
2 that. If he could ask a question and let Investigator
3 Perry answer it and then refresh his recollection.

4 BY MR. SULLIVAN:

5 Q. Did Robert say I didn't not say somebody didn't
6 touch that child and he even spoke to me about her mood
7 swings?

8 A. He did say that.

9 Q. Did he say he had only been seeing Irene for a
10 couple of months?

11 A. He said that.

12 Q. And then the routine to get the kids and walking
13 them back?

14 A. Yes, sir.

15 Q. Do you know what time Irene got home,
16 Ms. Cunningham, after her work at the Holiday Inn?

17 A. I spoke her and I spoke to her several times,
18 second or third, and she said it was usually 4:30 or 5:00.

19 Q. So Robert would pick the kids up about 3:10 and
20 walk them home?

21 A. I wasn't sure what time the kids come off the
22 bus. I don't recall asking her that question.

23 Q. She got off around 5:00, 5:30?

24 A. That's possible.

25 Q. Who watched the kids in that period of time? Did

Bob Perry - Cross

1 Robert leave them there or you don't know? Somebody had
2 to stay with those kids. It could have been Robert or it
3 could have been Lisa?

4 A. I just don't know. I'm sorry.

5 Q. When you were talking with Robert, I'm sure he
6 was upset, but he was cooperative?

7 A. I didn't feel like he was angry at me per se. We
8 were just talking normal.

9 MR. SULLIVAN: Thank you. Nothing further.

10 MS. SUSTAKOVITCH: Nothing further from the
11 State.

12 May we approach on the scheduling?

13 THE COURT: Yes.

14 (Whereupon, there was a brief bench
15 conference.)

16 Alright, ladies and gentlemen, it's reaching
17 this time when you may need to get a snack from
18 Mr. Anderson. We're going to take a lunch break. We're
19 going to break until 2:00. We have some legal matters to
20 take up. Please remember do not discuss the case with
21 anybody in any way shape or form. You've got to keep an
22 open mind about this case. It's a beautiful day in
23 Greenville and I'm very happy to be here this week and
24 we'll see you about 2:00.

25 (Jury exits courtroom for lunch break.)

~~State versus Robert Woods~~

1 THE COURT: You have how many more witnesses?

2 MS. SUSTAKOVITCH: The State has two
3 witnesses, Aunt Bessie and Ms. Carlberg.

4 THE COURT: And that's going to be everything
5 for you this afternoon?

6 MS. SUSTAKOVITCH: Yes, sir.

7 THE COURT: And with Ms. Carlberg, we have to
8 play that video. Does anybody want any specific charges?

9 MS. SUSTAKOVITCH: I do have three, Your
10 Honor. I didn't know we'd move this fast but it's in my
11 office. If Your Honor would like me to give you the three
12 it's penetration however slight. I have case law on that
13 and I can bring it back after lunch. I request the no
14 corroboration charge as well, Your Honor, that's by State
15 statute and also time is not an element of a CSC offense.
16 Those would be the three.

17 THE COURT: Do you have any, Mr. Sullivan?

18 MR. SULLIVAN: I'd like the penetration
19 explained well and then I'd like the lesser included.

20 THE COURT: She's charging lewd act so he's
21 going to get a lewd act charge.

22 MR. SULLIVAN: Then standards on the other.

23 MS. SUSTAKOVITCH: You charge hesitate and
24 Victor ---

25 THE COURT: I charge firmly convinced.

~~State versus Robert Woods~~

1 MS. SUSTAKOVITCH: Thank you, sir.

2 MR. SULLIVAN: One other thing would be after
3 the State rests, we've got to talk about his criminal
4 record and what's admissible if he decides to testify.

5 THE COURT: Do you want to do that after we
6 come back?

7 Let's see if we can figure that out so
8 Mr. Woods has plenty of notice so he can discuss with his
9 attorney.

10 MS. SUSTAKOVITCH: I believe his record is
11 actually back -- I apologize. I think it's a shoplifting,
12 receiving stolen goods, false info to police, a couple of
13 shoplifting but nothing huge.

14 THE COURT: What's your opinion on what's
15 admissible?

16 MS. SUSTAKOVITCH: I think the crimes of
17 dishonesty would come in and I'm going back 10 years.
18 He's got a longer record but anything past 10 years,
19 certainly the State is not going to try to bring in. He's
20 got a possession of crack from 2002. That's outside the
21 10 year limit so the State's just looking at the crime of
22 dishonesty up to 10 years and naturally his juvenile
23 defense would not come in.

24 THE COURT: What's your opinion,
25 Mr. Sullivan, the shoplifting, the receiving and the false

~~State~~ versus Robert Woods

1 information?

2 MS. SUSTAKOVITCH: I think he has multiple
3 counts of shoplifting but just those three general crimes.

4 THE COURT: None of those go back any further
5 than 10 years, correct?

6 MS. SUSTAKOVITCH: That's right, Judge.

7 THE COURT: None of the drug offenses or
8 juvenile offenses.

9 MS. SUSTAKOVITCH: That's correct.

10 THE COURT: What else?

11 MR. SULLIVAN: Just preserve my pretrial
12 objections.

13 THE COURT: Let me put this on the record,
14 too, I want to note for the record during the cross-
15 examination of Ms. **VICTIM**, Mr. Sullivan did renew his
16 previous objection which we handled on pre-trial as to his
17 ability to cross-examine Ms. **VICTIM** on the alleged incident
18 that took place in 2009 that was the subject of a pretrial
19 hearing. I respectfully requested of Mr. Sullivan that he
20 not go into too much detail, just to mention something so
21 the record could be protected and the issue preserved. I
22 believe that he has preserved that issue.

23 I agree with my earlier ruling that I was not
24 willing to allow the information from the 2009 incident in
25 and I do believe that Mr. Sullivan adequately preserved

State versus Robert Woods

1 that objection during his cross-examination of Ms. [REDACTED] and
2 he politely followed my instructions in not making too
3 much of an issue of it but still protecting the record.

4 MR. SULLIVAN: Thank you, Judge. My intent
5 in my trial strategy when asking her about the Julie
6 Valentine Center and in playing with the toys and I
7 thought she might have heard about it.

8 THE COURT: Thank you. No problem. I'll see
9 you at 2:00.

10 (Whereupon, there was a lunch break.)

11 Alright, are we ready to go. Somebody let
12 the jury know that we're dealing with a technical issue
13 and the delay was a technical issue and the didn't think
14 we were blowing them off.

15 Can we hear the tape?

16 MS. SUSTAKOVITCH: We played it and
17 Mr. Sullivan says it's loud enough. It's not a loud as
18 yesterday.

19 THE COURT: Okay. You're comfortable with
20 where it is?

21 MR. SULLIVAN: Yes, Your Honor. I have no
22 objection to this version.

23 THE COURT: The reason we changed it is I was
24 ruling in your favor in keeping that stuff out.

25 MS. SUSTAKOVITCH: The is the redacted

~~Bessie Davis~~ Direct

1 version that you ruled on.

2 THE COURT: Okay. Bring the jury in.

3 (Jury re-enters the courtroom.)

4 We're back on the record. Welcome back,
5 ladies and gentlemen, sorry for the delay. You are more
6 than likely going to see a little bit later this afternoon
7 and I asked the attorneys to make sure that the equipment
8 was ready to go so we didn't have to send you out and
9 bring you back in so we could take care of that technical
10 stuff. Anytime you have court technology, sometimes it
11 works and sometimes it does. We did our best to try to
12 make sure that runs smoothly this afternoon so that was
13 the cause of the delay. I do sincerely apologize.

14 Everybody was just following my instructions so we could
15 -- I hope you found this morning went very smooth and we
16 can continue with that same schedule this afternoon,

17 Ms. Sustakovitch.

18 MS. SUSTAKOVITCH: Thank you, Your Honor.
19 The State calls Ms. Bessie Davis.

20 THE BAILIFF: Place your left hand on the
21 Bible and raise your right hand and face the judge.

22 THE CLERK: Do you swear or affirm to tell
23 the truth, the whole truth and nothing but the truth so
24 help you God.

25 BESSIE DAVIS, having been duly sworn,

Bessie Davis - Direct

1 testified as follows:

2 Please come around and have a seat and then
3 state your full name for the court record.

4 THE WITNESS: Bessie Marie Davis.

5 DIRECT EXAMINATION

6 BY MS. SUSTAKOVITCH:

7 Q. Good afternoon, Ms. Davis. Where do you live,
8 Ms. Davis?

9 A. [REDACTED] Drive.

10 Q. And are you from Greenville?

11 A. Uh-hum.

12 Q. How long have you lived here?

13 A. All my life.

14 Q. And if I may ask how old you are?

15 A. 63.

16 Q. What is your relationship, if any, to Irene
17 Cunningham?

18 A. She's my niece.

19 Q. And what is your relationship with VICTIM [REDACTED]?

20 A. She's my great niece.

21 Q. I want to take you back to the summer of 2011.
22 Before we get into that, can you tell me a little bit
23 about your life and you life with VICTIM's throughout the
24 years. How much contact did you have with her before we
25 get to the summer of 2011.

Bessie Davis - Direct

1 A. Not a whole lot. I guess she might have been
2 about three -- I got her brother when he was two weeks old
3 so I would get her and let her interact with him.

4 Q. Are you talking about [Minor #1] ?

5 A. Yes.

6 Q. When he was born, did Irene give him to you to
7 raise?

8 A. It was like this, she had walked off and left her
9 oldest child and then when [VICTIM] came along and it seemed
10 like everybody was raising her and I told her when [Minor #1]
11 was born that he would be mine and I took care of him.

12 Q. I want to take you back to the summer of 2011.
13 Do you recall where Irene was living, [VICTIM]'s mother, at
14 that time?

15 A. [REDACTED] Apartments.

16 Q. And was [VICTIM] living with her at that time?

17 A. She was.

18 Q. And was [Minor #1] living with her at that time?

19 A. Uh-hum.

20 Q. And during that summer, did you meet this
21 defendant, Robert Woods?

22 A. I did.

23 Q. How did you meet him, if you recall?

24 A. I went to went up [Minor #1] one weekend and I had
25 seen him coming out the door. I wasn't sure if that was

Bessie Davis - Direct

1 her boyfriend. I assumed it was and when I went to take
2 him back and then she ended up coming to the door.

3 Q. Did you get along okay with Mr. Woods in whatever
4 interactions you had?

5 A. I didn't have no problem with him.

6 Q. Did the children come to live with you at some
7 point?

8 A. They did.

9 Q. When did they come to live with you?

10 A. September 16, 2011.

11 Q. Why did they come to live with you?

12 A. She had told me they were being evicted and she
13 told me they had to be out of there that Friday which was
14 on the 16th.

15 Q. Prior to being evicted September 16, 2011, this
16 defendant was living in the house?

17 A. Yes.

18 Q. And [Minor #1] and [VICTIM]?

19 A. Right.

20 Q. Where did Irene go once they got evicted?

21 A. They went to Robert's mother's house.

22 Q. Just very briefly with [VICTIM], are you aware of
23 any kind of health conditions she's had, skin conditions
24 through the years?

25 A. No.

Bessie Davis - Direct

1 Q. Do you remember if she's ever been treated
2 scabies?

3 A. Yes.

4 Q. And with scabies back in 2011 were you aware that
5 she had been treated for that?

6 A. I was.

7 Q. Did you become aware back in September of 2011
8 that VICTIM had been the victim of sexual abuse?

9 A. It was said in late September.

10 Q. And how did you become aware of this information?

11 A. Her mother called, Irene called and said somebody
12 had said she had been abused and Robert had did it ---

13 Q. Before we go into that phone conversation, were
14 was VICTIM during this phone conversation?

15 A. She was at school.

16 Q. So you find out about the allegation about
17 Robert.

18 A. Well, her mother called me first and told me
19 about it and when I picked up VICTIM after school and asked
20 her did somebody come and see you today and she said yes,
21 ma'am.

22 Q. Did VICTIM end up reporting to you, without saying
23 the name of the perpetrator, that she had been a victim of
24 sexual abuse?

25 A. She did.

Bessie Davis - Direct

1 Q. Were you present during a phone conversation when
2 Irene was yelling at VICTIM regarding this allegation?

3 A. I was.

4 Q. Are you familiar with Irene's voice and how it
5 sounds?

6 A. I am.

7 Q. At the beginning of the phone conversation, who
8 answered the phone?

9 A. I did.

10 Q. And was it, in fact, Irene on the phone?

11 A. It was.

12 Q. And she was screaming at VICTIM, could you hear
13 what she was saying?

14 A. Yes, because VICTIM was standing right here beside
15 me and she had ---

16 MR. SULLIVAN: Objection as to what she heard
17 her say.

18 THE COURT: I don't she's going -- I thought
19 she was explaining how close they were to see if she could
20 hear the conversation.

21 THE WITNESS: I did.

22 BY MS. SUSTAKOVITCH:

23 Q. In her demeanor over the phone, was she calm, was
24 she upset?

25 A. She was upset.

Bessie Davis -- Direct

1 Q. Would you classify that as yelling or calm or ---

2 A. She was.

3 Q. She was yelling?

4 A. She was.

5 Q. Could you hear what she was yelling to VICTIM?

6 A. I did.

7 MS. SUSTAKOVITCH: Your Honor, at this time
8 the State is going to submit what she was yelling at her
9 as an excited utterance.

10 BY MS. SUSTAKOVITCH:

11 Q. Was she basically confronting VICTIM about the
12 allegations?

13 A. She was.

14 Q. What was VICTIM's demeanor at this point?

15 A. VICTIM she was nervous as everything and she was
16 holding around my neck as tight as everything and I just
17 put my arm around her and told her it was alright.

18 Q. She ended up speaking with her mother.

19 A. She did.

20 Q. They talked about what her mother was confronting
21 her with. During the investigation, did you see
22 Investigator Bob Perry?

23 A. I did.

24 Q. And were you the person -- at some point, were
25 you told to take VICTIM for a forensic interview?

Bessie Davis - Cross

1 A. I did.

2 Q. Please answer any questions defense counsel has.

3 CROSS-EXAMINATION

4 BY MR. SULLIVAN:

5 Q. At some point, Irene and the children were
6 evicted from their apartment and [VICTIM] and [Minor #1] came to
7 live with you, correct?

8 A. They did.

9 Q. During that period of time I think you spoke with
10 the social worker that came to visit you?

11 A. I did.

12 Q. And she spoke to you how they dressed and how
13 they doing and school and things like that?

14 A. Uh-hum.

15 Q. How the children were behaving?

16 A. Yes.

17 Q. Did you ever stress to the social worker about
18 [VICTIM] may lie?

19 A. It was the counsel at the school and it was her I
20 was having conversations with her and everything and I was
21 expressing to her how sometimes [VICTIM] would do things.
22 Like if she had a cake or something and she would sneak
23 and have it and she'd finish eating and I would ask her
24 did she would get some cake or something and she would
25 say, no, ma'am, and then I turn around and I'll find it.

Bessie Davis - Redirect

1 Just like this Sunday she got a can of Vienna and she came
2 back in the room real quick and I said, **VICTIM**, did you get
3 a can or something and she would say, no, ma'am. And
4 later on I would go back in there and see she had ate one
5 and threwed it in the trash.

6 Q. Now, you met Robert that one time when you were
7 picking up **Minor #1**?

8 A. I don't believe I met Robert about two or three
9 times.

10 Q. And you had no problem with him?

11 A. No.

12 Q. I think you said that Robert and Irene went to
13 live with her mother?

14 A. Yes.

15 Q. And the children came to live with you?

16 A. Yes.

17 Q. 55 :21.

18 A. As far as I know they were still living with his
19 mother.

20 Q. You still have the children today?

21 A. I do.

REDIRECT EXAMINATION

22 BY MS. SUSTAKOVITCH:

23 Q. When you were talking about Vienna, you were
24 talking about Vienna sausages?
25

Christine Carlberg - Direct

1 A. Yes.

2 Q. And Mr. Sullivan asked you, she'll tell little
3 white lies like children do, correct? Have you ever known
4 her to tell anything of substance?

5 A. No.

6 MS. SUSTAKOVITCH: Nothing further.

7 THE COURT: Anything further, Mr. Sullivan?

8 MR. SULLIVAN: Nothing further.

9 THE COURT: Thank you, Ms. Davis. May she be
10 excused?

11 MS. SUSTAKOVITCH: Yes, Your Honor.

12 THE COURT: Any objections?

13 MR. SULLIVAN: No objection.

14 THE COURT: You are excused.

15 (Witness leaves witness stand.)

16 MS. SUSTAKOVITCH: The State calls Christine
17 Carlberg.

18 THE BAILIFF: Come forward and place your
19 left hand on the Bible and raise your right hand, face the
20 judge, please.

21 THE CLERK: Do you swear or affirm to tell
22 the truth, the whole truth, and nothing but the truth, so
23 help you God.

24 THE WITNESS: I do.

25 CHRISTINE CARLBERG, having been duly sworn,

Christine Carlberg - Direct

1 testified as follows:

2 THE CLERK: State your full name for the
3 record.

4 THE WITNESS: Christine Carlberg.

5 DIRECT EXAMINATION

6 BY MS. SUSTAKOVITCH:

7 Q. Where are you currently employed?

8 A. I'm employed with Greenville Department of Mental
9 Health.

10 Q. Do you work at the Julie Valentine Center?

11 A. Yes. I'm contracted at the Julie Valentine
12 Center.

13 Q. What is your position at the Julie Valentine
14 Center?

15 A. I'm a forensic interviewer.

16 Q. What is a forensic interviewer?

17 A. A forensic interviewer is an interviewer who
18 talks with children, teenagers and delayed adults that
19 allows them to in a child friendly environment using
20 non-leading questions developmentally appropriate inquiry
21 allowing them to tell about what happened.

22 Q. Can you explain to the jury your work experience
23 and training that allows you to do that?

24 A. I have been a forensic interviewer for almost 13
25 years. I worked at a children's advocacy center in

Christine Carlberg - Direct

1 Mississippi and I've been at the Julie Valentine Center
2 for about six years.

3 Q. And how many forensic interviews have you
4 conducted?

5 A. I've conducted over 2100.

6 Q. Is there a standard protocol that you use when
7 conducted a forensic interview?

8 A. We use a semi-structure protocol called Radtac.

9 Q. And what does Radtac stand for?

10 A. It's a five stage semi-structure protocol that
11 stands for referral, anatomy, id, touch inquiry, abuse
12 scenario and closure.

13 Q. And have you received special training in Radtac
14 method?

15 A. I have.

16 Q. Ms. Carlberg, did you have occasion to conduct a
17 forensic interview on **VICTIM** **████**?

18 A. Yes.

19 Q. How was she referred to your agency?

20 A. She was referred by the Greenville Department of
21 Social Services.

22 Q. And when did you interview her?

23 A. I interviewed her on November 10, 2011.

24 Q. Where did the interview take place?

25 A. At the Julie Valentine Center.

Christine Carlberg - Cross

1 Q. How old was **VICTIM** when you conducted the
2 interview?

3 A. She was eight.

4 Q. Did you make an audio recording on the interview
5 that you did in this case?

6 A. Audio and video, yes.

7 Q. And have you reviewed that prior to today?

8 A. Yes.

9 Q. I'm showing you what's marked as State's Exhibit
10 3 which is an empty wrapper but with no objection from the
11 defense counsel we have loaded this interview into the
12 projector. Have you previously reviewed the interview in
13 this case?

14 A. I have.

15 Q. And were there alterations or deletions when you
16 reviewed it?

17 A. No.

18 MS. SUSTAKOVITCH: Your Honor, at this time
19 the State moves to admit State's Exhibit 3 into evidence.

20 MR. SULLIVAN: I'd like to approach.

21 THE COURT: Sure.

22 (Whereupon, there was a bench conference.)

23 (Video marked as State's Exhibit No. 3 for
24 identification and admitted into evidence.)

25 MS. SUSTAKOVITCH: Permission to publish,

State versus Robert Woods

1 Your Honor.

2 THE COURT: This video is in evidence now.
3 It's admitted over defense objection.

4 Ms. Carlberg, why don't you step down just so
5 we can make sure everybody's got a clear view. You're
6 going to have to come back up but we want to make sure.
7 If you can't hear or you can't see, just try to wave your
8 hand in the area and we're try to get to where we make
9 sure you can, alright.

10 We'll turn down the lights a little bit once
11 we get it moving.

12 (Video played in open court.)

13 MS. SUSTAKOVITCH: Ms. Carlberg, would you
14 answer any questions defense counsel may have. Thank you

15 CROSS-EXAMINATION

16 BY MR. SULLIVAN:

17 Q. I just have one or two questions, Ms. Carlberg.
18 When you were talking to Ms. Sustakovitch, you said you
19 thought **VICTIM** was eight at the time of the interview?

20 A. Yes.

21 Q. Six or eight.

22 A. She was eight and almost nine. She was a couple
23 of months from being nine.

24 Q. I misunderstood, I thought you said she was six.

25 A. She first said she was nine and then she said,

State versus Robert Woods

1 no, I am eight so we turned it to eight.

2 MR. SULLIVAN: Nothing further.

3 MS. SUSTAKOVITCH: May this witness be
4 excused.

5 THE COURT: Any objections?

6 MR. SULLIVAN: No objection.

7 THE COURT: Thank you. You may be excused.

8 (Witness leaves the witness stand.)

9 MS. SUSTAKOVITCH: Your Honor, at this time
10 the State rests.

11 THE COURT: Ladies and gentlemen, we are
12 going to take our afternoon break. Please remember you
13 are not to discuss this case in any way, shape, or form
14 and keep an open mind about the case and we'll see you
15 back in a few minutes. Enjoy your break and thank you.

16 (Jury exits the courtroom.)

17 Yes, sir.

18 MR. SULLIVAN: Judge, I'd like to move for a
19 directed verdict on both charges. There was a lot of
20 inconsistencies during the testimony and the forensic
21 interview. Lisa was there and then she was not there so
22 there were consistencies and statements made about a rape
23 that could not have happened that way.

24 THE COURT: Ms. Sustakovitch.

25 MS. SUSTAKOVITCH: I believe that forensic

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1 interview could not be more clear if you believe it but
2 criminal sexual conduct in the first degree did occur.
3 That forensic interview, if you believe this victim, he
4 put his wee in her butt and it did feel bad. The doctor
5 also testified it was uncomfortable. It has sounds of
6 credibility. As far as the elements of CSC, they've been
7 met. As far as lewd act, him taking his clothes off and I
8 believe there was testimony that he touched her butt,
9 having her take her clothes off, disrobe, that would be
10 that. And then back to the CSC first, she repetitively
11 described the CSC. She did not say she saw the penis but
12 she described how it felt multiple times and then on the
13 anatomical doll, it was very clear her showing the male
14 penis going into her bottom. So I believe the State was
15 able to meet those elements.

16 THE COURT: I find that based on Rule 19, I
17 believe, in the South Carolina Rules of Civil Procedure
18 and the standard subject for directed verdict motions, my
19 responsibility is to look at the existence of the evidence
20 and not the weight of that evidence and I'm supposed to
21 consider that evidence in the light most favorable to the
22 State. So based on that and the testimony I heard in this
23 case both from the victim and the other witnesses I will
24 respectfully deny your motion for directed verdict.

25 MR. SULLIVAN: Thank you, Your Honor.

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1 THE COURT: Do you want some time to talk to
2 your client about whether or not he's going to testify or
3 are you ready to go?

4 MR. SULLIVAN: Your Honor, I think you should
5 have a brief talk.

6 THE COURT: I'm going to examine him.

7 MR. SULLIVAN: You can go ahead and examine
8 him now. Robert informs me after discussing it for a
9 couple of days that he would like to remain silent.

10 THE COURT: Alright, Mr. Woods stand up
11 please. The first thing we're going to do is place you
12 under oath.

13 THE CLERK: Raise your right hand.

14 ROBERT WILSON WOODS, having been duly sworn,
15 testified as follows:

16 THE COURT: At this time, I have to explain
17 to you some of your constitutional rights and this is the
18 way I do it. Not everybody does it this way but I want
19 you to know if you need to talk to Mr. Sullivan after I
20 say this to you or while I'm saying this to you, you just
21 let me know. You're not going to bother me, offend me,
22 upset me or anything else, okay, because this is a very
23 important part of this trial. This is a very crucial step
24 in this case and in your decision making ability. Okay.

25 And there are some things I have to read to

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1 you and if you look at me and say, Judge, I need a few
2 minutes to talk to my attorney, I'm going to give it to
3 you and I'm not going to be upset and I'm going to allow
4 you to talk in private and everything else because I don't
5 want you to think that just because I'm saying all this to
6 you, you have to answer me right on the spot. If you need
7 any more time to meet with Mr. Sullivan, I will give it to
8 you because that's how important this constitutional right
9 is. Okay.

10 Do you understand all that?

11 DEFENDANT WOODS: Yes, sir.

12 THE COURT: At this point, I'm going to
13 explain to you some of your constitutional rights. If you
14 do not understand anything that I say, please let me know.
15 If you want me to explain anything in more detail, please
16 let me know. Do you understand what I've said so far?

17 DEFENDANT WOODS: Yes, sir.

18 THE COURT: We have now reached the stage of
19 the trial where you may present your defense. You have
20 the right to claim the protections given to you by the
21 Fifth Amendment to the Constitution of United States of
22 America. This constitutional amendment states in part
23 that no person shall be compelled in any criminal case to
24 be a witness against himself.

25 This means that you can not be required to

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1 testify in this case. You have the right to testify on
2 your own behalf, however, nobody in this room including me
3 can make you testify. This is a personal right and no one
4 can waive this right but you.

5 If you decide to testify, you will be called
6 to the witness stand, you will be placed under oath and
7 you will be subject to the same rules that govern other
8 witnesses and you may be examined and cross-examined on
9 any relevant issue in this case.

10 In addition, if you have any convictions
11 involving dishonesty or false statements or for crimes
12 punishable by imprisonment for more than one year and this
13 Court determines that the probative value of admitting
14 this evidence outweighs its prejudicial effect, the
15 solicitor will be able to introduce your record to attack
16 your credibility.

17 Now, earlier today we had a conversation and
18 the solicitor, if you chose to take the witness stand,
19 they would choose to attack your credibility with some
20 convictions for shoplifting, false information to the
21 police and receiving stolen goods. And those would all be
22 within the past ten years alone. They would not mention
23 anything about your drug record or your prior convictions
24 or anything else like that.

25 Do you understand that so far?

~~State versus Robert Woods~~

1 DEFENDANT WOODS: Yes, sir.

2 THE COURT: If you decide to testify, this
3 decision on your part must be freely, voluntarily, and
4 intelligently made with the knowledge of the protections
5 given to you by the Fifth Amendment and the consequences
6 of your decision to testify. If you decide not to
7 testify, I will instruct the jurors that they can not give
8 the fact that you did not testify any consideration what
9 so ever and there is to be absolutely no prejudice to you
10 because you did not testify.

11 It is left entirely up to you whether or not
12 you testify. You may talk with your attorney, your
13 family, or anyone else that you need to but the final
14 decision will be left up entirely to you.

15 Do you understand what I have explained to
16 you?

17 DEFENDANT WOODS: Yes, sir.

18 THE COURT: Have you discussed this with
19 Mr. Sullivan as to whether or not you should testify?

20 DEFENDANT WOODS: Yes, sir.

21 THE COURT: And do you wish to talk with
22 Mr. Sullivan any more at this time about whether or not
23 you should testify?

24 DEFENDANT WOODS: No, sir.

25 THE COURT: And do you intend on testifying?

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1 DEFENDANT WOODS: No, sir.

2 THE COURT: And is that your decision?

3 DEFENDANT WOODS: Yes, sir.

4 THE COURT: And have you made that decision
5 on your own?

6 DEFENDANT WOODS: Yes, sir.

7 THE COURT: Has anybody forced you,
8 threatened you, coerced you in exchange for you to make
9 that decision?

10 DEFENDANT WOODS: No, sir.

11 THE COURT: And you're making that decision
12 freely and voluntarily fully understanding the
13 constitutional implications that are in play?

14 DEFENDANT WOODS: Yes, sir.

15 THE COURT: And are you also making that
16 decision based on the fact that I am going to instruct the
17 jury that they can not use that against you or even
18 consider that in their deliberations?

19 DEFENDANT WOODS: Yes, sir.

20 THE COURT: Thank you, Mr. Woods, you may sit
21 down. Mr. Sullivan, is there anything else you think I
22 need to inquire of Mr. Woods as to his Fifth Amendment
23 Rights?

24 MR. SULLIVAN: No, Your Honor. We discussed
25 it last week and we agreed that -- he said he was not

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1 guilty and we agreed we don't need to say anything.

2 THE COURT: Mr. Sustakovitch, anything I need
3 to put on the record in regards to that?

4 MS. SUSTAKOVITCH: No, sir.

5 THE COURT: Mr. Sullivan, are you going to
6 introduce any other evidence?

7 MR. SULLIVAN: No, Your Honor.

8 THE COURT: When the jury comes back in, if
9 you would go ahead and rest and then we'll move straight
10 into closing arguments?

11 MR. SULLIVAN: Okay.

12 THE COURT: On your jury charges, the
13 penetration however slight is already in there. I've
14 added in it doesn't have to be corroborated. I just used
15 the language from the statute and I've added in one of
16 those timing paragraphs somewhere in there.

17 Mr. Sullivan, you were telling me about this
18 lesser included. Tell me what you were talking about.

19 MR. SULLIVAN: Well, they have to go first
20 with the CSC guilty or not guilty. If they find him not
21 guilty of that, then they can come down to maybe he didn't
22 have the penetration and they would resolve it in his
23 favor and then they decide if he's not guilty of either
24 one and I think we have the lesser included ---

25 THE COURT: Here's my issue is where not

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1 dealing with a lesser included. You have two separate
2 indictments charging two separate crimes that each have
3 different elements of those crimes that have to be met so
4 I think -- what I plan on telling the jury is you can find
5 him guilty of one, not guilty of the other, guilty of
6 both, not guilty of both. Basically they have four
7 different decisions that they can make but I think because
8 of the difference in the elements of the crime between
9 criminal sexual conduct with a minor and lewd act on a
10 minor that that's going too much into the jury's decision
11 making process and I'm going to tell them they should
12 consider each charge independently because they have
13 different elements between them but I don't think this is
14 a case where it's a lesser included. If you're confused
15 about it, then you have to resolve with regards with a
16 lesser included.

17 I'm going to charge normal reasonable doubt
18 and these are two separate crimes that he's charged with.

19 MR. SULLIVAN: Okay. I understand your
20 ruling, but note my objection.

21 THE COURT: Absolutely. Anything else?
22 How long do you need to get ready for
23 closing?

24 MS. SUSTAKOVITCH: About 10 minutes.

25 MR. SULLIVAN: A couple of hours. No, just a

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1 few minutes.

2 THE COURT: She's going first and you're
3 going last.

4 Let's talk about the next question, how long
5 are you going to go tonight. I'm open to discussion. By
6 the time we do two sets of arguments and I give this
7 charge with two crimes, we're going to be at 5:00 and the
8 clerk is looking at me, she didn't say this out loud but
9 she's thinking it, if you're going to keep these people
10 here this late, we got to order food fast. Is that what
11 you're thinking?

12 THE CLERK: Yes.

13 THE COURT: Do you want to stop for the day
14 and argue and charge at 9:30 tomorrow morning?

15 MR. SULLIVAN: I think we should come back in
16 the morning because it would be more continuity.

17 THE COURT: I don't like to stop a jury
18 during the deliberations. I've done it before but it's
19 not something I prefer to do.

20 Ms. Sustakovitch, what do you think?

21 MS. SUSTAKOVITCH: Your Honor, I refer to
22 you. We can go today or if Mr. Sullivan prefers tomorrow,
23 that's fine.

24 THE COURT: Here's where I don't want to be
25 and we get everything back there and then somebody's got

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1 to go pick up some kids and they got to go and all that
2 kind of stuff. I would say let me bring them back in and
3 I will tell them they can go and I'll give them the choice
4 of whether they want to start at 9:00 or 9:30 tomorrow
5 morning. And then we'll come in in the morning and we'll
6 argue and charge and I think we'll run into fewer issues
7 that way.

8 MS. SUSTAKOVITCH: Okay.

9 THE COURT: Does anybody have any major
10 objection to that?

11 MS. SUSTAKOVITCH: No, Your Honor.

12 MR. SULLIVAN: No, Your Honor.

13 THE COURT: Okay. Bring them back in.

14 (Jury re-enters the courtroom.)

15 Alright, ladies and gentlemen, the State has
16 rested its case and what that essentially means is they
17 are saying to you and they are saying to the Court is
18 that, that is all the evidence that they have to present
19 to you at this time.

20 At this time, I will inquire of the defense
21 if they wish to put up any evidence. Keep in mind as I
22 have told you in the beginning and as I have told you in
23 the end, they are under no obligation in any way, shape or
24 form, to put up any testimony or anything else because
25 they carry no burden in this courtroom at all.

~~State versus Robert Woods~~

1 Mr. Sullivan.

2 MR. SULLIVAN: At this time, the defense
3 rests.

4 THE COURT: Thank you, Mr. Sullivan.

5 Alright, ladies and gentlemen, I have made an
6 executive decision on what we're going to do the rest of
7 the night. The next step of the case is that we do
8 closing arguments and then I tell you what the law is and
9 then you begin your deliberations. I don't want to speak
10 to how long the attorneys will be but my closing is
11 somewhere between 30 and 45 minutes of instructions so we
12 could very easily be pushing 5:00 or after before the case
13 even gets to you.

14 I'm sure some of you have duties and
15 responsibilities this evening that are outside of that so
16 I made the decision as to what we're going to do is we're
17 going to send you home for the night and y'all can pick
18 whether we start at 9:00 or 9:30 in the morning. And when
19 we come back in the morning, the only things that we're
20 have to do is closing arguments, I'll tell you what the
21 law is and then you can begin your deliberations and that
22 way nobody is pressed for time and in the middle of it
23 someone says hey, I've got to pick my kids up by 6:00 or
24 they charge me \$5.00 a minute or my kid has a baseball
25 game tonight or whatever it may be. This way you'll have

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1 continual deliberations without any break.

2 So would y'all prefer to start at 9:00 or
3 9:30 in the morning. You want to start at 9:00. Is that
4 good with everybody? Alternates, I will still need you to
5 come back tomorrow morning. You are not released until
6 the jury officially begins deliberations.

7 So do not discuss the case with anybody, your
8 fellow jurors, your family, your friends, you co-workers
9 or anyone that you can imagine. Keep an open mind about
10 the case. The lawyers still have their opportunity to
11 come before you and make their closing arguments and you
12 still have not heard the full extent of the law as it
13 applies to this case. We will see you tomorrow morning
14 and we will be starting at 9:00. Thank you and good
15 evening.

16 (Jury exits the courtroom, dismissed for the
17 day.)

18 Mr. Sullivan, do you want to renew all your
19 previous motions?

20 MR. SULLIVAN: Yes, Your Honor.

21 THE COURT: All of your previous motions are
22 renewed and I will respectfully deny those motions.

23 We'll start at 9:00.

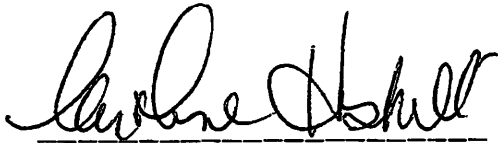
24 --- End of transcript for Day 2 ---

25

~~State versus Robert Woods~~

1
2 I, the undersigned, Caroline Hiskell, Official
3 Court Reporter for the Thirteenth Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the trial
7 of the captioned case, relative to appeal, in the Court of
8 General Sessions, Greenville, South Carolina on this 9th
9 of April, 2013.

10 I do further certify that I am neither of kin,
11 counsel, nor interest to any party hereto.

12
13
14 

15 Caroline Hiskell
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25

~~State versus Robert Woods~~

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 State of South Carolina) 2012-GS-23-2852, 2853
3)
4 vs.) TRANSCRIPT RECORD
5 Robert Wilson Woods)
6 Defendant)

7 April 10, 2013
8 Greenville, South Carolina

9 ---
10 HONORABLE ROBERT E. HOOD, Presiding
11 ---

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

13 SUSTAKOVITCH SUSTAKOVITCH, Esquire
14 Assistant Solicitor
15 Attorney for the State

16 TIM SULLIVAN, Esquire
17 Attorney for the Defendant
18
19
20

21 Caroline Hiskell
22 Thirteenth Circuit Court Reporter
23
24
25

I N D E X

(No Witnesses or Exhibits presented)

Please see corrected CR Index
on next page.

I N D E X

(There were no witnesses or exhibits presented.)

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P R O C E E D I N G S

THE BAILIFF: All rise, the Honorable Robert E. Hood presiding.

THE COURT: Good morning, everybody. Please take your seats. Are we ready to go?

MS. SUSTAKOVITCH: Yes, Your Honor.

MR. SULLIVAN: Yes, sir, Your Honor.

THE COURT: Bring them in.

(Jury re-enters the courtroom.)

Good morning, ladies and gentlemen, I hope y'all had a good night and enjoyed getting off a little bit early yesterday. We will now start will closing arguments. The State will go first and the defense will go second and I will charge you as to the law and you will retire to your jury room.

Ms. Sustakovitch.

MS. SUSTAKOVITCH: Thank you, Your Honor, may it please the Court.

THE COURT: Yes, ma'am.

MS. SUSTAKOVITCH: Good morning, ladies and gentlemen. If you don't mind, I brought a few notes. The issues in this matter are so serious and I want to make sure I don't miss anything key.

What is this case really about? What have we been doing in here since Monday? As Judge Hood said, this

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1 is a search for the truth. This is a courtroom of justice
2 and what we're doing is vitally important. This is the
3 best criminal justice system in this world and you are
4 playing a vital part.

5 As Judge Hood said the ground rules are is
6 that I talk first and then I sit down and defense counsel
7 will get up and he will talk to you. I won't get a chance
8 to get back up and reply to anything or respond so hope I
9 hit the points that you might have questions on.

10 I'll say from the outset an this is certainly
11 not a reference to Mr. Sullivan, we all have roles here.
12 Mine is to present to you the evidence to prove to you the
13 elements of these defenses. His is to zealously defend
14 his client within the bounds of the law. Sometimes what
15 happens at this stage is issues get confused. I asked you
16 at this point keep your eye on the ball.

17 You heard the testimony. You are the sole
18 finders of the facts in this case. So often things that
19 you know you heard get all mixed up and I caution you
20 don't lose focus keep your eye on the ball and you will
21 reach the right verdict in this case.

22 The State has met its burden. I'd like to
23 take you through the evidence very briefly. I'd like to
24 say that every defendant is entitled to a fair trial.
25 When a state has met its burden, the victim is entitled to

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1 justice.

2 Now, very briefly, what is reasonable doubt.
3 It's not an unreasonable doubt. And it's not beyond any
4 and all doubt. It basically means are you firmly
5 convinced the defendant did what he's charged with because
6 there are very few things in this life that you know with
7 any and all certainty. It just means are you firmly
8 convinced in your mind that this defendant is guilty.

9 There are two separate crimes that he's
10 charged with in this case and Judge Hood is going to go
11 through the law in detail at the end of this but very
12 briefly, criminal sexual conduct with a minor is when
13 someone commits a sexual battery of a minor under the age
14 of 11. The sexual battery can be anal sex, vaginal
15 intercourse, oral sex. In this case it's anal sex and
16 penetration can be however slight.

17 I know you've had to listen to me and I
18 apologize for having to use some of the words and taking
19 to you about some of these concepts as bluntly as I am,
20 but that's the subject matter that we're dealing with and
21 in this type of a case, it's penetration however slight.
22 You may have your own experiences where you consider
23 penetration something different. But in the context of
24 criminal sexual conduct with a minor, a sexual battery is
25 penetrating the rectum of a child, the vagina of a child

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1 however slight, it's hurting that child.

2 In this case, the bottom line if you believe
3 her testimony, you heard criminal sexual conduct with a
4 minor first degree. You heard it. The question is do you
5 believe her. You heard it outright multiple times and
6 we'll go through that briefly.

7 As to the lewd act on a minor, lewd act on a
8 minor is basically when someone -- it's lewd and
9 lascivious touching of a minor for sexual gratification.
10 In this case, she was told her to come into the room, take
11 her clothes off, lay on the bed, lay on top of her. At
12 this point, if everything stops, that would be a lewd act.
13 If someone came running in the room, open the door, bam,
14 it stopped, you'd have a lewd act. You would potentially
15 might have another crime, but that in and of itself would
16 be a lewd act to be laying on a child like that.

17 So let's go to real facts of what you have to
18 decide, do you believe this happened to her or do you
19 believe what you witnessed is one grand big lie. I can
20 not sugarcoat it. This is not a robbery case where I can
21 go, you know, the clerk was at the counter and somebody
22 came in and he had on hat and the clerk picked out
23 somebody from a six person line-up and maybe the clerk's
24 just mistaken. Maybe the clerk just picked out the wrong
25 guy. We've heard of that kind of case and that's not this

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1 case. This child is very specific in who she says hurt
2 her and it is this defendant. So the question is, do you
3 believe it happened.

4 The starting point of a criminal sexual
5 conduct case, by statute, is you can convict on
6 uncorroborated testimony of a victim alone. Now, what
7 does that mean? What it means is because of the nature of
8 a criminal sexual cases, often times, there aren't
9 witnesses, most people don't invite five people in to see
10 the act happening or happens at 12:00 noon in the parking
11 lot. So these are crimes that happen in secret. By
12 statute, you could convict by just **VICTIM**'s testimony
13 alone.

14 We could have brought her in. She could have
15 testified, closed the books, that could have been it. And
16 if you believed her, you could convict on just that, but
17 you have so much more in this case than just that. You
18 have to look as I said at the credibility of the witness.
19 What would be her motive to make this up. Consider how
20 this even came to light.

21 This is not a case where there's a custody
22 dispute or something else going on in the back, all this
23 drama in the background. We don't have that. What we
24 have is a momma who has let this defendant within a week
25 move into her home. Can't really know him that well.

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1 Well now he's taking care of her two children within the
2 span of a week. He's sleeping in her bed. There's porn
3 going on. The children are hearing this.

4 You heard testimony that they heard arguments
5 from Irene about maybe sex and if she didn't want to have
6 sex, there could be arguments about that. And you can
7 imagine the atmosphere that's going on in the home, but
8 what we have is what would be her motive to make it up.
9 She goes to her teacher at school. You've heard from
10 Ms. Griese. Her testimony was very brief. She was
11 **VICTIM**'s third grade teacher. We didn't have the burden
12 but you needed to hear from the first person to talk to.
13 Why did she go to Ms. Griese? She didn't think her mom
14 would believe her and guess what? She didn't.

15 Her mom from the evidence that's clear, her
16 mom didn't believe her. Her mom didn't support her. Her
17 mom was supporting this defendant. You heard the
18 testimony from Investigator Perry. Her mom from the
19 outset was lying. He didn't live here. That's a lie. At
20 least she came in and told you the truth that he was.

21 This is September 29th, 2011, Dr. Varnadore
22 testifying, yes, it happened in September in her mother's
23 room at **██████████**. She didn't go into all of the
24 details with **VICTIM** about that because that's not her job.
25 She shouldn't, but at that point the investigation began.

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1 Then we go to Dr. Henderson. You heard
2 expert testimony about why children delay in reporting and
3 what that means. Often times children are scared. They
4 can't even appreciate what happened to them is really that
5 wrong. They don't get it. She explained that she did an
6 exam and it was "normal," and for many jurors if you've
7 never been involved in a case that involves anal
8 penetration a lot of juror might think, gosh, if there was
9 anal penetration, this child would have tears and rips and
10 scars so that's evidence it didn't happen. You heard from
11 an expert penetration whose deal with hundreds of children
12 over 20 years that only once where there's a history of
13 anal abuse, that she found the actual tearing and scaring
14 that you would expect.

15 Within a short amount of time, I asked, would
16 you expert all this evidence and she still said, no. And
17 the reason I bring that up is that **VICTIM**'s exam was in
18 January. Defense may bring that up. The way this case
19 progressed was, they begin the investigation, Investigator
20 Perry to her mother, went to Aunt Bessie, a forensic
21 interview was conducted that was very clear and then
22 warrants were served. Her medical was after that. I was
23 not worried because they were not expecting to find
24 anything anyway and they didn't. Dr. Henderson explain
25 why that would be that way.

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1 You got to hear from **VICTIM**. She came in and
2 took the stand and testified. You got to see her
3 demeanor. I wouldn't describe it because each one of you
4 will recall what you saw. She detailed the account. One
5 thing I would caution you in cases with forensic
6 interviews, I don't know absolutely, but one thing that
7 happens is if you go back to the forensic interview, you
8 have the forensic, it's 30 minutes long, and often times
9 what will happen there is they'll pull out this one little
10 word or this one little sentence. It's like a Perry Mason
11 moment and this is how you know she lied, look at this.
12 You're talking to a child. If you follow **VICTIM**'s
13 interview, you saw moments where she clearly is not
14 appreciating what happened to her was that bad.

15 Some of the things that stuck out to me is
16 she likes toys a lot. She said it twice. She likes
17 pizza. This is out of the brain that she is talking about
18 what Robert did as plainly as I'm talking to you right
19 now. Sometimes the defense would say why isn't she
20 crying, why isn't she just balled up in the chair? What I
21 would say as you common sense tells you every child is
22 different. What do we know about **VICTIM**? We've already
23 touched on that. She's been exposed to things that she
24 shouldn't have been.

25 You heard Aunt Bessie testify that **VICTIM** has

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1 been raised by different people. **VICTIM** told you herself
2 she saw porn. She described where she saw the porn. I
3 asked her about the Madea movies and it struck me because
4 she's giving this detail. Think of the sophistication and
5 cunning and deceit it would be take would be planting in
6 there that you like Madea and you mom let's you watch
7 Madea. There are little moments like that, that tell you
8 that this child is telling the truth. Her mom said yes
9 and it may seem random to you but its these some things in
10 totality of watching the interview that you listen to.

11 So I go back to the forensic interview, I
12 don't know if there would be that Perry Mason moment, but
13 just look for it, watch for it, but what you come back to
14 is what you viewed over that 30 minute span?

15 A couple of things she said, "His wee was
16 moving, but his body wasn't." That would be an aw-ha
17 moment because people as grown-ups you think your body
18 should move. When you're eight, she's describing the wee
19 moving back and forth. The fact that she doesn't describe
20 gyration perfectly, if she stays down on the bed, not a
21 problem. That could be one of those moments, I don't
22 know. She didn't see his penis, she felt it. She was
23 very clear.

24 The forensic interviewer said, what did you
25 feel and she said his wee in my butt. I don't know how

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1 you could be any clearer about that.

2 We got to Irene Cunningham and this I just
3 touched on, we know that this children were in this
4 defendant's care. She tells us that. We know in the
5 summer of 2011 they were living there, she let him move
6 in. I briefly tell you that as far as the time frame in
7 this case, you may be wondering. Time is not an essential
8 element of a CSC case and the reason for that is children
9 often have no clue.

10 I believe if you remember in the interview
11 and I'm paraphrasing they asked **VICTIM** when it occurred --
12 it's in November now and it's been a couple of months and
13 she says Thursday in September, I think, I'm not sure, I
14 don't know. Probably because she doesn't. In these
15 cases, the State is allowed an expanded time frame because
16 kids don't have the memories that adults do. Even adults
17 probably couldn't figure that out. But the time frame is
18 around the time he was around the kids from when he moved
19 in through September when the abuse was reported, the
20 29th.

21 Let's talk about the defendant, his statement
22 to police. You heard Bob Perry. What is his immediate
23 reaction when he is given his Miranda rights and he has
24 the right to talk to an attorney and he talks to
25 Investigator Perry and starts asking him questions and he

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1 says I didn't even live there, not me, that's a lie. He
2 did live there. Then he comes up with a story that make
3 zero sense that his mom's house is over here and that --
4 what he was figure out what to say where I'm not around
5 this child and then the police will leave me alone. It
6 will be her word, my word, bam, nobody will believe her.

7 So he says I didn't live there and then in
8 case people have seen me with the kids, I guess, his story
9 is I get up from my mom's house, I walk, and Investigator
10 Perry clocked it, almost three miles in the morning and
11 talk them to the bus stop and then I walk back home. How
12 we know that that is a lie, we know that from Irene coming
13 and we know that from **VICTIM** that he was living there. We
14 know that from Aunt Bessie he was in that home.

15 I talk about rabbit trail and I'm sure I'm
16 not going to remember all of them. There was a girl named
17 Lisa somebody that popped up in testimony that **VICTIM** was
18 being asked about. What about Lisa? **VICTIM** is trying to
19 testify to you and she's under oath, she said maybe she
20 was there, I don't know, I don't remember, right. What
21 did Irene say? Lisa moved out. She moved out because
22 Robert moved in. Lisa is what we call a rabbit trail.
23 She's not involved in this case. By Irene's own
24 testimony, she's out of the equation.

25 Ladies and gentlemen, it all adds up to this

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1 bottom line, do you believe VICTIM or not? Do you believe
2 that one day in September of 2011, eight-year old VICTIM
3 said to her I'm going to go in and I'm going to tell
4 Ms. Griesse that I was sexually assaulted. And then I'm
5 going to carry that through and go to Dr. Varnadore and
6 I'm going to tell her the same thing. Then I'm going to go
7 and have a forensic interview, the interview that you all
8 watched, and I'm going to be subjected to an anal exam and
9 then I'm going to talk to Dr. Henderson about it and I'm
10 going to keep it up and for what? And then I'm going to
11 walk into a court about a year and a half later and look
12 at this man who has no contact with her at all and
13 perpetuate it and basically lie to you.

14 Ladies and gentlemen, the last thing I touch
15 on the defense touched on her credibility. The State
16 didn't go there, the defense did, three times. VICTIM
17 isn't it true that you tell little stories sometimes and
18 she was no. What are you going to say? You're sitting in
19 court in front of this jury telling them that you were
20 sexually assaulted and you saw it as she goes, yeah,
21 sometimes with my Aunt Bessie I'll have candy and she is
22 telling on herself.

23 Defense went back to with the mom, isn't it
24 true she tells little lies and the mom said yeah, she
25 might lie about hitting her little brother, but, no, no,

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1 not lie on adults. Aunt Bessie said, well, now, we did
2 have a concern about this Vienna Sausage situation and she
3 gave that example about what we are talking about, ladies
4 and gentlemen. Lying about eating a Vienna Sausage and
5 saying a man put his penis in her rectum are not even on
6 the same stratosphere and it's ridiculous to put them
7 together. Every child, any person that's been around a
8 child, any person that's been a parent knows that that is
9 normal.

10 It takes something totally different to
11 perpetuate the last year and a half unless it really
12 happened and that's what I submit to you, ladies and
13 gentlemen, what the evidence in this case shows.

14 We can't submit to you a bunch of DNA. We
15 don't have an eye witness that's going to come in here and
16 say, yeah, I walked in on them, here it is. That doesn't
17 happen often. These cases happen in secret, behind closed
18 doors, and the power between the grown-up and a child in
19 the belief that nobody will believe them.

20 You are the sole finders of fact and I ask
21 you to with a clear heart and mind, not passion, but clear
22 heart and mind, take the evidence you heard and render the
23 verdict that you believe is justice because that's what we
24 all want.

25 Thank you.

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1 MR. SULLIVAN: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. SULLIVAN: Ms. Sustakovitch. Ladies and
4 gentlemen, I believe this is a tough case for the defense.
5 One of the hardest things is, and the Judge is going to
6 tell you and listen to the law, the State does not have to
7 put up any corroborating witness. They can put the little
8 girl up with anything and let her tell her story and that
9 would be it.

10 Let's look at the witnesses and see what we
11 found out. We had Ms. Griese, the one she report and if
12 you notice the witnesses who came in were not sequestered
13 that's when they leave the courtroom so they can't hear
14 what each other is saying and also in these cases you hear
15 the witnesses asked to be excused, Ms. Griese came in,
16 told her story and asked to be excused.

17 Then we had Ms. Varnadore, who is a doctor of
18 education and not child psychology. She heard the story
19 and she had to contact DSS and that's the procedure. You
20 have to do that by law. If someone is abusing a child,
21 you have to report it. They don't make judgments, they
22 have to report it.

23 Then we get to law enforcement, Bob Perry and
24 all and then we get to Dr. Henderson. Basically what she
25 said is unless you see it on an exam, there's no way to

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1 tell whether it happened or not. So the doctor really
2 offered no real proof or evidence.

3 And then we get to VICTIM and like Aunt Bessie
4 said she's had a rough time. Her mother abandoned her and
5 Aunt Bessie said, I'll take her. For a period of time,
6 VICTIM was bouncing around until Irene got her act together
7 for a while and got her kids back.

8 Now, I asked Irene about this Lisa and she
9 said, yeah, she lived there and then I asked VICTIM did she
10 know Lisa and she said, yeah, she lived there. When did
11 she move out? I don't know. Was she there when this
12 happened? Maybe. Did she hear this? Did Minor #1 here
13 this? His room was next door. You know from the
14 testimony that the kids could hear things from the
15 bedroom. We don't know what they saw. We don't know how
16 VICTIM could see porn and not other activities. I don't
17 know how she could hear sexual activity and not know
18 what's going on. I asked her mother, no, she never saw
19 it.

20 Something is not making sense here. You
21 can't listen to everything and not figure out what's going
22 on. Maybe she had this imaginary sexual fantasy of what's
23 going on between her and her mother. So I asked her and
24 as I recall she said she undressed herself and then she
25 had come out of the bathroom and Robert asked her to come

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1 in the bedroom and get undressed and laid on top of her.
2 His hands never touched her and I asked her to be specific
3 where was his penis and she said, I never saw his penis, I
4 never saw him take it out and I never saw him put it back.

5 Now, we have her brother in the next bedroom
6 and we know Lisa may or may not have been there. You
7 decide what testimony to believe. He's going to take an
8 eight-year old child and take her in the bedroom and she
9 said this has never happened to her before or never
10 happened to her again and he had no idea if she was going
11 to scream or holler or what and at that point he hadn't
12 made any threats.

13 The physicality just don't jive because he's
14 laying there with his hands like this and he does not put
15 his hands anywhere and he rapes her.

16 The mother testifies that he met Robert and
17 they were behind on the rent. **VICTIM** testified this
18 happened on a school night in September about a two week
19 period. They were together until they were evicted. They
20 had no where to go so they could stay together and then
21 Irene moved in with Robert's mother. She testified she
22 needed to find someplace so they could get back together.

23 Irene also said and I thought this was very
24 important that she left Robert when she found out about
25 The allegations of abuse. Well, when you get to Detective

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1 Perry and he finds them, she tells him that I don't know
2 where he is and I have not seen him in a while. I don't
3 know his last name, I don't know his phone number. I
4 don't think he has a car. I know where his mother is, I
5 don't know where he is and I don't know if she's covering
6 up for him or not. She said I left him and I have no idea
7 what you're talking about after this happened.

8 You have to convince 12 strangers beyond a
9 reasonable doubt that something like this happened.
10 Here's the child's mother whose been told that her
11 daughter has been abused and her reaction is not how is
12 she doing, what's going on, she gets on the phone and
13 chastises her daughter for making something up. The
14 mother didn't even believe her who knew her. Her mother
15 knew she told little white lies and make stuff up.

16 Well, little kids tell little lies. The
17 purpose of lies from a child is to get out of trouble.
18 It's just the older you get, the more trouble you can get
19 in and then we call them bigger lies but its the same
20 principle.

21 Bob's interview with Robert came in. Robert
22 was scared and he knew what the case was about. He said
23 he didn't live there but we don't know what he did from
24 the time he picked the kids up and the time he dropped
25 them off. We know Lisa was there. He said he was not

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1 with the kids by himself and Irene got off around 5:00,
2 5:30. If he was there, Lisa was here, her brother was
3 there, he was not with the children by himself.

4 Y'all watched the forensic video and one
5 consistent thing was he put his wee on my butt but on
6 cross she said, I was on the bed, his hands were on the
7 bed and I never saw it.

8 Now, you can put a cat in a box and a mice in
9 this same box, tie it, and when you come back the cat is
10 not grinning but the mouse isn't there. No question. I
11 put a whole in the box and I have a cat in it and I put
12 the little mouse in there, I tie it up, I come back and
13 the mice is gone. Did the cat get it or did he get out?
14 I don't know. If my contention is the State is the shoe
15 box with the whole in it. This is the only type of
16 criminal case where there doesn't have to be any
17 corroboration. It can be akin to a man walks into a
18 police station with a shotgun and (inaudible), they can
19 say he shot it and prosecute, but it won't be
20 corroboration.

21 When we leave here today, my contention is
22 there were two people, **VICTIM** and that man sitting over
23 there, and we can't know with any certainty what happened.
24 And somebody would say how do we find this person
25 innocent? You're not, but what you're saying is the State

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1 didn't prove to my satisfaction guilt but that's not your
2 fault. That's how these cases are handled. Christy has
3 done a great job. She's a professional in handling these
4 types of cases. She has to work with what she has and if
5 you think she's proven guilt beyond a reasonable, then you
6 find him guilty.

7 I don't like to say guilt or innocence. I
8 like to say proven or not proven because sometimes when
9 you say not guilty that means he's innocent.

10 I would ask you to consider this, they have
11 no corroboration to tip the scales and not innocent but
12 they didn't prove it. Thank you.

13 THE COURT: Ladies and gentlemen, we have now
14 reached a point in the trial where it's my responsibility
15 to tell you what the law is in this case as it applies to
16 the evidence that you have heard.

17 The indictments which I read to you at the
18 beginning of this case charge the defendant with criminal
19 sexual conduct with a minor in the first degree and lewd
20 act on a minor.

21 I remind that the fact that the defendant was
22 arrested charged and indicted in this case is not evidence
23 in this case and it can not be considered by you as
24 evidence of guilt in this case nor does it create any
25 presumption or inference of guilt. The indictments are

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1 simply the formal written instruments which contain the
2 charges made against the defendant. It is the formal
3 document by which the case was brought into this court.

4 I also remind you that during this trial you
5 and I have certain duties to perform. As the trial judge
6 it is my responsibility to preside over the trial of this
7 case and I also have the duty to rule on the admissibility
8 of evidence offered during this trial. You are to
9 consider only the competent evidence before you. If there
10 was any testimony ordered stricken from the record in this
11 case during this trial, you must disregard that testimony.
12 You are to consider only the testimony which has been
13 presented from this witness stand, any exhibits which have
14 been made a part of the record in this case and any
15 stipulations of counsel.

16 I have the additional duty to charge you the
17 law applicable to this case. As the presiding judge, I am
18 the sole judge of the law of this case and it is your duty
19 as jurors to accept and apply the law as I now state it to
20 you. If you have an idea as to what the law is or what
21 the law should be and it does not agree with what I now
22 tell you, you must abandon your own idea because you are
23 sworn to accept the law and apply the law exactly as I
24 give it to you.

25 In every case tried in this court before a

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1 jury, the jury becomes the sole and exclusive judge of the
2 facts in a case. A trial judge can not intimate, state,
3 comment or make any statement to a trial jury about the
4 facts in a case. Since you the jury are the sole judge of
5 the facts in this case, you are not to infer from anything
6 that I have said or done during the progress of this trial
7 in ruling upon the admissibility of evidence or otherwise
8 or anything that I say now during the course of this
9 instruction to you that I have any opinion about the facts
10 in this case.

11 This is a matter solely for you, the jury, to
12 determine. As jurors it is your duty to determine the
13 effect, the value, the weight, and the truth of the
14 evidence presented during this trial.

15 Mr. Woods has pled not guilty to these
16 indictments and that plea puts the burden of proof on the
17 State to show or prove the defendant guilty. A person
18 charged with committing a criminal offense in South
19 Carolina is never required to prove himself innocence. I
20 charge you it is an important rule of law that a defendant
21 in a criminal trial, no matter what the seriousness of the
22 charge may be, will always be presumed to be innocent of
23 the crime for which the indictments were issued unless
24 guilt has been proven by evidence satisfying you of that
25 guilt beyond a reasonable doubt.

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1 The presumption of innocence does not end
2 when you begin your deliberations but it accompanies a
3 defendant through the trial until you reach a verdict of
4 guilt based on evidence satisfying of that guilt beyond a
5 reasonable doubt.

6 The best example I can give you of a
7 presumption of innocence is that it is like a robe of
8 righteousness placed around the shoulders of the defendant
9 which remains with the defendant until it has been
10 stripped from the defendant by evidence satisfying you of
11 the defendant's guilty beyond a reasonable doubt.

12 The presumption of innocence is not a mere
13 legal theory. It is not just a legal phrase. It is a
14 substantial right to which every defendant is entitled
15 unless you the jury are satisfied from the evidence of the
16 defendant's guilt beyond a reasonable doubt.

17 The State has the burden of proving the
18 defendant guilty beyond a reasonable doubt. Some of you
19 may have served as jurors on civil cases where you were
20 told that it is only necessary to prove that a fact is
21 more likely true than not true such as by the greater
22 weight or the preponderance of the evidence. In criminal
23 cases, the State's proof must be more powerful than that.
24 It must be beyond a reasonable doubt.

25 Proof beyond a reasonable doubt is proof that

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1 leaves you firmly convinced of the defendant's guilt.
2 There are very few things in this world that we all know
3 with absolute certainty and in criminal cases, the law
4 does not require proof that overcomes every possible
5 doubt. If based on your consideration of the evidence you
6 are firmly convinced that the defendant is guilty of the
7 crimes charged, you must find the defendant guilty. If on
8 the other hand, you think there is a real possibility that
9 this defendant is not guilty, you must give the defendant
10 the benefit of the doubt and find him not guilty.

11 There are two types of evidence which are
12 generally presented during a trial, direct and
13 circumstantial evidence. Now, direct evidence is the
14 testimony of a person who claims to have actual knowledge
15 of a fact such as an eye witness. It is evidence which
16 immediately establishes the main fact to be proved.
17 Circumstantial evidence is proof of a chain of facts and
18 circumstances indicating the existence of a fact. It is
19 evidence which immediately establishes collateral facts
20 from which the main fact may be inferred.

21 Circumstantial evidence is based on inference
22 and not on personal knowledge or observation. The best
23 example I can give you of this is a story and let's
24 imagine that you are in your home and it is in the winter
25 and its 10:00 at night and you're getting ready to go to

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1 bed and you're looking out over your front lawn and your
2 grass is brown and there's nothing on it. You go to bed
3 and you wake up the next morning to go to work or to go to
4 school and you look out across your front lawn and it is
5 covered in snow and there are footsteps in the snow.

6 Now, did you see it snow? No. Did you see
7 anybody walking through your front yard? No. But can you
8 put a chain of facts together to make the inference that
9 it snowed and that somebody walked through your yard.

10 That's the best example I can give you of circumstantial
11 evidence.

12 Now, the law makes no distinction between the
13 weight or value to be given to either direct nor
14 circumstantial evidence nor is a greater degree of
15 certainty required that circumstantial evidence than of
16 direct evidence. You should weigh all the evidence in
17 this case. After weighing all the evidence, if you are no
18 convinced of the guilt of the defendant beyond a
19 reasonable doubt, you must find the defendant not guilty.

20 You must also determine the credibility of
21 the witnesses who testified in this case. Credibility
22 simply means believability. It becomes your duty as
23 jurors to analyze and evaluate the evidence and determine
24 which evidence convinces you of its truth.

25 In determining the believability of the

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1 witnesses who have testified in this case, you may believe
2 a part of a testimony of a witness and reject the
3 remaining part of a testimony of a witness. You may
4 believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety.

6 You may consider whether any witness has
7 exhibited to you any interest, bias, prejudice or other
8 motive in this case. You may also consider the appearance
9 and the demeanor or the manner of a witness while on the
10 witness stand.

11 Now, during the trial you have heard
12 testimony from a child. Where a witness is a child, you
13 must determine as with any witness whether that testimony
14 is believable. In deciding believability, you may
15 consider not only matters that I have already discussed
16 with you, but you may also consider the age of the child,
17 the child's ability to observe and remember facts, and the
18 child's ability to understand and answer questions.
19 Because young children may not fully understand what is
20 happening here, it is up to you to decide whether the
21 child understood the seriousness of appearing as a witness
22 at this criminal trial, whether the child understood the
23 questions, whether the child has a good memory and whether
24 the child understands the difference between lying and
25 telling the truth.

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1 In addition, young children may be influenced
2 by the way the questions are asked. It is up to you to
3 decide whether the child understood the questions asked.

4 The rules of evidence do not permit witnesses
5 to testify as to their opinions or conclusions. An
6 exception to this rule are witnesses we call expert
7 witnesses. A witness who by education and experience has
8 become and expert in some art, science, profession or
9 calling, may state an opinion as to relevant and material
10 matters in which witness claims to be an expert and may
11 also state the reasons for the opinion.

12 You should consider any expert opinion
13 received into evidence in this case and like any other
14 evidence give it the weight you think it deserves. If you
15 decide that an opinion of an expert witness is not based
16 on sufficient education and experience or if you conclude
17 that the reasons given in support of the opinion are not
18 sound or that the opinion is outweighed by other evidence,
19 you may disregard the opinion entirely.

20 And expert witness's testimony is to be given
21 no greater weight than that of other witnesses simply
22 because the witness is an expert. Further you are not
23 required to accept an expert's opinion even though it is
24 not contradicted.

25 In instruct you now and I emphasize that the

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1 fact that the defendant did not testify is not a fact to
2 be considered by you in any way in your deliberations and
3 in your consideration on the question of the guilt or the
4 innocence of the defendant. It must not be considered by
5 you in any manner what so ever.

6 A defendant has the constitutional right to
7 remain silent and the exertion of this right must not be
8 considered by you in deliberations at all. I repeat to
9 you under your oath that you took at the beginning if this
10 case, you are to draw no conclusions what so ever from the
11 fact that the defendant in this case did not testify. The
12 fact that this defendant did not testify, should not even
13 be discussed in the jury room. The burden of proof as I
14 have stated to you is on the State. The defendant is not
15 required to prove his innocence. The burden of proof
16 remains on the State to prove guilt beyond a reasonable
17 doubt.

18 Now, a statement alleged to have been made by
19 the defendant has been admitted into evidence in this
20 case. While the Court has determined that the statement
21 is admissible, I instruct you that you make the ultimate
22 decision of whether or not the defendant made the
23 statement. If the defendant did make the statement, you
24 must determine whether the statement was made voluntarily
25 and freely. This means that the statement was not caused

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1 by pressure, force, fear, threats, coercion or
2 intimidation or by hope or promise of leniency or reward
3 of any kind.

4 In determining whether that statement was
5 voluntarily, you should consider both the characteristics
6 of the defendant and the details of the questioning. Some
7 of the factors you must consider are the age of the
8 defendant, the defendant's education, the defendant's
9 mental ability, the defendant's IQ or intelligence, the
10 defendant's background and environment, the place and the
11 length of the detention, the nature of the questioning and
12 the advice or lack thereof to the defendant of his
13 constitutional rights including but not limited to his
14 right to his right to remain silent that any statement
15 could be used against him in court, the right to have a
16 lawyer present, if you could not afford a lawyer, a lawyer
17 would be appointed to represent them without any costs and
18 that he could stop making a statement at any time.

19 You must carefully consider all of the
20 surrounding circumstances before you give any weight to an
21 alleged statement.

22 The State has the burden of proving beyond a
23 reasonable doubt that the alleged statement of the
24 defendant was voluntary. If you determine if was, you may
25 give the statement any further consideration that you deem

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1 proper. You must decide what weight, if any, should be
2 given to the alleged statement. If you determine the
3 alleged statement was not the free and voluntary statement
4 of the defendant, you should not consider the statement at
5 all.

6 In order to establish criminal liability,
7 criminal intent is required. For example, the mental
8 state required to be proven by the State for a particular
9 crime by the purpose, intent, knowledge, recklessness or
10 criminal negligence, criminal intent must be proven by the
11 State beyond a reasonable doubt. Criminal intent is
12 always a matter that must be determined by the jury from
13 the circumstances surrounding the situation.

14 There is no way to prove intent to a
15 mathematical certainty. There is no medical science that
16 can dissect a person's brain and determine what that
17 person had in mind so the law says that criminal intent
18 may be inferred from the circumstances shown to have
19 existed. This is how you make a determination of whether
20 or not the element requiring intent was present. It was
21 not necessary to establish intent by direct and positive
22 evidence. But intent may be established by inference in
23 the same way as any other fact by taking into
24 consideration the acts of the parties all the facts and
25 circumstances of the case.

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1 Criminal intent is a mental state, a
2 conscious wrongdoing. It is up to you to determine what
3 the defendant intended to do based on the circumstances
4 shown to have existed. Criminal intent may arise from
5 negligence, recklessness or any indifference to duty born
6 of consequences considered by the law to be the equivalent
7 of intent.

8 Now, you have two separate crimes before you
9 and I'm going to go over them separately as you should
10 consider them separately. First, and there's no
11 particular order, I simply have to do one first. The
12 defendant is charged with first degree criminal sexual
13 conduct with a minor. The State must prove beyond a
14 reasonable doubt that the defendant engaged in a sexual
15 battery with the victim. A sexual battery is sexual
16 intercourse, condilunguous, fallacious, anal intercourse
17 or any intrusion, however slight, of any part of a
18 person's body or of any object in to the genital or anal
19 opening of another person's body except when the intrusion
20 is accomplished for medically recognized treatment or
21 diagnostic purposes.

22 The State must then prove beyond a reasonable
23 doubt that the victim was less than 11 years old at the
24 time of the sexual battery. Consent, willingness,
25 indifference or ignorance on the part of the minor if any

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1 as to what was taking place, does not in any way affect
2 the charge of criminal sexual conduct with a minor because
3 an unmarried woman under the age of 14 can not legally
4 consent to sexual intercourse.

5 Further, the testimony of an alleged victim
6 need not be corroborated in a criminal sexual conduct with
7 a minor case.

8 The second charge is lewd act upon a minor.
9 The defendant is charged with committing a lewd act on a
10 minor. A minor for the purposes of the statute is a
11 person under the age of 16. The State must first prove
12 beyond a reasonable doubt that the defendant was over the
13 age of 14. Next, the State must prove that the defendant
14 willfully and lewdly committed or attempted a lewd or
15 lascivious act on or with the body or its parts of a child
16 under the age of 16 years with the intent to arouse,
17 appeal to or gratify the lust, passions, or sexual desires
18 of the defendant or the child.

19 Willfully means voluntarily and intentionally
20 with the specific intent to do something the law forbids.
21 Lewd means obscene, lustful, indecent, lustrous.
22 Lascivious means tending to incite lust, lewd, indecent,
23 obscene or intending to deprave the morals in respect to
24 sexual relations.

25 Now, as to both of these charges where time

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1 is not an essential element of the offense, the
2 indictments need not specifically charge the precise time
3 the offense allegedly occurred. We're almost done.

4 Let me say something to you about your
5 deliberations. Deliberations is defined as careful
6 consideration weighing of with a view to decision. The
7 judice of our jury system is it allows 12 good men and
8 women from 12 different backgrounds, life experiences and
9 perspectives to consider the evidence, talk about it and
10 ultimately reach a verdict. We call them deliberations
11 for a reason. You are to consider the evidence in this
12 case carefully and deliberately and discuss it in a calm,
13 thorough and courteous manner.

14 Remember you are not partisans or advocates
15 for either side favoring one side or the other. You are
16 judges. You are the judges of the facts. Your sole
17 interest in this case is to find the truth from the
18 evidence you have heard in this courtroom. Listen to the
19 views of your fellow jurors, consider other people's
20 points and points of view and talk through and discuss the
21 evidence and remember if you are doing something
22 deliberately, you're not in a big hurry. You should not
23 be in a big hurry here. This case is very important to
24 both sides and this is their only day in court.

25 When you retire to the jury room, you should

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1 discuss this case with your fellow jurors to reach an
2 agreement if you can do so. Your verdict must be
3 unanimous. Each of you must decide the case for your so
4 but you should do so only after you have impartially
5 considered all the evidence, discussed it fully with your
6 other jurors and listen to the views of your fellow
7 jurors. Do not be afraid to change your opinion if the
8 discussion persuades you that you should, but you do not
9 come to a decision simply because other jurors think it's
10 right.

11 It is important that you attempt to reach a
12 unanimous verdict but, of course, only if each of you can
13 do so after having made your own decision. Do not change
14 an honest belief about the weight and effect of the
15 evidence simply to reach a verdict. In other words, do
16 not change your opinions your opinions totally for the
17 sake of reaching a unanimous verdict.

18 There are four potential verdicts in this
19 case and you need to consider each charge separately. You
20 have two charges before you, criminal sexual conduct with
21 a minor and lewd act on a minor. You could find Mr. Woods
22 not guilty of both. You could find Mr. Woods guilty of
23 both. You could find Mr. Woods guilty of one and not
24 guilty of the other or visa versa. You should consider
25 each of the charges separately because the way I explained

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1 it to you earlier, they each have different elements of
2 the crime that are required to be proven but your verdict
3 must be unanimous.

4 Now, during this procedure, we have cases
5 where juries will send in notes and they will say, judge,
6 the count is x to x. Don't ever tell anybody what your
7 couldn't is. There is no good reason for me to know in
8 any way shape or form. There is no reason for the bailiff
9 to know in any way shape or form. When you reach a
10 verdict, Mr. Anderson and Mr. Lynch will tell you how you
11 can let them know you've reached a verdict and we'll come
12 out. The deliberation process, there is no reason to
13 inform me or the bailiff's or anybody else what the count
14 is or where you are in your deliberation process.

15 Now, I'm providing you with a verdict form.
16 A verdict form has a case caption as we call it and it
17 says we the jury by unanimous consent find the defendant
18 Robert Wilson Woods and there's no particular rhyme or
19 reason, they have to be in an order, the first one is
20 criminal sexual conduct, the second one is lewd act. I
21 have to write not guilty on there, I have to write guilty
22 on there and there's no significance as to the order.

23 Mr. Foreman, when the jury as reached a
24 unanimous verdict, you will check the appropriate boxes
25 and sign. At that time, you'll let the bailiff's know and

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1 we'll bring you back in the courtroom and we'll receive
2 the verdict.

3 Now, you're still not allowed to deliberate
4 but I'm going to send you back to your jury room and the
5 alternates go with them and once I pull the alternates out
6 and once I give you the only piece of evidence we have is
7 the disc and once you get the disc, then you can begin
8 your deliberations. You are only all to deliberate if all
9 12 of you are in the room. So if somebody needs to go to
10 the bathroom, use the phone to call home, somebody needs
11 to take a smoke break, no deliberations. You can only
12 deliberate when all 12 are present in the room.

13 At this time, if you all will retire to your
14 jury rooms.

15 (Jury exits the courtroom.)

16 Any exceptions to the charge other than those
17 previous stated.

18 MR. SULLIVAN: None from the defense, Your
19 Honor.

20 MS. SUSTAKOVITCH: None from the State.

21 THE COURT: How are we going to disc, do you
22 want to send the computer back?

23 MS. SUSTAKOVITCH: What we normally do, if
24 they want to view a portion of the disc, we let them view
25 it in here, but if you want to do it a different way.

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1 THE COURT: I'd rather send the computer back
2 with them ready to go and that way they can have it.

3 Let's do this. Let's send the disc back so
4 they're ready to start and if they ask for something to
5 view, then we can tell them we can send the computer back.
6 Mr. Lynch if you will pull my two alternates out and then
7 we'll send the disc back.

8 (Alternates return to courtroom.)

9 Let me say thank you, gentlemen, for your
10 service on this jury. You have paid attention throughout
11 the entire thing, been prompt and efficient and we want to
12 say thank you. I know it is a big burden to be away from
13 your family and your work and your livelihoods during
14 this, however, it is such an important role to our
15 criminal justice system as it proceeds over time. And I
16 want to say thank you and I say that on behalf of the
17 other judges, lawyers and parties in the courtroom. Your
18 prompt attention and being on time was greatly
19 appreciated.

20 We're going to send you back down stairs
21 right now and you are free to leave in the service of this
22 case.

23 Thank you.

24 We'll be in recess.

25 (Jury began deliberations.)

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1 (Whereupon, court was in recess.)

2 Okay. It's my understanding we have a
3 verdict. Anything before I bring the jury out?

4 MS. SUSTAKOVITCH: No, Your Honor.

5 MR. SULLIVAN: Nothing from the defense.

6 (Jury re-enters the courtroom.)

7 THE COURT: Let the record reflect that the
8 jury is all present and it's my understanding that you
9 have reached a verdict. Would you please hand it to
10 Mr. Anderson for me.

11 I find that the verdict form is in its proper
12 form and has been properly signed. Clerk, you may publish
13 the verdict.

14 THE CLERK: State of South Carolina, County
15 of Greenville versus Robert Wilson Woods, Defendant. We
16 the jury by unanimous consent find the defendant Robert
17 Wilson Woods as to the charge of criminal sexual conduct
18 with a minor in the first degree on indictment 2012-GS-
19 23-2853 guilty. As to the charge of lewd act upon a child
20 on indictment 2012-GS-23-2852 guilty.

21 THE COURT: Anybody wish for the jury to be
22 poled?

23 MR. SULLIVAN: Yes, Your Honor.

24 THE COURT: At this time, the clerk is going
25 to ask you two separate questions and you will just

State versus Robert Woods

1 respond as your number or name is called, please.

2 THE CLERK: I'm sorry. One moment, please.

3 THE COURT: That's alright. I'll do it.

4 Juror No. 50, if you would please raise your
5 hand. Is this your verdict?

6 JUROR NO. 50: Yes.

7 THE COURT: And this still your verdict?

8 JUROR NO. 50: Yes.

9 THE COURT: 135, if you would please raise
10 your hand. Is this your verdict?

11 JUROR NO. 135: Yes.

12 THE COURT: And is it still your verdict?

13 JUROR NO. 135: Yes.

14 THE COURT: Juror No. 138, is this your
15 verdict, sir?

16 JUROR NO. 138: Yes.

17 THE COURT: And is this still your verdict?

18 JUROR NO. 138: Yes.

19 THE COURT: Juror No. 170, is this your
20 verdict?

21 JUROR NO. 170: Yes, sir.

22 THE COURT: And is this still your verdict?

23 JUROR NO. 170: Yes, sir.

24 THE COURT: Juror No. 49, is this your
25 verdict?

State versus Robert Woods

1 JUROR NO. 49: Yes, sir.

2 THE COURT: And is this still your verdict?

3 JUROR NO 49: Yes, sir.

4 THE COURT: Juror No. 141, is this your
5 verdict?

6 JUROR NO 141: Yes, sir.

7 THE COURT: And is this still your verdict?

8 JUROR NO. 141: Yes, sir.

9 THE COURT: Juror No. 148, is this your
10 verdict?

11 JUROR NO. 148: Yes, sir.

12 THE COURT: And is this still your verdict?

13 JUROR NO. 148: Yes, sir.

14 THE COURT: Juror No. 90, is this your
15 verdict?

16 JUROR NO. 90: Yes, sir.

17 THE COURT: And is this still your verdict?

18 JUROR NO. 90: Yes, sir.

19 THE COURT: Juror No. 1, is this your
20 verdict?

21 JUROR NO. 1: Yes, sir.

22 THE COURT: And is this still your verdict?

23 JUROR NO. 1: Yes, sir.

24 THE COURT: Juror No. 55, is this your
25 verdict?

State versus Robert Woods

1 JUROR NO. 55: Yes, sir.

2 THE COURT: And is this still your verdict?

3 JUROR NO. 55: Yes, sir.

4 THE COURT: Juror No. 67, is this your

5 verdict?

6 JUROR NO. 67: Yes, sir.

7 THE COURT: And is this still your verdict?

8 JUROR NO. 67: Yes, sir.

9 THE COURT: Juror No. 40, is this your

10 verdict?

11 JUROR NO. 67: Yes, sir.

12 THE COURT: And is this still your verdict?

13 JUROR NO. 67: Yes, sir.

14 THE COURT: Is there any member of jury panel

15 whose number I did not call? If so, please raise your

16 hand. There are none.

17 Ladies and gentlemen, let me conclude your

18 jury service here today by saying a sincere thank you.

19 Jury service is said by some people to be the most

20 important service that you can pay your country outside of

21 serving in the military. You are in a very unique and

22 special position to service on a jury. I know it takes

23 you away from your work and your other things that you do,

24 but it is so very important to the continuation of this

25 justice system which we have in this country. It is vital

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1 and I hope this has been a good experience for you. I
2 hope that you leave feeling like you have seen the
3 criminal justice system at work and seen what a real
4 criminal trial is like as opposed to what's on tv or
5 what's in a book or what's in a movie.

6 We all thank you and I want to say this not
7 only behalf of the court and the court staff and the
8 attorneys and all the other judges in the court house,
9 thank you. You were all prompt and you all paid
10 attention. We didn't have any issues with jurors sleeping
11 or nodding off or not paying attention.

12 I want to thank you for your patience with us
13 as it took longer sometimes for us to get started or took
14 extended breaks. I hope you understand we did all that to
15 make things as seamless as possible once you came into the
16 courtroom.

17 At this time, you are going to be excused and
18 you're going to be sent back downstairs for further
19 instructions from the clerk. Here are the rules, now that
20 the case is over, you are free to discuss the case and
21 anything about the case with anybody that you want. I
22 know I've said something different every time. You can
23 discuss it with anybody that you want.

24 Sometimes lawyers call jurors, sometimes they
25 don't. If you don't want to talk to somebody, you just

~~State versus Robert Woods~~

1 say, I don't want to talk to you. That's perfectly normal
2 and perfectly fine. If anybody begins to harass you or
3 bother you about this, you notify the Greenville County
4 Clerk of Court and a circuit court judge will deal with
5 that properly, but you are certainly free to discuss the
6 case, the facts of the case or anybody else that you like
7 to. Now you are dismissed to head back downstairs.

8 (Jury exits the courtroom and dismissed from
9 this case.)

10 Come on around for sentencing.

11 Ms. Sustakovitch, what do you want to tell
12 me?

13 MS. SUSTAKOVITCH: As far as a prior record,
14 Your Honor, Your Honor knows about the juvenile
15 conviction. That was when he was 14 for criminal sexual
16 conduct with a minor. He was 14 at the time. And he is
17 on the sex offender registry.

18 As far as other record 2002 PWID cocaine,
19 2005 assault and battery, 2007 shoplifting, 2010 false
20 name to police, 2010 receiving stolen goods, 2010
21 shoplifting third and above.

22 THE COURT: Is anybody from the victim's
23 family want to be heard?

24 MS. SUSTAKOVITCH: I don't believe so.

25 THE COURT: Aunt Bessie, anything you want to

State versus Robert Woods

1 tell me?

2 MS. BESSIE: Just glad for the verdict.

3 THE COURT: Thank you for being here.

4 Mr. Sullivan.

5 MR. SULLIVAN: Judge, you heard it all. With
6 the CSC, you got to give him the mandatory minimum 25.
7 I'd like you to consider that he is 34 and that would put
8 him in his late 50's when he gets out and he will be an
9 older man. And he'll get some time on the other one and I
10 would ask you to consider concurrent time.

11 I'd like to put on the record, Judge, he
12 wants me to file an appeal and if something happens to me
13 I want to preserved so somebody can do it. He does want
14 an appeal.

15 THE COURT: Alright.

16 MR. SULLIVAN: And one more thing, prior to
17 the trial there were discussions of plea offers and he was
18 offered to plead to the lewd act and CSC of 12 years. He
19 said he didn't want to plead guilty for something he says
20 he did not do. After the jury was picked, the plea offer
21 changed for the same thing only for 15 and I told him that
22 would be the State's recommendation and I couldn't
23 guarantee and Robert still says I didn't do.

24 So he's had his day in court and I want that
25 on the record that there were some offers made that he

~~State versus Robert Woods~~

1 considered but he opted to go with a trial.

2 THE COURT: Okay. Mr. Woods, you do not have
3 to say anything at all. You have a constitutional right
4 to remain silent and I have a great and deep respect for
5 that. If there is anything you'd like to say, I'd be
6 happy to hear from you but you certainly do not have to if
7 you do not wish to.

8 DEFENDANT WOODS: I don't wish to speak.

9 MR. SULLIVAN: I would like you to take this
10 under consideration, I did not hear any testimony about
11 the girl being in a traumatic situation or receiving
12 counseling, having nightmares and all that kind of stuff.
13 By her testimony and watching the video, she's moved on
14 and I don't know if she realized that this is what
15 happened. I don't think we have a situation where
16 somebody is scared for life, I don't know.

17 MS. SUSTAKOVITCH: Your Honor, just from my
18 dealings with her she is in counseling and asking her what
19 she thought should happen and she thought Robert should go
20 to jail and she just wanted him to know what happened was
21 wrong.

22 THE COURT: What do we know about the 14 year
23 old case?

24 MS. SUSTAKOVITCH: It was, I believe, 14 and
25 the allegation was, and correct me if I'm wrong, oral sex

State versus Robert Woods

1 with two boys.

2 MR. SULLIVAN: Eight years old. He spent
3 time in counseling and a juvenile facility and he hasn't
4 had an issue with anybody until this situation.

5 THE COURT: The sentence of the Court on the
6 criminal sexual conduct with a minor under the age of 11
7 years is that he be committed to the State Department of
8 Corrections for a determinate period of 25 years.
9 Sentence on the lewd act on a minor is he be sentenced to
10 the State Department of Corrections for a period of 10
11 years and I'm going to suspend that on the service of five
12 years of probation and I'm going to run that consecutive
13 to the lewd act on a minor.

14 So here's the deal, I'm going to order sex
15 offender registry on both cases and central child abuse
16 registry on both cases.

17 Once you do your time on the CSC with a
18 minor, you're going to be on probation for five years and
19 the reason I'm doing that is because during those five
20 years you need to be monitored. If you get out and you
21 make it those five years and you don't have any more
22 issues, then I will be confident that there would be a
23 good chance that you will not re-offend.

24 However, if something happens, I think it
25 will probably happen within those first five years and you

State versus Robert Woods

1 will have an additional 10 years hanging over your head to
2 make sure you're behaving once you get out after your
3 criminal sexual conduct with a minor charge.

4 Now, as to the appeal issue, I certainly
5 don't hope anything happens to you, Mr. Sullivan, but it
6 is my understanding that you are protected for the record.
7 Mr. Woods, that is your desire and your intent to appeal
8 this decision to the appropriate appellant courts if
9 something does happen to Mr. Sullivan, which I have no way
10 of knowing that in any way, shape or form, but I will put
11 on the record that this is your full intent and I do
12 understand that and you are protected on the record.

13 Mr. Sullivan will go ahead and file the
14 appropriate paperwork.

15 Thank you.

16 MR. SULLIVAN: On the 10 suspended will the
17 Department of Corrections look at that as a 25 year
18 sentence?

19 THE COURT: I don't believe so. My intention
20 is that once he is released on the criminal sexual conduct
21 with a minor, he's on probation for five years with 10
22 years hanging over his head. Yes.

23 Good luck to you, Mr. Woods.

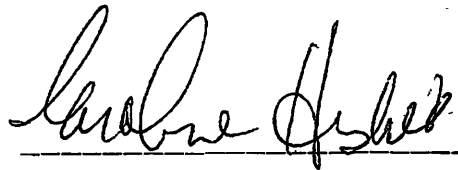
24 MS. SUSTAKOVITCH: Thank you, Your Honor.

25 ---END OF TRANSCRIPT RECORD---

State versus Robert Woods

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Circuit of the State of
3 South Carolina, do hereby certify that the foregoing is a
4 true, accurate, and complete transcript of record of all
5 the proceedings had and evidence introduced in the trial
6 of the captioned case, relative to appeal, in the Court of
7 General of Greenville County, South Carolina on this 10th
8 day of April, 2014.

9 I do further certify that I am neither of kin,
10 counsel, nor interest to any party hereto.

11
12
13 

14 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Greenville)Robert Woods # 305393)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2016-CP-23-

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENHISMER
 01878
 MAR 22 PM 2 54

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 Greenville County Detention Center
Perry Correctional Inst.
2. Name and location of Court which imposed sentence Greenville County
General Sessions, Greenville County Court house
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-2853 / criminal sexual conduct w. the Admin
 - (b) 2012-GS-23-2852 / Lewd Act upon a child

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 10, 2013 / 25 years ^{mandatory} ~~mandatory~~ sentence
- (b) April 10, 2013 / 10 years suspended to 5 years Probation
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
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, Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JAN. 11, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- 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:
- (a) See Attachment "A"
- (b) See Attachment "B"
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment "A" A thru
- (b) See Attachment "B" B thru
- (c) ~~See Attachment "B" etc.~~
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. _____
 - ii. N/A
 - 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. _____
 - ii. N/A
 - 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) The first opportunity
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES N/A
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. Timothy Sullivan, Esq. Attorney for Defendant
305 E. North Street, Suite 123 Greenville SC. 29601
 ii. David Alexander, South Carolina Commission on Indigent
Defense Division of Appellate Defense PO Box 11589
 iii. Columbia, SC. 29211

(b) the proceedings at which each such attorney represented you:

- i. Timothy Sullivan trial and Sentencing
 ii. David Alexander Direct appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, Robert Woods, 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.

Robert Woods Depose 1/23/16 ✓

SWORN to and subscribed before me this 24th
day of February, 2016.

Gary C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2017

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Robert Woods, 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.

Robert Woods Robertwoods
Applicant

SWORN or affirmed to and subscribed before me this

24 day of February, 2016.

Nancy C. Merchant
Notary Public

My Commission Expires: 1-23-2022

P.L.R

AFFIRMED.

ISSUE 5

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

1. Trial Counsel was ineffective for failing to squash indictments #2012-65-23-2853. ~~and~~ 1st CSC, that all the elements of 16-3-655(A)(1) "~~write in the whole element~~" was not provided in the Applicant's Indictment so that statutory language, so plainly that the nature of the charged offense could be easily understood. See *State v. Baker*; opinion # 27497, Book # 700 S.E. 2d 440; see also S.C. Const Art I sec. III and S.C. Code 17-19-10. The in the indictment does not have the complete statutory language that all included in 16-3-655(A)(1) "write in all the language that applies" or does not have the full language of what "sexual battery means", Applicant was not informed by his trial counsel what all the elements were in 16-3-655(A)(1) sexual battery "means sexual intercourse; cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any of a person's body or of any object into the ~~genital~~ genital or Anal opening of another person's body except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes". However the Applicant counsel did not explain "Sexual Battery" nor the word phrase "However slight" that would cause penetration. Without all these elements in the Indictment and Applicant not knowing due to his trial counsel not addressing all of the elements in the 1st CSC. How is the Applicant to easily understand what he perpare to answer to during trial.

2. Trial Counsel was ineffective for failing to obtain Applicant's prior mental health records prior to trial to establish Applicant has prior and present mental health issues. Trial Counsel failed by not ordering a mental examination to determine Applicant competency to stand trial in prosecution for 1st CSC and related offenses, which violated Applicant's Due process and S.C. Code 44-23-410; S.C. Code 44-23-420. Plainly the Applicant was taken psych meds under Mental Health care prior to incarceration and while Applicant was being held in Greenville County Jail. Records from Greenville County Jail would show what psych meds Applicant was taken.

3. Trial Counsel failed to preserve victim prior statements in 2009 for Appellate review, that trial Counsel did not raise the 2009 statement during trial at anytime, so that the Applicant could preserve this issue in his Direct Appeal which violated Applicant's 6th const. Amendments. Which victim clearly states in both allegation "it was my mom's boyfriend and it only happen 1 time. See Appellate Case No. 2013-000814 on pg. 2, ¶ 1 paragraph, the fifth sentence where it states "the record indicates minor always claimed the perpetrator was her mother's boyfriend. The victim told Cheryl Cromartie in prior allegations in 2009, "my mom's boyfriend" Tr. pg. 23 LNS 23-24 Tr. pg. 24 LNS. 20-25. In recent allegation then on Tr. pg. LNS 173 victims says it happen on Dec. 21. In the recent allegation Nancy Henderson "Child abuse pediatrician with the Greenville Health system", The victim states "ONE time at her mother's house. Tr. pg. 117 LNS 22-25 and Trial pg. 118 LNS 1-5. When victim was questioned by Dr. Varnadore when it happen and where. The victim says her mom's bedroom. When Nancy Henderson was Cross Examination in the recent charged Trial speaks of age and how many times did it occur. Tr. pg. 121 LNS 1-25. The victim prior statements in 2009, the perpetrators were NEVER questioned by law enforcement. With victim prior allegations and statements, would have shown light in Applicant's trial proceeding.

1. Trial Counsel was ineffective for allowing the state to indict Applicant on 2012 statute 16-3-655(a)(1) 2012, when allegation were made in 2009 and 2011. Warrant # M-99049 and M-99051 clearly states "During the of Sept. 2011", this is in violation of Applicant Due process.

✓ Trial Counsel was ineffective for failing to object to the judge instructions on the Applicant to the jury of Applicant's mental Health, Education, defendant's I.Q. or intelligence. Tr. pg. 238 LNS. 4-25; Tr. pg. 239 LNS. 1-25; Tr. pg. 240 LNS. 1-7. When NONE of the Applicant's mental Health records, Education, I.Q. or intelligence records was NEVER introduce to the jury during Applicant trial proceeding.

✓ Trial Counsel was ineffective for failing to squash indictments #2012-GS-23-2852 and 2853 for reason being, each Indictment exceed the 90 day to Rule 3 scrimp. Applicant was warranted on Nov. 14th, 2011 for 1st CSC and sex/Lewd Act. Clerk of Court of Greenville County received the Warrants on Nov. 18, 2011. The Solicitor indicted Applicant on March 19, 2013, which exceeds the criminal procedure Rule 3 scrimp.

Issue #3 ✓

Trial counsel failed to preserve victim's prior allegations in "2009" for Applicant Direct Appeal for Appellate review, so that the Applicant could preserve the allegations made by the victim to raise in his Direct Appeal. Which violated Applicant's 6th const. Amend. Trial judge even explain to trial counsel what Trial Counsel could do to preserve the 2009 prior accusations, since Trial judge was Not going to allow the prior 2009 accusations in Applicant trial proceeding in April 8th 2013. See Tr. pg. 36 LNS 11-25; Tr. pg. 37 LNS. 18-25; Tr. pg. 38 LNS. 1-25; Tr. pg. 39 LNS. 1-25; Tr. pg. 1-9, ~~when~~ Trial counsel NEVER raised the 2009 prior accusations to the victim, nor to the victim Mother or to victim Aunt to Betty; so the 2009 prior accusation was NEVER preserved for Applicant to raise in his Direct Appeal. In ~~App~~ Applicant's Direct Appeal Appellate No. 2013-000814 State v. Robert Wilson Woods, ~~that~~ The only issue trial counsel raised, is the prior "2009" accusation ~~which~~ ONLY Applicant was denied by The State of South Carolina, In The Court of Appeals, ~~because~~ ^{all the issues were} ~~that~~ counsel The S.C. Supreme Court found a defendant must demonstrate - under Strickland Strickland - Both that trial counsel's failure to preserve the "prior 2009 accusation" for a Direct Appeal was deficient and that Applicant was prejudiced by counsel performance. Applicant has shown both deficient and prejudice under - Strickland.

Issue #11 ✓ Trial counsel was ineffective for allowing the State to use "Christine Carlberg" Forensic video Interview and ~~not~~ ^{not} ~~qualify~~ with the victim. Judge did Not qualify "Christine Carlberg" from the Julie Valentine Center in Greenville S.C. an expert witness in Trial proceeding. The video was shown to the jury. Christine Carlberg interview with victim was on Nov. 10, 2011. See Tr. pages 41 LNS 1-25; Tr. pg. 42 LNS 1-25; Tr. pg. 43 LNS 1-25; Tr. pg. 44 LNS 1-25; Tr. page 45 LNS 1-25; Tr. pg. 46 LNS 1-25; Tr. pg. 47 LNS 1-25; Tr. pg. 48 LNS. 1-25; Tr. pg. 49 LNS 1-25; State ~~tells~~ judge in Tr. pg. 50 ~~that~~ Trial judge speaks about "Christine Carlberg" on Tr. pg. 50 LNS. 11-22; Then the State says "I plan to qualify her and then put the tape in" Tr. pg. 50 LNS. 23-25, when "Christine Carlberg" was called to the stand to speak and show her video, Trial judge did Not qualify her as an Expert witness. READ Tr. pages 190 thru 195 and trial Counsel Did Not object. SEE Tr. pg. 195 LNS 5-6. Trial judge did qualify Nancy Henderson as expert witness. To see how Trial judge explain to the jury on ~~an~~ Nancy Henderson for her to be qualified. SEE Tr. pg. 111 LNS 1-8. For the testimony or Forensic Interviewer, Expert witness to be received, his/her qualifications as such must be first Approved by the Court. If the prerequisite is Not met the opinion of the expert, must be excluded. Criminal Law 481, Knudsen v. Duffee-Freeman, Inc. GA.; 99 S.E. 2d 370.

CPT MASTER CODES

Patient Name _____

Account Number _____

Date of Service 1/28/11

NEW PATIENT E&M CODE	
Straightforward	99201
Brief/Limited	99202
Standard/Moderate	99203
Extensive	99204
Comprehensive	99205
ESTABLISHED PATIENT E&M CODE	
Nurse	99211
Minimal	99212
Brief/Limited	99213
Standard/Moderate	99214
Extensive	99215
INITIAL PHYSICAL	
Age 1 through 4 Years	99382
Age 5 through 11 Years	99383
Age 12 through 17 Years	99384
Age 18 through 39 Years	99385
Age 40 through 64 Years	99386
Age 65 Years & Older	99387
PERIODIC PHYSICAL	
Age 1 through 4 Years	99392
Age 5 through 11 Years	99393
Age 12 through 17 Years	99394
Age 18 through 39 Years	99395
Age 40 through 64 Years	99396
Age 65 Years & Older	99397
SPECIAL PHYSICAL	
Camp	CAMP
School	SCHOOL 1-2 or 3
Sport	SPORT
Dot	99385, D
Pre-Employment	99385, P
PELVIC EXAM	
Pelvic without illness or problem	appropriate PHY Code
Pelvic with problem	appropriate E&M Code
I&D/REMOVAL — GLOBAL DAYS 10	
Abscess Simple/Single	10060
Abscess Complicated/Multiple	10061
Pilonidal Cyst	10080
Hematoma/Seroma/Fluid Collect	10140
Puncture Aspiration	10160
FB Removal Subcutaneous/Simple	
Subcutaneous Tissue	10120
Shoulder	23330
Upper Arm/Elbow	24200
Foot	28190
FB Removal Deep/Diff/Other	
Complicated I&D or FB Removal	10121
Upper Arm/Elbow	24201
Foot	28192
Nose	30300
Throat	42809
FB EYE/EAR — GLOBAL DAYS zero	
Conjunctival	65205
Corneal w/slit lamp	65220
Corneal w/slit lamp	65222
External Auditory Canal	69200
Corneal Abrasion No Foreign Body	appropriate E&M Code
ASPIRATION/INJECTION — GLOBAL DAYS 10	
Tendon Sheath or Ligament	20550
Trigger Point/Single or Multiple	20552
Joint or Bursa Small (finger-toe)	20600
Joint or Bursa Medium (wrist-elbow-ankle)	20605
Joint or Bursa Large (shoulder-hip-knee)	20610

WRITE IN CODES TO BE ENTERED IN HPM

LACERATION REPAIR — GLOBAL DAYS 10	
Simple/Scalp, Neck, Trunk, Extremities	
<2.5 cm	12001
2.6 - 7.5 cm	12002
7.6 - 12.5 cm	12004
Simple/Face, Ear, Eyelid, Nose, Lip	
<2.5 cm	12011
2.6 - 5.0 cm	12013
5.1 - 7.5 cm	12014
Layered/Scalp, Trunk, Extremities	
<2.5 cm	12031
2.6 - 7.5 cm	12032
Layered/Neck, Hand, Foot, or Ext Genitalia	
<2.5 cm	12041
2.6 - 7.5 cm	12042
Layered/Face, Ears, Eyelids, Nose, Lips	
<2.5 cm	12051
2.6 - 5.0 cm	12052
Complex (see book)	13100-13160
BURNS — GLOBAL DAYS zero	
1st Degree - Initial	16000
follow up	appropriate E&M Code
Partial Thickness BSA	
Less than 5% Initial or Subsequent	16020
follow up with debridement or re-dressing	repeat code
follow up without debridement or re-dressing	appropriate E&M Code
5% -10% Initial or Subsequent	16025
follow up with debridement or re-dressing	repeat code
follow up without debridement or re-dressing	appropriate E&M Code
SKIN LESIONS — GLOBAL DAYS zero	
Skin Tag Removal (first 15)	11200
Skin Tag Removal (next 10 Use 11200 +)	11201
Shaving (see book for size)	11300 - 11303
Excision (benign) (see book)	11400-11446
Excision (malignant) (see book)	11600-11646
Destruction including Cauterization & Cryotherapy (except skin tags)	
1st Lesion	17000
2-14 Lesions (use 17000 +)	17003
15+ Lesions (use only this code)	17004
NAIL BED — GLOBAL DAYS zero	
Trimming	11719
Avulsion of Nail Plate	11730
Drilling Subungual Hematoma	11740
Nail Bed "exception" Global Days 10**	11760
Nail Wedge/Ingrown Toe Nail "exception" Global Days 10**	11765
ORTHOPEDIC PROCEDURES — GLOBAL DAYS 90	
Dislocated Shoulder	23650
Dislocated Metacarpophalangeal	26700
Dislocated Interphalangeal	26770
Manipulation "exception" Global Days zero**	98925
Fractures (see book)	21310-28899
Application of Splint — Global Days zero	
Long Arm	29105
Short Arm	29125
Finger	29130
Long Leg	29505
Short Leg	29515
Application of Strapping — Global Days zero	
Thorax	29200
Lower Back	29220
Shoulder	29240
Elbow or Wrist	29260
Hand or Finger	29280
Ankle and/or Foot	29540
Knee	29530
Toes	29550
Unna Boot	29580
Application of Cast — Global Days zero	
Short Arm	29075
Hand & Lower Forearm (gauntlet)	29085
Finger	29086
Short Leg	29405

a.

#11

9. Trial counsel was ineffective for allowing the State to use "Christine Carlberg the Forensic video Interviewer with the victim. Trial judge did not qualify "Christine Carlberg" from the Julie Valentine Center in Greenville S.C. an expert witness in Applicant's trial proceeding. Victim was questioned through "Christine Carlberg" prior to trial proceeding and recorded, to be shown during Applicant trial proceeding. "Christine Carlberg" was put on the stand on April 9th 2013 to testify to her video that was done with victim. The video was shown to the jury and Trial judge NEVER qualify her as an "Expert Witness" to the jury, so video was used as evidence against Applicant. SEE Tr. pgs. 41 thru 49 all LNS. 1-25.

Trial judge speaks about "Christine Carlberg" on Tr. pg. 50 LNS. 11-22 in pretrial. And on Tr. pg. 50 LNS. 23-25 State says at one point "I plan to qualify her and then put the tape in". When the Forensic interviewer "Christine Carlberg" was called to the stand to speak and show the video the jury, trial judge did not qualify her as a Expert witness. SEE Tr. pgs 190 thru 195 LNS 1-25 and trial counsel did not object. SEE Tr. pg. 195 LNS. 5-6. Trial judge did qualify Nancy Henderson medical examiner an expert witness. SEE Tr. pg 110 LNS. 18-25, Tr. pg. 111 LNS. 1-8. For a testimony or Forensic Interviewer expert witness to be received, his/her qualifications as such must be first approved by the Court. If the prerequisite is not met the opinion of the Expert, must be excluded. Criminal Law KeyCite 481, Knudsen v. Duffee-Freeman, Inc. GA; 99 S.E. 2d 370.

1. Trial counsel failed to preserve victim prior accusation, victim made in "2009" for Applicant Direct Appeal for Appellate review, so that Applicant could preserve the accusations made by the victim to raise in his Direct Appeal. Which violated Applicant's 6th constitution amendment. Trial judge even explain to trial counsel what trial counsel could do in trial proceeding to preserve the "2009" accusations made by the victim. Since trial judge was not going to allow the prior "2009" accusations in Applicant's trial proceeding in April 8th, 2013. See Tr. pg. 36 Lns. 11-25; Tr. pg. 37 Lns. 1-25; Tr. pg. 38 Lns. 1-25; Tr. pg. 39 Lns. 1-25; Tr. pg. 40 Lns. 1-9. Trial Counsel NEVER raised the "2009" accusation to the victim, nor the victim mother or to the victim Aunt "Betty". So the 2009 prior accusations was NEVER preserved for Applicant to raise in his Direct Appeal. In Applicant's Direct Appeal Appellate No: 2013-000814 State v. Robert Wilson Woods. The only issue trial counsel did raise was the prior "2009" accusations only. Applicant was denied by The State of South Carolina, In The Court of Appeals on January 6, 2016, Because trial counsel did not preserved the issue during trial proceeding. SEE State v. Dunbar, 356 S.C. 138, 142, 587 S.E. 2d 691, 693-94 (2003) ("Issues not raised and ruled upon in trial court will not be considered on appeal.") SEE also State v. Langford, 400 S.C. 421, 432, 735 S.E. 2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal."). The South Carolina Supreme Court found a defendant must demonstrate - under - Strickland - Both that trial counsel's failure to preserve the prior "2009" accusation for a Direct Appeal was deficient and that Applicant was prejudiced by Counsel performance. Applicant has shown Both deficient and prejudice - under - Strickland.

110.

b.

111

- b. Trial Counsel was ineffective for failing to squash indictments #2012-GS-23-2852 and 2853 for reason being. Each indictment exceeded the 90 day process to Rule 3 scrimP. Applicant was warranted on Nov. 14th, 2011 for 1st degree CSL and SEX/Lewd Act. Clerk of Court of Greenville County received the warrants on Nov. 18th, 2011. The solicitor indicted Applicant on March 19, 2013, which exceeds the criminal procedure Rule 3 scrimP.
- c. Trial Counsel was ineffective for allowing the State to indict Applicant on 2012 statute 16-3-655(A)(1) 2012, when allegation were made in "2011". Warrant # M-99049 and M-99051 clearly state's "During the month of Sept. 2011"; this is in violation of Applicant's Due process.
- d. Trial Counsel was ineffective for failing indictments #2012-GS-23-2852 and 2853, that the indictments did not give a location where the alleged offense was committed. Trial judge says on Tr. pg. 241 Lns. 25; Tr. pg. 242 Lns. 1-3 ("Time is Not Essential Element of the offense, indictments NEED NOT specially charge the precise time of the offense allegedly occurred."). For Applicant to answer what language is in the indictment, location is a essential element to the offense, that it lay jurisdiction of the court

and to inform the accused of what County in which he is charged. The indictments only include the County, not the location of address which the offense took place at. This is in violation of S.C. CODE 17-19-20; SEE State v. Fisher, 33 S.E.2d 495; State v. McIntire, 71 S.E.2d 410; SEE also State v. Thompson, 409 S.E.2d 420.

e. Trial Counsel was ineffective for failing to squish indictments #2012-65-23-2853 1st degree CSC, that all the Elements of 16-3-655(A)(1) (2012) was not provided in the Applicant's Indictment, so that the statutory language, so plainly that the nature of the charged offense could be easily understood. SEE State v. Baker; opinion # 27497, Book 700 S.E.2d 440; SEE also S.C. Const. Art I sec. III and S.C. CODE 17-19-10. The Applicant indictment does not have the complete statutory language that's all included in 16-3-655(A)(1)

"(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

- (1) the actor engages in sexual battery with a victim who is less than eleven years of age; or
- (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or Nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(c) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(d)."

nor doesn't the indictment have the full language of what "sexual battery means". Applicant was not informed by his trial counsel what all the elements were in 16-3-655(A)(1) (2012).

Sexual battery "means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any of a person's body or of any object the genital or anal opening of another person's body except when such intrusion is accomplished for medically recognized

treatment or diagnostic purposes." However, the Applicant trial counsel did not explain the full language of "sexual battery" nor the word phrase "However slight that would cause penetration". Without these elements not in the indictment and Applicant trial counsel did not explain to Applicant prior to trial proceeding. How is the Applicant, to easily understand what he prepared to answer to during trial proceeding.

- f. Trial Counsel was ineffective for failing to obtain Applicant's prior mental health records prior to trial to establish Applicant has prior and present mental health issues. Trial Counsel failed by not ordering a mental examination to determine Applicant competency to stand trial in prosecution for 1st degree CSC and related offense, which violated Applicant's due process and S.C. code 44-23-410; S.C. code 44-23-420. Plainly the Applicant was taking psych medications under mental health care prior to incarceration and while Applicant was being held in Greenville County Jail. Records from Greenville County Jail Medical would show what medications the Applicant was taking prior and during trial proceeding.
- g. Trial Counsel was ineffective for failing to object to the judge instructions on the Applicant to the jury of Applicant's mental health, education defendant's I.Q. or intelligence. See Tr. pg. 238 Lns. 4-25; Tr. pg. 239 Lns 1-25; Tr. pg. 240 Lns 1-7. When none of the Applicant's mental health records, Education, I.Q. or intelligence records was never provide or introduced to the jury during Applicant trial proceeding on April 8th, 9th and 10th 2013.

h. Trial Counsel was ineffective for failing to object to judge for not charging the with a lesser offense 16-3-600(c)(1)(a)(i) "ABHAM", which is a lesser offense to a 1st degree CSC. Trial Counsel asked the during a recess, that he would like the lesser included offense charged. SEE Tr. pg. 177 Lns. 18-25. Trial judge says "she charging lewd act so he's going to get a lewd act charge". A Lewd/Act is NOT a lesser offense to a 1st degree CSC. On Tr. pg. 202 Lns. 17-25 the judge ask trial counsel again "You were telling me about this lesser included". Then continues on Tr. pg. 203 Lns. 1-20. During trial proceeding the judge charges the only 1st degree CSC and Lewd/Act, which trial counsel NEVER objected, so that the issue be preserved for Appellate review. Trial Counsel objected only in a recess period not in the trial proceedings. See Also Tr. pg. 240 Lns 8-25, Tr. pg. 241 Lns. 1-24 to SEE how trial judge charged the jury. Which violated Applicant's 6th const. Amendment and Due process.

I. Trial counsel was ineffective for failing not to show Applicant's his indictments until some time after March 19, 2013 and trial proceeding started on April 8th, 2013, which only gave trial counsel 18 days to prepare for a defense. Clearly this is not a sufficient amount of time for trial Counsel to prepare for trial nor to explain all the ramifications to the Applicant. This is less than 30 days, certainly not adequate time for any trial counsel to discuss the terms of it's ramification, nor to review the evidence all necessary to our Supreme Court to provide adequate representation. This violated Applicant's 6th const. Amendment and Due Process.

j. Trial Counsel was ineffective for failing to object to trial judge saying to the jury "Time is Not essential Element of the offense" Tr. pg. 241 LNS 25 and Tr. pg. 242 LNS. 1-3. The actual Clock time is Not essential element, but when your using time in related ~~da~~ Months, dates and years in an indictment, it is essential element in the indictment. The reason being is in each Degree of a "Criminal Sexual Conduct", meaning 1st, 2nd or 3rd degree. Each degree has an certain "age" number, to determine what degree to charge the Applicant. So "~~Time~~ ^{AGE}" is an essential element when "Time" is being used to determine the age of the in these indictments using "Months, Dates and Years". Which law makers know the "Criminal Sexual Conduct offense can be stacked from 1st, 2nd, 3rd degree or with a Lewd/Act. For Example: Let say defendant did commit a Criminal Sexual Conduct w/ minor and it was in Feb. 2013 and the victim say's "it only happen one time". In the defendant indictments the "Time" using Months, dates and years say's "Between Nov. 10, 2012 and Feb. 2013 defendant did commit a sexual battery in a 1st degree, Because victim was eleven years old during the months Nov. and Decembee of 2012. But in Jan. 2013 the victim turn 12 yrs. old. Using "Time" for Months, dates and years, you now have the defendant committing a Criminal Sexual Conduct with a minor in a 1st degree Because victim was eleven years old in Nov. 12 and committing a 2nd degree Because victim turn 12 years old some time Jan. 2013 and a Lewd/Act. So using "Time" for Dates, Months and Years is a essential Element when victim stated "it only happen in Feb. 2013 one time" In each criminal sexual conduct each one clearly has a certain "Age".

1st 16-3-655(A)(1) is less than eleven years old, 2nd 16-3-655(B)(1) if the

victim who is fourteen years of age or less, or 3rd degree; the victim:
over fourteen years of age. Each one of these degrees uses an "Age"
which is clearly essential Element to each degree of a Criminal
sexual conduct.

✓ Trial counsel was ineffective for failing to object to the indictment and 2853. That indictment did not give a location where the alleged crime was committed. Trial judge says on Tr. pg. 241 LNS. 25; Tr. pg. 242 LNS 1-3 "Time is not an essential element of the offense, indictments need not specially charge the precise time the offense allegedly occurred". For the Applicant to answer what language is in the indictment, location is a essential element, that it lay jurisdiction of the court and to inform the accused of county in which he is charged. The indictments only include the County, not the location of a address which the offense took place at. This is in violation of S.C. CODE 17-19-20; see STATE v. Fisher, 33 S.E. 2d 495; State v. McIntire, 71 S.E. 2d 410 and State v. Thompson, 409 S.E. 2d 420.

✓ Trial counsel was ineffective for failing to ^{object to} the judge for not charging the jury with a lesser offense 16-3-600(c)(1)(a)(i) (ABHAB), which is a lesser offense to a 1st CSC. Trial Counsel asked the judge during recess "that he would like the lesser included offense charged" Tr. pg. 177 LNS 18-25. Trial judge says "she charging lewd act so he's going to get a lewd act charge. A lewd Act is not a lesser offense to a 1st CSC. Then on Tr. pg. 202 LNS. 17-25 the judge ask trial counsel "You were telling me about this lesser included." Then continue on Tr. pg. 203 LNS. 1-20. During trial proceeding the judge charges the jury only 1st CSC and Lewd act, which trial counsel objected only in the recess period, so this issue did not get preserve for a direct Appeal. SEE Tr. pg. 240 LNS. 8-25; Tr. pg. 241 LNS 1-24 To how the judge charged the jury.

9. ✓ ~~Trial Counsel was ineffective for failing to explain to the Applicant, what all the Elements consisted in a 1st CSC 16-3-655(a)(1) and what "sexual battery" means in the 1st CSC, since all the language was not provided in the 1st CSC indictment. Trial counsel failed to explain~~
Which Applicant NEVER received his Indictments from his Trial counsel. Applicant was indicted on March 19, 2013 and Trial proceeding was on April 10, 2013, only allowing Trial Counsel 18 days to prepare for a defense. This is not a sufficient amount of time for trial Counsel to prepare for trial nor to explain all the ramifications to the Applicant. This less than 30 days, certainly not an adequate time for any Trial Counsel to discuss the terms its ramification, nor to review the evidence all necessary according to our Supreme Court to provide adequate representation. This violated Applicants 6th Amend and Due process.

D. 2801. ~~Time is Not Essential Element of the Offense~~. Top pg. 241 LNS. 25 and Tr. pg. 242 LNS. 1-3. The actual clock time isn't ~~an~~ ^{an} ~~essential~~ ^{essential} Element, but when your using Time as in related to dates and months in the indictments, It is Essential Element in the indictments. The reason being in each Degree of a CSC meaning "1st, 2nd or 3rd degree" ~~the~~ Each degree has an certain Age Number, to determine what degree to charge Applicant. ~~So~~ So age is an ~~element~~ ^{essential} Element when "Time" is being used to determine the age of the victim in these indictments using Month, dates and years. Which law maker knows that sexual criminal conduct w/minor the charges can be stacked any where from 1st CSC, 2nd CSC, 3rd CSC and Lewd/Act. Example: "Let's say the Applicant did commit a CSC and it was in Feb. 2013 and the victim was 12 yrs. old at the time this offense occur and victim says it only happen one time. In the indictments the "Time" using dates, months and years says "between Nov²⁴12 and Feb. 2013 applicant did commit a sexual battery in a 1st degree, b/c victim was Eleven yrs old during Nov. 2012 and DEC 2012. But in Jan. 2013 the victim turn 12 yrs old. So what you have now, is the Applicant commit the offense to the victim when she was 11 and 12 years old. ~~Which~~ Which the victim says "Only one time in Feb. 2013", Now ~~you~~ the state can indict Applicant on 1st CSC because in the indictment she was 11 yrs. old at one point. Then indict Applicant on a 2nd degree, b/c victim is 12 yrs old now and indict Applicant on a Lewd/Act. So "time" using dates, months and years is AN ESSENTIAL Element in these type of charges, when the statutes read each "Age" clearly in each offense. 1st CSC 16-3-655, 2nd 16-3, 3rd 16-3, and Lewd/Act.

1. Trial Counsel was ineffective for allowing the state to use "Christine Carlberg" The Forensic Interview of Julie Valentine Center in Greenville S.C. The state used "Christine" interview ~~to~~ ^{to} the interview that was done on the victim Nov. 10, 2011, to show the jury what "Christine Carlberg" and the victim spoke about ~~the~~ ^{the} allegations that was made against Applicant. Trial Judge did not qualify "Christine Carlberg" as an expert witness. Read Tr. pgs 194-195 LNS 6-6. For the testimony of an ~~and~~ ^{and} Trial Counsel did not object ~~to~~ ^{to} AS LNS 6-6. For the testimony of an expert witness to be received, his/her's qualification as such must be first approved by the court. If that prerequisite is not met ~~the~~ ^{the} opinion of the expert must be excluded. Criminal Law 481; Knudsen v. Daffee-Freeman, Inc. 95 GA. 99 S.E. 2d 370.

prior false allegation of sexual abuse. He contends this determination was in error for the following reasons: (1) he proved Minor's prior allegation was false because she accused two people—Kevin and Calvin—of the same offense, and both accusations could not have been true; (2) he proved Minor's prior allegation was false because the police did not prosecute the alleged prior offender even though the evidence was the same as the evidence in his case and thus, the only reasonable inference is the police did not believe Minor; (3) the "high" burden of proving the accusation was false, as applied by the trial court, was incorrect; and (4) the "high" burden of proving the accusation was false, as applied by the trial court, violated his Sixth Amendment rights under the Confrontation Clause. We affirm.¹

1. The trial court did not err in determining Woods failed to prove Minor's prior allegation was false despite Woods's assertion that Minor accused two people—Kevin and Calvin—of the same offense and both accusations could not have been true. Although Minor's father's name is Kevin and Minor told Investigator Cheryl Cromartie the perpetrator's name was Kevin, the record indicates Minor always claimed the perpetrator was her mother's boyfriend. Minor told Investigator Cromartie that her mother's boyfriend was the one who molested her. Additionally, Investigator Cromartie testified Minor's guardian, to whom Minor had initially disclosed the molestation, referred to the perpetrator as Calvin, the new boyfriend of Minor's mother. Based on this evidence, Minor did not accuse two people of the same crime; therefore, the trial court properly determined Woods failed to prove Minor's prior allegation was false. *See State v. Boiter*, 302 S.C. 381, 383-84, 396 S.E.2d 364, 365 (1990) (stating when applying the test for deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false before considering the remoteness in time and the factual similarity between the prior and present allegations). Accordingly, the trial court did not abuse its discretion in precluding the admission of evidence regarding Minor's prior allegation.

2. The trial court did not err in determining Woods failed to prove Minor's prior allegation was false despite Woods's assertion the only reasonable inference that can be made is the police did not believe Minor because they did not pursue an investigation. However, the fact that law enforcement did not further investigate Minor's prior allegation is not alone sufficient to establish her allegation was false. *See id.* at 384, 396 S.E.2d at 365 (finding the defense did not present evidence to establish the falsity of the victim's prior allegation in a case in which the prior allegation had not been investigated). Moreover, Investigator Cromartie testified

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

she did not believe Minor had lied or recanted her allegation. She further stated she decided not to seek criminal charges against anyone regarding Minor's prior allegation because she "could not prove who the actual subject would have been at the time and [she] just didn't have enough information or details to pursue criminal charges." In light of this testimony, we find the trial court properly determined Woods failed to prove Minor's prior allegation was false. *See id.* at 383-84, 396 S.E.2d at 365 (stating when deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false before considering the remoteness in time and the factual similarity between the prior and present allegations). Accordingly, the trial court did not abuse its discretion in precluding the admission of evidence regarding Minor's prior allegation.

3. The trial court did not apply an incorrect standard in requiring Woods to prove Minor's prior allegation was false. Although Woods asserted Minor's prior allegation must have been false because the police did not pursue an investigation into her allegation, the trial court found there was "no evidence before this [c]ourt that anybody in law enforcement or the forensic interviewer or the medical professional believed [Minor] was lying. They just believed there wasn't enough evidence to charge him." This finding is supported by the testimony of Investigator Cromartie regarding why she declined to seek criminal charges, as well as her statement she did not determine Minor had lied or recanted the allegation. Because courts must first determine whether a prior allegation is false when deciding whether the allegation is admissible and evidence supports the trial court's determination Woods failed to prove Minor's prior allegation was false, the trial court did not apply an incorrect standard. *See id.* at 383, 396 S.E.2d at 365 (stating when deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false); *id.* at 383-84, 396 S.E.2d at 365 (finding the three-part test for determining the admissibility of a victim's prior allegation "is consistent with the well-settled rule that admission of proffered testimony is largely discretionary with the trial court, and its rulings will not be disturbed on appeal unless an abuse of discretion is shown").

4. Woods failed to preserve his argument regarding whether the "high" burden of proving the accusation was false violated his Sixth Amendment rights under the Confrontation Clause. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *see also State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal.").

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Peizer, S.C. 29669



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2016-CP-23-01878

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STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 OF THE THIRTEENTH JUDICIAL CIRCUIT

Robert Woods, #305393,)

Case No.: 2016-CP-23-1878

Applicant,)

RETURN¹

v.)

State of South Carolina,)

Respondent.)

In response to Applicant's post-conviction relief application filed March 22, 2016, Respondent would show this Court:

I.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted Applicant at the March 2013 term for first degree criminal sexual conduct with a minor first degree (2012-GS-23-2853) and a separate count of lewd act upon a child (2012-GS-23-2852). Applicant was represented by Timothy Sullivan, Esquire.

On April 8, 2013, Applicant was tried before the Honorable Robert E. Hood and a jury. The jury convicted Applicant on both charges as indicted. Judge Hood sentenced Applicant to twenty-five (25) years' imprisonment for criminal sexual conduct and a consecutive term of ten years' imprisonment suspended upon the service of five years' probation for lewd act.

Applicant filed a timely notice of appeal which was perfected by David Alexander, Esquire. App. Case No. 2013-000814. The South Carolina Court of Appeals affirmed

¹ By Order dated April 13, 2016, Brian Johnson, Esquire, has been appointed to represent Applicant.

Applicant's convictions in an unpublished opinion filed January 6, 2016. 2016-UP-001. The Remittitur was sent on January 22, 2016.

II.

In his application for post-conviction relief, Applicant alleges he is being unlawfully held in custody for the following reasons:²

Ineffective assistance of counsel, in that

1. Failure to quash indictments;
2. Failure to obtain Applicant's prior mental health records prior to trial to establish Applicant has prior and present mental health issues;
3. Failure to preserve victim's prior statements for Appellate review;
4. Allowing the State to indict Applicant on 2012 statute when allegations were made in 2009 and 2011;
5. Failure to object to judge instructions on the Applicant to the jury of Applicant's mental health, ducatino, defendant's I.Q. or intelligence, where Applicant's mentlah health records, education, I.Q., or intelligence records were never introduced to the jury during Applicant's trial proceedings;
6. Failure to quash indictments for exceeding the 90 day time limit;
7. [illegible]
8. Failure to object to the judge for not charging the jury with a lesser included offense of assault and battery of a high and aggravated nature.
9. Failing to explain to Applicant the elements of the offense.
10. [illegible]
11. Allowing State to use forensic video interview with the victim.

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not **specifically** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Attached herewith and incorporated herein

² Applicant's 17 pages of hand written, *pro se* allegations are, at times, illegible. Respondent has attempted to transcribe them, and interprets each to be that trial counsel was ineffective.

by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, appellate record, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

Attached to this return and incorporated herein are the records of the Greenville County Clerk of Court regarding the subject conviction, the trial transcript, appellate court records, Applicant's SCDC records, and the pleadings. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of relevant materials.

III.

Applicant's allegation of ineffective assistance of counsel is without merit. Respondent asserts Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

Respondent submits Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

[Signature follows]

IV.

Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

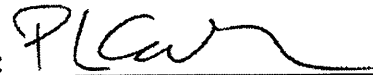
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

PATRICK SCHMECKPEPER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2016-CP-23-1878

ROBERT WOODS, 305393

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

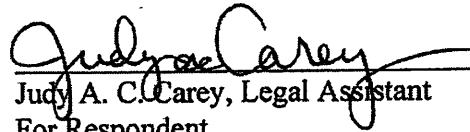
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Brian P. Johnson, Esquire
522 North Church Street
Greenville SC 29601

DATED this 26th day of August, 2016.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2016-CP-23-01878

ROBERT WILSON WOODS,
APPLICANT,

vs.

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.

ORIGINAL

February 20, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE FRANK R. ADDY, JUDGE.

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

BRIAN P. JOHNSON, ESQ.
Attorney for the Applicant

DESHAWN H. MITCHELL, ESQ.
Assistant Attorney General

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.(AW) ROBERT WILSON WOODS:

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(RW) C. TIMOTHY SULLIVAN:

Direct Examination by Mr. Mitchell.....17
Cross-Examination by Mr. Johnson.....22

INDEX (CONTINUED)E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: I think that the next case that we're
3 going to be addressing is Woods v. State.

4 MR. MITCHELL: That's correct, Your Honor.

5 THE COURT: Yes, sir.

6 MR. MITCHELL: May it please the Court.

7 This is 2016-CP-23-1878, Robert Woods v. the State of
8 South Carolina.

9 The Applicant is presently incarcerated in the South
10 Carolina Department of Corrections pursuant to Greenville
11 County Clerk of Court orders of commitment. The
12 Greenville County Grand Jury indicted the Applicant at the
13 March 2013 term for first degree criminal sexual conduct
14 with a minor, and a separate count of lewd act upon a
15 child. The Applicant was represented by C. Timothy
16 Sullivan.

17 On April 8th, 2013, the Applicant was tried before
18 the Honorable Robert E. Hood and a jury. The jury
19 convicted Applicant on both charges as indicted. Judge
20 Hood sentenced the Applicant to 25 years imprisonment for
21 CSC first, and a consecutive term of 10 years imprisonment
22 suspended upon the service of five years probation for the
23 lewd act.

24 The Applicant filed a timely notice of appeal, which
25 was perfected by David Alexander. The South Carolina

1 Court of Appeals affirmed the Applicant's conviction in an
2 unpublished opinion filed January 6th, 2016.

3 The Applicant filed a PCR application on March 22nd,
4 2016, alleging numerous allegations.

5 He's present in the courtroom today and represented
6 by Mr. Johnson.

7 THE COURT: All right. Mr. Johnson, are you ready to
8 proceed?

9 MR. JOHNSON: Yes, sir, Your Honor.

10 THE COURT: Call your first witness, if you would,
11 please.

12 MR. JOHNSON: Thank you, Your Honor.

13 I'm going to call Robert Woods, the Applicant.

14 THE CLERK: Mr. Woods, step over to the witness
15 booth.

16 Place your left hand on the Bible and raise your
17 right hand.

18 WHEREUPON,

19 ROBERT WILSON WOODS,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 You may be seated.

23 THE COURT: And, Mr. Woods, I neglected to introduce
24 myself to you. I'm Frank Addy. I'm from Greenwood.

25 Okay. Good to meet you.

1 THE WITNESS: Good to meet you.

2 THE COURT: All right. Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 THE CLERK: Please state your full name for the
5 record.

6 THE WITNESS: Robert Wilson Woods.

7 DIRECT EXAMINATION

8 BY MR. JOHNSON:

9 Q Okay. Mr. Woods, as I question you, if you don't
10 understand my question, or if you need me to speak up, or
11 anything like that, just let me know and I'll, certainly,
12 re-ask the question. Okay.

13 A Okay.

14 Q All right. Now, do you understand why you're here
15 today?

16 A Yes, sir.

17 Q And it's for your application for post-conviction
18 relief?

19 A Yes, sir.

20 Q All right. And in your application, you've alleged,
21 essentially, that you had ineffective assistance of
22 counsel from your trial attorney?

23 A Yes, sir.

24 Q And I know you heard what the Attorney General stated
25 as it relates to the -- to the case background. Did you

1 hear what he said?

2 A Uh-huh.

3 Q Okay. You've got to say "yes" or "no." I'm sorry.

4 A Yes, sir.

5 Q All right. Is that, essentially, an accurate case
6 background?

7 A Yes, sir.

8 Q All right. And you had a trial on your underlying
9 case?

10 A Yes, sir.

11 Q And what was the charge?

12 A Criminal sexual conduct first degree and lewd act on
13 a minor.

14 Q Okay. And you had a trial on that matter and you
15 were convicted at trial?

16 A Yes, sir.

17 Q And then subsequent to that, you, actually, had an
18 appeal. And the case was upheld on appeal; correct?

19 A Yes.

20 Q All right. And now, you're here today alleging
21 ineffective assistance of counsel?

22 A Yes.

23 Q All right. In your application and in your claim for
24 ineffectiveness, one of your claims is that you believe
25 that you should have been evaluated as it related to your

1 mental health; is that correct?

2 A Yes.

3 Q All right. I'm going to ask you some more open-ended
4 questions about that. Do you have a history of mental
5 health issues?

6 A Yes.

7 Q Can you tell the Court a little bit about it?

8 A Well, I've been evaluated since I was three years old
9 going to mental health back and forth, taking
10 medication -- different kinds of medication over the
11 years. As I got older, I started having real bad symptoms
12 of -- suicidal, and hearing voices, and things in that
13 sort.

14 Q Okay. And you have somewhat of a criminal history;
15 correct?

16 A Yes.

17 Q And throughout that history -- we, actually, pulled
18 documents from -- from the detention center and other
19 facilities that you had visited throughout -- throughout
20 those years; is that correct?

21 A Yes.

22 Q And when you were at those facilities, did you
23 receive treatment?

24 A Yes.

25 Q All right. Looking through your -- your records, it

1 appears that you suffered from a bipolar disorder?

2 A Yes.

3 Q Okay. Can you recall offhand what -- what other
4 types of disorders and things that you were treated for?

5 A Paranoid schizoaffective, and stress, and mood
6 swings.

7 Q And what's paranoid -- what's paranoid -- you say
8 disaffective?

9 A Schizoaffective.

10 Q Schizoaffective. Now, what does that mean to you?

11 A Paranoid schizoaffective is when you have -- you're
12 paranoid about certain things in life that goes on around
13 you like certain people, or a certain group, or things in
14 that sort.

15 THE COURT: I take his answer to mean he's talking
16 about paranoid schizophrenia, so.

17 THE WITNESS: It's the same thing.

18 THE COURT: Yes, sir.

19 MR. JOHNSON: Thank you, Your Honor.

20 BY MR. JOHNSON:

21 Q Have you ever had any instances of blacking out or
22 blanking out?

23 A Yes, sir.

24 Q Okay. And that's where something's happened when you
25 don't necessarily remember it?

1 A Yes, sir.

2 Q Okay. And throughout the course of your dealings
3 with Mr. Sullivan after you were charged with the case,
4 you talked with him multiple times; is that correct?

5 A Yes.

6 Q All right. Now, when you -- did you go over your
7 discovery with him?

8 A Somewhat.

9 Q Okay. And discovery -- I know you and I've talked
10 about discovery. And I believe you -- you call it the
11 Rule 5; correct?

12 A Uh-huh.

13 Q And that's the same thing?

14 A Yes.

15 Q And did y'all -- did you and him go over that
16 material?

17 A Not exactly.

18 Q Express to the Court what you mean.

19 A Well, when I asked what was going on with the type of
20 evidence they have, or what type of, you know, things they
21 said that I was doing, he never even pulled it up and
22 discussed it with me. He said he was going to take care
23 of it. So I left it alone.

24 Q Okay. So did you, actually, ever receive a copy of
25 the material?

1 A Not that I recall.

2 Q Okay. So it wasn't something that you went over on
3 your own?

4 A Huh-uh.

5 Q Okay. And you're stating that he didn't visit you or
6 have a meeting with you and go over it with you?

7 A No.

8 Q Okay. Now, the conversations that you had with
9 him -- do you believe that you understood the
10 conversations that you had with him?

11 A No.

12 Q Okay. Now, why -- what was the problem?

13 A Most of the time, I was under my medication. And
14 when I'm taking my medication, I'm either incoherent or
15 I'm deep in my sleep. And I fall asleep or I'm real tired
16 and I can't really hear or understand what you're saying.

17 Q Okay. It looks like your most recent medications --
18 you had antidepressant and you had antipsychotic medicine
19 as well; is that correct?

20 A Yes.

21 Q Is there anything else that I didn't see that you
22 were taking at the time?

23 A I take Prozac for depression. I take Depakote for
24 bipolar. I take Risperdal for mood swings and voices.
25 And I take Remeron [phonetic] to help me sleep and bad

1 dreams.

2 Q Okay. And you were taking those things during the
3 time that you were -- were you incarcerated during the
4 period of time you were waiting to go to trial?

5 A Yes.

6 Q Okay. And were you taking those medications then?

7 A Yes.

8 Q Were you taking them as directed?

9 A Yes.

10 Q All right. And you say it affected -- does that
11 affect your ability to understand conversations with you
12 and other people?

13 A Yes.

14 Q Okay. Did it affect your ability to understand
15 conversations with Mr. Sullivan?

16 A Yes.

17 Q Now, did you and Mr. Sullivan ever have any
18 discussions about your medications, or what you were
19 taking, or your history?

20 A I mentioned it to him.

21 Q Okay.

22 A And I told him about my mental health. And I don't
23 think he ever followed up on it.

24 Q Okay. And do you think that if y'all had had a
25 proper understanding -- or if you would have been able to

1 understand the material, both -- the Rule 5, if you would
2 have went over it and you'd have understood the
3 conversations with Mr. Sullivan, do you believe that the
4 outcome of your trial may have been different?

5 A Yes, sir.

6 Q Okay. Are you asking the Court to consider that the
7 failure to have you evaluated could be ineffective
8 assistance of counsel?

9 A Yes, sir.

10 Q And you would like what they call the case to be
11 remanded and for you to face a new trial?

12 A Yes, sir.

13 MR. JOHNSON: All right. Please answer any questions
14 that the Attorney General's Office has. Okay.

15 CROSS-EXAMINATION

16 BY MR. MITCHELL:

17 Q Mr. Woods, how are you this morning?

18 A All right.

19 How are you doing?

20 Q Good.

21 Are you currently taking medication?

22 A Yes, I am.

23 Q Is it the same type of medication that you were on
24 when -- prior to your trial?

25 A Yes, I am.

1 Q Okay. So you said you didn't understand your
2 conversations with Mr. Sullivan prior to the trial; right?

3 A Uh-huh.

4 Q Did you understand your conversations with your PCR
5 counsel?

6 A Yes. I didn't take my medicine last night.

7 Q So is that the first time you've talked to him?

8 A Yeah.

9 Q Is it?

10 A Prior to this, yes.

11 Q Okay. Let me ask you this. Do you recall how many
12 times you met with Mr. Sullivan?

13 A No, I do not.

14 Q Okay. And so you said that he didn't go over the
15 discovery in the case with you at all?

16 A No.

17 Q Okay. So he didn't go over the discovery. When he
18 did meet with you, what did you guys talk about?

19 A I was asking him questions about the case, about if
20 he found anything that I needed to know or go over with.
21 And I let him know that I didn't do it. I -- you know,
22 I'm innocent.

23 Q Okay. So you guys -- well, I guess let me back up.
24 Prior to you going to trial, were there any discussions
25 about you pleading guilty -- pardon me, pleading guilty to

1 the charge?

2 A Yes, he asked me.

3 Q Okay. And your response to that was no?

4 A No.

5 Q Okay. So you always wanted a trial?

6 A Yes.

7 Q Okay. And so you guys got ready to try -- got ready
8 for a trial and were preparing for trial; right?

9 A Uh-huh.

10 Q Okay. Did Mr. Sullivan investigate the case, or did
11 he call any witnesses --

12 A No.

13 Q -- or do anything on your behalf?

14 A No.

15 Q He didn't do any of that?

16 A No.

17 Q Okay. Did you ever make a -- tell the Court that --
18 or did you ever try to have Mr. Sullivan removed from your
19 case?

20 A No, not at the moment.

21 Q Okay. So you weren't satisfied with him or...

22 A I wasn't satisfied. But, at the time, the medicine
23 that I was taking -- the doses that I was taking, I
24 couldn't really understand what was going on.

25 Q Okay. Let me -- so -- and you said that you wanted

1 Mr. Sullivan to have you evaluated?

2 A Yes.

3 Q Okay. And he did not?

4 A He didn't.

5 Q Okay. Have you been evaluated since then?

6 A I've been evaluated at Perry.

7 MR. MITCHELL: Judge, that's all the questions I have
8 at the moment.

9 THE COURT: Any redirect?

10 MR. JOHNSON: No, sir, Your Honor.

11 THE COURT: Sir, thank you.

12 You can step down.

13 Any additional witnesses on behalf of Mr. Woods?

14 MR. JOHNSON: Your Honor, no additional witnesses.

15 THE COURT: Mr. Mitchell, if you'll call your first
16 witness, please.

17 MR. MITCHELL: Your Honor, the State would call Tim
18 Sullivan to the stand.

19 THE CLERK: Mr. Sullivan, please place your left hand
20 on the Bible and raise your right hand.

21 WHEREUPON,

22 C. TIMOTHY SULLIVAN,
23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 You may be seated.

1 And please state your full name for the record.

2 THE WITNESS: C. Timothy Sullivan.

3 I'm an attorney admitted to the Greenville County
4 Bar. And I represented Mr. Woods in this case.

5 DIRECT EXAMINATION

6 BY MR. MITCHELL:

7 Q Good morning, Mr. Sullivan.

8 How are you?

9 A I'm doing well.

10 Q Good.

11 Just to start off by way of introductory information,
12 how long have you practiced law here in South Carolina?

13 A I'm in my fiftieth year.

14 Q Fiftieth year. How much of that time has been
15 devoted to criminal law?

16 A The last 30.

17 Q The last 30. Okay. Were you retained or appointed
18 in this cas?

19 A I was appointed through the Public Defender's Office.
20 I have a contract for a part-time public defender, and
21 part-time private. This was through the public defender's
22 office.

23 Q Okay. Could you tell me how -- or do you recall how
24 these charges arose in this case?

25 A Well, it was a little girl. I won't go into a lot of

1 the details. Robert had been living with this lady. And
2 she had two children. And the daughter was about 11 years
3 old. She and a son moved back with -- or moved to the
4 aunt's house. Because Robert and the girlfriend had to
5 give up their house and move in with his mother. And they
6 were going to all get back together.

7 The little girl raised this out of the blue after a
8 year or so that he had penetrated her anally. There was
9 no forensics, no witnesses. So that was it, just her one
10 little comment. That's what happened.

11 Q Okay. During the course of your representation of
12 Mr. Woods -- and you don't have to have an exact number.
13 Can you give me an estimate of how many times you may have
14 met with him prior to trial?

15 A I can't tell you exactly. But we were in touch a
16 lot. I'll look at my notes here. My first jail visit
17 was on 11/28/11, 2011. We met after that at different
18 times.

19 In the meantime, we'd sent Robert the discovery, all
20 of it. And then on 11/6/12, he wanted another copy of his
21 discovery because he had thrown the other one away. And
22 we, finally, gave him another one on 3/19. We gave him
23 another copy of it.

24 Q Okay.

25 A So he had the discovery for a good while.

1 Q And I see you have notes there from your case file.
2 Is it fair to say that you met with Mr. Woods a number of
3 times?

4 A Yes. The last -- the last time was on -- before the
5 trial. It was on 4/2. We met and went over the discovery
6 at length.

7 And during that time, they made an offer. With the
8 lewd act with a child, they offered him 12 years. We
9 discussed that. And he said he didn't do it and he wanted
10 a trial.

11 And, to be honest with you, I don't think he did it
12 either. But we were taking a chance at zero to 25. And
13 he knew that.

14 Q Okay. And I guess let me ask you about that. During
15 the course of your meetings with him, is it fair to
16 say that you discussed the sentences that he would be
17 facing?

18 A Oh, yeah.

19 Q Okay.

20 A I mean, he had to know that he was looking at 25 to
21 evaluate the 12-year offer.

22 Q Okay. Did he -- and I want to shift gears just for a
23 minute here. You've heard testimony from him about his
24 mental health. When you started to represent him -- and I
25 know you've been doing this for 50 years. Did you ever

1 have any indication that he didn't understand your
2 questions?

3 A No, I didn't. Honestly, I did not see any problems
4 with his mental situation, the peril he was facing, or
5 anything.

6 Q Okay.

7 A If I had with this type of case with a 25-year
8 sentence, I would've had him sent to Columbia. It
9 would've helped us.

10 Q Okay. So he appeared to understand the charges that
11 he was facing?

12 A Yeah. At one point, he asked us to make sure -- he
13 was on probation at the time. That if we did something
14 with the charges, I had to make sure we got the probation
15 to run concurrent with it, which we did after he was
16 sentenced in this case. The probation was revoked for
17 four years and ran concurrent with the sentence he's doing
18 now.

19 Q So he was asking questions during the course of this?

20 A About handling the probation, and how this would be
21 handled, that type of thing.

22 Q Okay. And nothing alarmed you about any of his
23 responses to any of your questions that --

24 A No, not really.

25 Q Okay.

1 A If they had -- like I say, I liked Robert. And I
2 thought he was innocent. If I could have helped him by
3 getting him an evaluation, I'd have, certainly, done it.

4 Q Okay. You heard him testify about the medications
5 that he was on prior to going to trial. Were you aware of
6 any medications that he was on?

7 A I don't recall.

8 Q Okay.

9 A If I had been, I would have checked with Marie
10 Livingston, the nurse there at the LEC, and then found out
11 where he had been treated, this type of thing.

12 Q Okay. And in your overall opinion, do you think that
13 the Defendant was able to participate in his defense going
14 to trial?

15 A He knew what we were doing, yeah. I mean, I'm not a
16 psychiatrist or -- but he -- he was able to help me with
17 the trial.

18 If -- if you get down to the facts, the little girl
19 said he did something. He said he didn't. And it went
20 from there.

21 MR. MITCHELL: Thank you, Mr. Sullivan.

22 Please answer any questions Mr. Johnson may have for
23 you.

24 THE COURT: Cross.

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Sullivan, you and I, we talked a little bit about this case before today; correct?

A Yes, we have.

Q And, in fact, we talked a little bit about his -- Mr. Woods' mental health history?

A Yeah. You showed me something that had -- but, yeah.

Q Okay. And that history, it wasn't something that you were aware of until we talked about it just recently; correct?

A Yeah. That's correct. When you first got this case and we were talking up here one day, it was continued because you wanted to have him seen by someone.

Q Yeah.

A And I said, Well, I hope you can help him because I think he's innocent. And that's why it was taking a while before -- from the time it was filed until we got here now so that could be done.

Q Yes, sir. And if you'd have known about that history, would you -- would you have had him evaluated --

A Yeah.

Q -- just out of practice?

A Yes, I would have.

Q Okay.

1 A Okay. Even though, Brian, there wasn't anything to
2 trigger me. I'm not a psychiatrist. I'd have had him
3 evaluated to see just what the situation was.

4 Q Yes, sir.

5 A For mitigation, if nothing else.

6 MR. JOHNSON: I have no further questions, Your
7 Honor.

8 THE COURT: All right. Nothing on redirect?

9 MR. MITCHELL: No additional questions, Judge.

10 THE COURT: All right. Thank you, sir.

11 You can step down.

12 Thank you for coming.

13 THE WITNESS: Thank you.

14 THE COURT: Just as a housekeeping matter,
15 Mr. Johnson. He had alleged some additional matters in
16 his application --

17 I assume the State has no further witnesses.

18 MR. MITCHELL: I do not, Judge.

19 THE COURT: He'd alleged -- Mr. Woods had alleged a
20 few additional matters in his application. I'm assuming
21 that you're choosing to focus on the matters that were,
22 actually, discussed here today, the lack of discovery
23 review, and the mental health issue.

24 MR. JOHNSON: From my discussions with Mr. Woods,
25 this appears to be the meritorious claims.

1 THE COURT: All right. Anything in the way of
2 argument that you want to bring to the Court's attention?

3 MR. JOHNSON: Just briefly, Judge.

4 I think everyone admits now he does have a long
5 mental health history. Just a matter -- also, kind of, I
6 guess, as a matter of record, I did have him seen by
7 Dr. Donna Schwartz-Maddox. I had his -- his records
8 reviewed. And we decided today to proceed as is.

9 But in any case, Judge, he does have a long mental
10 health history. And it appears from the testimony of the
11 Applicant's attorney that if he'd known about it, he'd
12 have had him evaluated. So we ask you to consider that.

13 We ask you, at the very least, Your Honor to consider
14 taking it under advisement and issuing a ruling that way.
15 But, Your Honor, we ask for the mercy of the Court, and
16 ask you to consider the Applicant's application.

17 THE COURT: Very good.

18 Anything from the State?

19 MR. MITCHELL: Just briefly, Your Honor.

20 In terms of the allegations of failure to provide
21 discovery to the Applicant in this case, I think there's
22 been ample testimony by Defense Counsel in this case that
23 he provided the discovery to the Applicant twice. After
24 the first time after he destroyed it, he sent it a second
25 time.

1 In terms of whether the Defendant -- or pardon me,
2 Defense Counsel was ineffective in failing to request a
3 mental health evaluation, pursuant to Geter v. State, the
4 burden is on the Defendant in this particular case to show
5 that he was incompetent prior to going to trial. And that
6 means by way of having a mental evaluation done that would
7 produce results to the contrary. I do not think there's
8 been any evidence presented today that would show that he
9 was incompetent prior to going to trial.

10 Thank you, Judge.

11 THE COURT: All right. I -- I did not have an
12 opportunity to review the transcript fully. So I will
13 take the matter under advisement. And because my day is
14 fairly light today, I should be able to have an order,
15 hopefully, drafted today. But please don't look for it
16 before Friday. Okay.

17 MR. JOHNSON: Yes, sir, Your Honor.

18 THE COURT: All right. Very good.

19 The matter is under advisement.

20 Mr. Woods, good to meet you, sir.

21 Take care.

22 *****END OF TRANSCRIPT OF RECORD*****
23
24
25

CERTIFICATE OF REPORTER

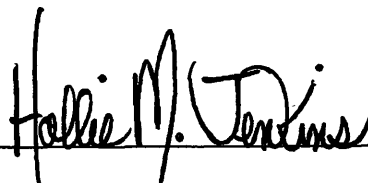
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 20th day of February, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 18, 2018

A handwritten signature in black ink, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Robert Woods, #305393

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

2016-CP-23-1878

ORDER OF DISMISSAL

ENTERED COMPUTER

18 MAY 17 PM 3:09
Paul Wickens - COC GIL SC

This matter comes before the Court by way of an application for post-conviction relief filed on March 22, 2016 by Robert Woods (Applicant). Respondent made its Return on or about August 26, 2016. An evidentiary hearing into the matter was convened on February 20, 2018, at the Greenville County Courthouse in Greenville, South Carolina. Applicant was present and represented by Brian P. Johnson, 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 C. Timothy Sullivan Jr., Esquire also testified. This Court had before it a copy of the records of the Greenville 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 incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County

[Handwritten signature]

Grand Jury indicted Applicant at the March 2013 term for criminal sexual conduct with a minor first degree (2012-GS-23-2853) and a separate count of lewd act upon a child (2012-GS-23-2852). Applicant was represented by C. Timothy Sullivan Jr, Esquire.

On April 8, 2013, Applicant was tried before the Honorable Robert E. Hood and a jury. The jury convicted Applicant on both charges as indicted. Judge Hood sentenced Applicant to twenty-five (25) years imprisonment for criminal sexual conduct and a consecutive term of ten years imprisonment suspended upon the service of five years probation for lewd act.

Applicant filed a timely notice of appeal which was perfected by David Alexander, Esquire. App. Case No. 2013-000814. The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion filed January 6, 2016. 2016-UP-001. The Remittitur was sent on January 22, 2016.

FACTUAL HISTORY

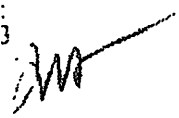
The victim, age ten at the time of trial, was raised in a very unstable home environment. The victim's mother "walked off and left her oldest child," and when the victim was born, "it seemed like everybody was raising her." (R. p. 183, lines 6-10). The victim's younger brother was raised by the victim's aunt. (R. p. 183, lines 6-11). The Department of Social Services ("DSS") became a part of the victim's life at an early age. (See R. p. 152-53; see 2010 Forensic Interview Report). The victim stayed with her mother some of the time but her father had little contact with her and did not assist her financially. (R. p. 26, lines 8-10; p. 156, lines 11-14). The victim's mother had different boyfriends from time to time and she would allow them to live with her. Applicant became one of these boyfriends after the victim's mother met Applicant "over the phone at work" while she was working in housekeeping at a Holiday Inn. (R. p. 147, lines 1-16).



The victim's mother invited Applicant over to the house a couple of days later and after "about a week or so," she moved Applicant into the house. (R. p. 147, lines 10-24).

When the victim started third grade in 2011, her teacher noticed she was emotional, cried a lot, and did not always complete her work. (R. p. 100-102). Near the beginning of the school year, the victim disclosed to her teacher that she had been sexually abused recently in her mother's bedroom. (R. p. 101; p. 105-106). The teacher immediately sent the victim to the guidance counselor pursuant to protocol. (R. p. 101-102). After speaking with the victim, the guidance counselor reported the sexual abuse to DSS. (R. p. 104-105). The victim was referred for a medical exam with Dr. Nancy Henderson, and the victim, then age nine, disclosed the sexual abuse to Dr. Henderson. (R. p. 117-18).

At trial, the victim testified that she was staying with her mother in Greenville before starting third grade. (R. p. 128). She testified that she lived with her mom, Applicant, and her brother. (R. p. 128, lines 23-25). The victim liked Applicant initially and liked his dog "Buttercup." (R. p. 129). However, one day while the victim's mother was at work, Applicant called the victim into her mother's bedroom and "put his private in [the victim's] butt." (R. p. 130, lines 2-14). The victim's little brother was in another room at the time. (R. p. 130, lines 4-8). When Applicant penetrated her, he told the victim that what he was doing would help her "stop scratching." (R. p. 130, lines 16-24). At the time, the victim was suffering from scabies, which caused her to have an itchy rash. (R. p. 120, lines 14-24). When Applicant penetrated her, the victim was laying on her mother's bed and Applicant was standing behind her. (R. p. 131). When he was finished, Applicant told the victim not to tell her mother about what he had just done. (R. p. 133). The victim did not tell her mother because she was afraid her mother would believe Applicant over her. (See R. p. 133, lines 11-12).



Applicant did not testify at trial, and he presented no witnesses. The jury convicted Applicant, and the trial judge sentenced him to twenty-five years for criminal sexual conduct with a minor and ten years, consecutive, but suspended to five years of probation for lewd act upon a minor.

ALLEGATIONS

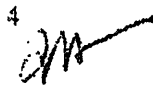
In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Failure to quash indictments;
2. Failure to obtain Applicant's prior mental health records prior to trial to establish Applicant has prior and present mental health issues;
3. Failure to preserve victim's prior statements for Appellate review;
4. Allowing the State to indict Applicant on 2012 statute when allegations were made in 2009 and 2011;
5. Failure to object to judge instructions on the Applicant to the jury of Applicant's mental health, education, defendant's I.Q. or intelligence, where Applicant's mental health records, education, I.Q., or intelligence records were never introduced to the jury during Applicant's trial proceedings;
6. Failure to quash indictments for exceeding the 90 day time limit;
7. [illegible]
8. Failure to object to the judge for not charging the jury with a lesser included offense of assault and battery of a high and aggravated nature.
9. Failing to explain to Applicant the elements of the offense.
10. [illegible]
11. Allowing State to use forensic video interview with the victim.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTARY HEARING

Applicant's Testimony

Applicant testified Trial Counsel represented him on the charges he was facing. He testified Trial Counsel should have had him evaluated prior to him going to trial. Applicant testified he had been taking medication for mental health issues all his life. He testified he was bipolar and suffered from Schizophrenia. Applicant testified that he has a criminal history, he is paranoid about things, and was previously diagnosed with a mental health illness related to paranoia. Applicant testified

4


he talked to Trial Counsel multiple times during the course of his representation, and Trial Counsel went over his discovery with him somewhat but not *in toto*. He testified he did not understand his conversations with Trial Counsel due to the medication he was taking. Applicant testified that he told Trial Counsel about his mental health issues, but Trial Counsel failed to do anything about it.

Trial Counsel's Testimony

Trial Counsel testified he was appointed to represent Applicant. He testified he had been practicing law for over fifty years and the last thirty of those years had been devoted to criminal law. Trial Counsel testified about the facts of the case and how Applicant was charged with criminal sexual conduct with a minor, first degree. He testified he met with Applicant frequently during his representation. Trial Counsel testified he sent Applicant a copy of his discovery twice and went over it with him at length. He testified the State extended a plea offer to Applicant to plead guilty to a lewd act, but Applicant declined the offer. Trial Counsel testified that, during the course of his representation, Applicant appeared to comprehend fully everything they discussed and that Applicant appeared to understand the charges he was facing.

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.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Applicant proceeded on the following allegations during his evidentiary hearing.

Failure to Request a Competency Evaluation

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Applicant asserts Trial Counsel was ineffective for failing to request a competency evaluation. As to this ground, this Court finds that Trial Counsel was not ineffective in failing to request a competency evaluation. This Court finds Trial Counsel's testimony that he experienced no problems communicating with Applicant as very credible. Additionally, Applicant's PCR counsel alluded to a competency evaluation conducted prior to the evidentiary hearing on Applicant's PCR, and although this evaluation was not made a part of the record, Applicant has failed to show any prejudice from Trial Counsel's supposed failure to request an evaluation. 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 Trial Counsel failed to request a competency evaluation. The allegation is denied and dismissed.

Ineffective Assistance of Counsel

Applicant also asserts Trial Counsel did not sufficiently meet or review discovery with him. To the extent Applicant raises the issue of Trial Counsel not meeting with him enough or sufficiently reviewing discovery with him, this Court finds this ground wholly lacking in merit. Trial Counsel testified he provided copies of the discovery to Applicant twice and sufficiently reviewed the material with Applicant. Additionally, this Court finds the underlying factual basis for the conviction involves a delayed reporting incident where the only direct evidence of abuse is the victim's testimony at trial, and Applicant elected not to testify. Clearly, this Court finds the

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jury found the child's testimony credible. Accordingly, having reviewed the full trial transcript, this Court finds that Trial Counsel was well-versed in the factual allegations, that Trial Counsel asked appropriate questions which were relevant to Applicant's theory of the case, and that Trial Counsel's pretrial discussions with Applicant were sufficient and were not deficient in any respect. 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 Trial Counsel failed to request a competency evaluation. 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.

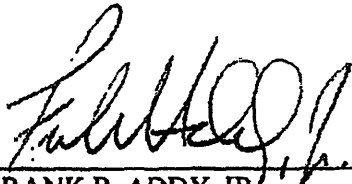
This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they 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), SCRCR. Refer to Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

8 

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.

IT IS SO ORDERED this 8th day of May, 2018.



FRANK R. ADDY, JR.
Presiding Judge
Thirteenth Judicial Circuit

Greenwood, South Carolina

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/16/2011

RJP

DOCKET NO. 2012-GS-23-002852

CLK

The State of South Carolina

County of Greenville

guel

✓

COURT OF GENERAL SESSIONS

March

TERM 2013

THE STATE

vs.

ARREST WARRANT NUMBER

M990499

ROBERT WILSON WOODS

ACTION OF GRAND JURY

TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Charles B. Langstaff*
Foreperson of Petit Jury

Date:

✓
2468

Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on
County present upon their oath:

the Grand Jurors of Greenville

MAR 19 2013

That ROBERT WILSON WOODS did in Greenville County, between the 1st day of June, 2011 and the 29th day of September, 2011, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of I.C., 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 §16-15-0140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Greenville

VS.

Robert Wilson Woods

AKA:

Race: BLACK Sex: M Age: 34

DOB: [REDACTED]-1978 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greenville, SC 29601

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.JAMES SUSTAKOVICH 70315
Sustakovitch, Christy Keenocl SC Bar#

Defendant

Attorney for Defendant

SC Bar# 5425

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and/or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2012 GS 23 2853
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ ___ plus 20% fee: \$ ___

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
Proviso 47.9 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$150 \$
§ 50-21-114 (BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ ___ beginning

\$ ___ paid to Public Defender Fund

Other: sex offender registry

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Haskell

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2164

Sentence Date: 4/10/13

Paul B. Wickensamer
 Prob to begin from 25 yr sent rec. this date
 to include bring rel on any early rel prg.

Re Hood

533/505
5/30/11
ARREST WARRANT
M-990499
11-18-11

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

2011-162951

against

Robert Wilson Woods

Address:

Greenville, SC 29601-

Phone: (864) SSN:

Sex: M Race: B Height: 6 2 Weight: 185

DL State: SC DL #:

DOB: 1978 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Robert Joseph Perry - 1039

Offense: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Offense Code: 2468

Code/Ordinance Sec: 16-15-0140

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant ROBERT WILSON WOODS on 11/16/11

C.O. ROSEAN #7081532
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

Gorette

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Robert Joseph Perry who

being duly sworn deposes and says that defendant Robert Wilson Woods

did within this county and state on or about 09/01/2011 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

During the month of September, 2011, the defendant did engage in a sexual act with the the 8-year old victim, at Avenue, Greenville, SC. The affiant has a statement from the victim stating that one day in September, she came out of the shower wearing only a towel. The defendant told the victim to come into his bedroom, where he told her to take off the towel. The defendant then began touching the victims private areas, including touching her butt and anus area with his hands. The defendant knowingly knew the victim was under age at the time of the incident. The above described incident occurred in Greenville County, SC.

Signature of Affiant

Affiant's Address 4 Mcgee Street

Greenville, SC 29601-

Affiant's Telephone (864)271-5210

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

According to the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2011 defendant Robert Wilson Woods

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 11/14/2011

Signature of Issuing Judge (L.S.)

James E. Hudson

Judge Code: 5031

Judge's Address 4 Mcgee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

COMPUTER ENTERED
NOV 15 2011
GREENVILLE COUNTY
SHERIFF'S OFFICE

WITNESSES

Robert Joseph Perry
 Greenville County Sheriffs Office
 11/16/2011



DOCKET NO. 2012-GS-23-002853

CLK

The State of South Carolina

County of Greenville



COURT OF GENERAL SESSIONS

March

TERM 2013

✓

THE STATE

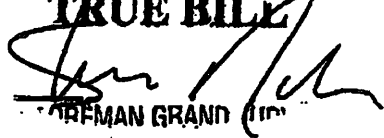
vs.

ARREST WARRANT NUMBER
 M990501

ROBERT WILSON WOODS

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty



Foreperson of Petit Jury

Date:

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
 FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

MAR 19 2013

the Grand Jurors of Greenville

County present upon their oath:

That ROBERT WILSON WOODS did in Greenville County, between the 1st day of June, 2011 and 29th day of September, 2011, commit a sexual battery on I.C., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Robert Wilson Woods

AKA:

Race: BLACK Sex: M Age: 34

DOB: [REDACTED] 1978 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greenville, SC 29601

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.Sustakovitch, Christy Kedroci
SC Bar#

Defendant

[Signature] 5425
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ ; provided that upon the service of _____ days/months/years and/or payment

of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011).

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2302853

A/W#: M990501

Date of Offense: 9/1/2011

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS[Signature] 70225
Sustakovitch, Christy Kedroci
SC Bar#

Defendant

[Signature] 5425
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____ ; provided that upon the service of _____ days/months/years and/or payment

of \$ _____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
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Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011).

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: Sex Offender Registry

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Red Hood
7164
4/10/13

ARREST WARRANT

M-990501

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

2011-152851

against

Robert Wilson Woods

Address:

Greenville, SC 29601-

Phone: (864)

SSN:

Sex: M Race: B Height: 6 2 Weight: 185

DL State: SC DL #:

DOB: 1978 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriff's Office

Prosecuting Officer: Robert Joseph Perry - 1039

Offense: Sex / Criminal sexual conduct with minor - victim
under 11 yrs of age - First degree

Offense Code: 0385

Code/Ordinance Sec: 16-03-0655(A)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant ROBERT WILSON WOODS
on 11/16/11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

.ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Robert Joseph Perry

being duly sworn deposes and says that defendant Robert Wilson Woods

did within this county and state on or about 09/01/2011

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:During the month of September, 2011, the defendant did engage in sexual intercourse with the the 8-year old victim, at
Avenue, Greenville, SC. The affiant has a statement from the victim stating that one day in September, after showering,
the defendant told the victim to come into his bedroom. The defendant told her to lay down on the bed, where the defendant then
began touching the victims private areas. The defendant then began to have anal intercourse with the victim. The defendant
knowingly knew the victim was under age at the time of the incident. The defendant has also been previously convicted of a sex
offense, and is currently registered as a sex offender. The above described incident occurred in Greenville County, SC

Signature of Affiant

Affiant's Address 4 McGee Street

Greenville, SC 29601-

Affiant's Telephone (864)271-5210

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

COMPUTER ENTERED

NOV 15 2011

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2011 defendant Robert Wilson Woods

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 11/14/2011

Signature of Issuing Judge
James E. Hudson

Judge Code: 5031

(L.S.)

Judge's Address 4 McGee Street, Room 116-B

Greenville, SC 29601-

Judge's Telephone (864)467-5302

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robert Wilson Woods, Appellant.

Appellate Case No. 2013-000814

Appeal From Greenville County
Robert E. Hood, Circuit Court Judge

Unpublished Opinion No. 2016-UP-001
Submitted October 1, 2015 – Filed January 6, 2016

AFFIRMED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General V. Henry Gunter, Jr., both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Robert Wilson Woods appeals his convictions for first-degree criminal sexual conduct with a minor and lewd act upon a child, arguing the trial court erred in precluding him from cross-examining the victim (Minor) regarding a

prior false allegation of sexual abuse. He contends this determination was in error for the following reasons: (1) he proved Minor's prior allegation was false because she accused two people—Kevin and Calvin—of the same offense, and both accusations could not have been true; (2) he proved Minor's prior allegation was false because the police did not prosecute the alleged prior offender even though the evidence was the same as the evidence in his case and thus, the only reasonable inference is the police did not believe Minor; (3) the "high" burden of proving the accusation was false, as applied by the trial court, was incorrect; and (4) the "high" burden of proving the accusation was false, as applied by the trial court, violated his Sixth Amendment rights under the Confrontation Clause. We affirm.¹

1. The trial court did not err in determining Woods failed to prove Minor's prior allegation was false despite Woods's assertion that Minor accused two people—Kevin and Calvin—of the same offense and both accusations could not have been true. Although Minor's father's name is Kevin and Minor told Investigator Cheryl Cromartie the perpetrator's name was Kevin, the record indicates Minor always claimed the perpetrator was her mother's boyfriend. Minor told Investigator Cromartie that her mother's boyfriend was the one who molested her. Additionally, Investigator Cromartie testified Minor's guardian, to whom Minor had initially disclosed the molestation, referred to the perpetrator as Calvin, the new boyfriend of Minor's mother. Based on this evidence, Minor did not accuse two people of the same crime; therefore, the trial court properly determined Woods failed to prove Minor's prior allegation was false. *See State v. Boiter*, 302 S.C. 381, 383-84, 396 S.E.2d 364, 365 (1990) (stating when applying the test for deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false before considering the remoteness in time and the factual similarity between the prior and present allegations). Accordingly, the trial court did not abuse its discretion in precluding the admission of evidence regarding Minor's prior allegation.

2. The trial court did not err in determining Woods failed to prove Minor's prior allegation was false despite Woods's assertion the only reasonable inference that can be made is the police did not believe Minor because they did not pursue an investigation. However, the fact that law enforcement did not further investigate Minor's prior allegation is not alone sufficient to establish her allegation was false. *See id.* at 384, 396 S.E.2d at 365 (finding the defense did not present evidence to establish the falsity of the victim's prior allegation in a case in which the prior allegation had not been investigated). Moreover, Investigator Cromartie testified

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

she did not believe Minor had lied or recanted her allegation. She further stated she decided not to seek criminal charges against anyone regarding Minor's prior allegation because she "could not prove who the actual subject would have been at the time and [she] just didn't have enough information or details to pursue criminal charges." In light of this testimony, we find the trial court properly determined Woods failed to prove Minor's prior allegation was false. *See id.* at 383-84, 396 S.E.2d at 365 (stating when deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false before considering the remoteness in time and the factual similarity between the prior and present allegations). Accordingly, the trial court did not abuse its discretion in precluding the admission of evidence regarding Minor's prior allegation.

3. The trial court did not apply an incorrect standard in requiring Woods to prove Minor's prior allegation was false. Although Woods asserted Minor's prior allegation must have been false because the police did not pursue an investigation into her allegation, the trial court found there was "no evidence before this [c]ourt that anybody in law enforcement or the forensic interviewer or the medical professional believed [Minor] was lying. They just believed there wasn't enough evidence to charge him." This finding is supported by the testimony of Investigator Cromartie regarding why she declined to seek criminal charges, as well as her statement she did not determine Minor had lied or recanted the allegation. Because courts must first determine whether a prior allegation is false when deciding whether the allegation is admissible and evidence supports the trial court's determination Woods failed to prove Minor's prior allegation was false, the trial court did not apply an incorrect standard. *See id.* at 383, 396 S.E.2d at 365 (stating when deciding the admissibility of evidence of a victim's prior allegation, a trial court must first determine whether the allegation was false); *id.* at 383-84, 396 S.E.2d at 365 (finding the three-part test for determining the admissibility of a victim's prior allegation "is consistent with the well-settled rule that admission of proffered testimony is largely discretionary with the trial court, and its rulings will not be disturbed on appeal unless an abuse of discretion is shown").

4. Woods failed to preserve his argument regarding whether the "high" burden of proving the accusation was false violated his Sixth Amendment rights under the Confrontation Clause. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *see also State v. Langford*, 400 S.C. 421, 432, 735 S.E.2d 471, 477 (2012) ("Constitutional questions must be preserved like any other issue on appeal.").

AFFIRMED.

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.